

Fair and Legal Employment

This Act directs that an employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien. On receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code Section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code Section 1373(c). If, after an investigation, the attorney general or county attorney determines that the complaint is not frivolous, the attorney general or county attorney shall notify United States Immigration and Customs Enforcement of the unauthorized alien. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

On February 7, 2008 the United States District Court for the District of Arizona dismissed a suit challenging the Act and also denied a temporary restraining order that would prohibit enforcing the Act.

Generally, the Court found:

- the Immigration Reform and Control Act (IRCA) expressly authorizes, rather than preempts, the licensing sanctions in the Act;
- the plain language of 8 U.S.C. § 1324a(h)(2) authorizes state licensing sanctions;
- the licensing sanction authorization is not conditioned on completed federal proceedings against the violator;
- the structure and purpose of IRCA do not support plaintiffs' restrictive interpretation of the savings clause;
- IRCA does not clearly evidence congressional intent to prevent states from independently revoking the business licenses of those who knowingly employ unauthorized aliens;
- the Act does not impermissibly regulate in the field of immigration;
- the Act does not conflict with the purposes and objectives of Congress;
- the Act provides employers with procedural due process;
- plaintiffs have not shown that their interpretation fails due process; and
- the Superior Court process is fair and adequate.

Submitted as:

Arizona

[Chapter 279 of 2007](#)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as “The Fair and Legal Employment Act.”
- 2
- 3 Section 2. [*Definitions.*] As used in this Act:

4 1. “agency” means any [agency, department, board or commission] of this state or a
5 county, city or town that issues a license for purposes of operating a business in this state.

6 2. “basic pilot program” means the Basic Employment Verification Pilot Program
7 as jointly administered by the United States Department of Homeland Security and the Social
8 Security Administration or its successor program.

9 3. “employee” means any person who performs employment services for an
10 employer pursuant to an employment relationship between the employee and employer.

11 4. “employer” means any individual or type of organization that transacts business
12 in this state, that has a license issued by an agency in this state and that employs [one or more]
13 people who perform employment services in this state. Employer includes this state, any political
14 subdivision of this state and self-employed people.

15 5. “intentionally” has the same meaning prescribed in [insert citation].

16 6. “knowingly employ an unauthorized alien” means the actions described in 8
17 United States Code Section 1324a. This term shall be interpreted consistently with 8 United States
18 Code Section 1324a and any applicable federal rules and regulations.

19 7. “license:”

20 (a) means any agency permit, certificate, approval, registration, charter or
21 similar form of authorization that is required by law and that is issued by any agency for the
22 purposes of operating a business in this state.

23 (b) includes:

24 (i) articles of incorporation under [insert citation].

25 (ii) a certificate of partnership, a partnership registration or articles
26 of organization under [insert citation].

27 (iii) a grant of authority issued under [insert citation].

28 (iv) any transaction privilege tax license.

29 (c) does not include:

30 (i) any license issued pursuant to [insert citation] or rules adopted
31 pursuant to those [titles].

32 (ii) any professional license.

33 8. “unauthorized alien” means an alien who does not have the legal right or
34 authorization under federal law to work in the United States as described in 8 United States Code
35 Section 1324a(h)(3).

36
37 Section 3. *[Employment of Unauthorized Aliens; Prohibition; False and Frivolous*
38 *Complaints; Violation; Classification; License Suspension and Revocation.]*

39 A. An employer shall not intentionally employ an unauthorized alien or knowingly
40 employ an unauthorized alien.

41 B. On receipt of a complaint that an employer allegedly intentionally employs an
42 unauthorized alien or knowingly employs an unauthorized alien, the [attorney general] or county
43 attorney shall investigate whether the employer has violated subsection A. When investigating a
44 complaint, the [attorney general] or county attorney shall verify the work authorization of the
45 alleged unauthorized alien with the federal government pursuant to 8 United States Code Section
46 1373(c). A state, county or local official shall not attempt to independently make a final
47 determination on whether an alien is authorized to work in the United States. An alien's
48 immigration status or work authorization status shall be verified with the federal government
49 pursuant to 8 United States Code Section 1373(c). A person who knowingly files a false and
50 frivolous complaint under this subsection is guilty of a [class 3 misdemeanor].

51 C. If, after an investigation, the [attorney general] or county attorney determines that the
52 complaint is not frivolous:

53 1. The [attorney general] or county attorney shall notify the United States
54 Immigration and Customs Enforcement of the unauthorized alien.

55 2. The [attorney general] or county attorney shall notify the local law enforcement
56 agency of the unauthorized alien.

57 3. The [attorney general] shall notify the appropriate county attorney to bring an
58 action pursuant to subsection d if the complaint was originally filed with the [attorney general].

59 D. An action for a violation of subsection A of this Section shall be brought against the
60 employer by the county attorney in the county where the unauthorized alien employee is
61 employed. The county attorney shall not bring an action against any employer for any violation of
62 subsection A that occurs before [January 1, 2008]. A second violation of this section shall be
63 based only on an unauthorized alien who is employed by the employer after an action has been
64 brought for a violation of subsection A.

65 E. For any action in [superior court under this section] the court shall expedite the action,
66 including assigning the hearing at the earliest practicable date.

67 F. On a finding of a violation of subsection A:

68 1. For a [first violation during a three year period] that is a knowing violation of
69 subsection A, the court:

70 (a) shall order the employer to terminate the employment of all
71 unauthorized aliens.

72 (b) shall order the employer to be subject to a [three year probationary
73 period]. During the probationary period the employer shall file [quarterly] reports with the county
74 attorney of each new employee who is hired by the employer at the specific location where the
75 unauthorized alien performed work.

76 (c) shall order the employer to file a signed sworn affidavit with the county
77 attorney within [three business days] after the order is issued. The affidavit shall state that the
78 employer has terminated the employment of all unauthorized aliens and that the employer will not
79 intentionally or knowingly employ an unauthorized alien. The court shall order the appropriate
80 agencies to suspend all licenses subject to this subdivision that are held by the employer if the
81 employer fails to file a signed sworn affidavit with the county attorney within [three business
82 days] after the order is issued. All licenses that are suspended under this subdivision shall remain
83 suspended until the employer files a signed sworn affidavit with the county attorney.
84 Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated
85 immediately by the appropriate agencies for the purposes of this subdivision, the licenses that are
86 subject to suspension under this subdivision are all licenses that are held by the employer and that
87 are necessary to operate the employer's business at the employer's business location where the
88 unauthorized alien performed work. If a license is not necessary to operate the employer's business
89 at the specific location where the unauthorized alien performed work, but a license is necessary to
90 operate the employer's business in general, the licenses that are subject to suspension under this
91 subdivision are all licenses that are held by the employer at the employer's primary place of
92 business. On receipt of the court's order and notwithstanding any other law, the appropriate
93 agencies shall suspend the licenses according to the court's order. The court shall send a copy of
94 the court's order to the [attorney general] and the [attorney general] shall maintain the copy
95 pursuant to subsection G.

96 (d) may order the appropriate agencies to suspend all licenses described in
97 subdivision (c) of this paragraph that are held by the employer for not to exceed ten business days.
98 The court shall base its decision to suspend under this subdivision on any evidence or information
99 submitted to it during the action for a violation of this subsection and shall consider the following
100 factors, if relevant:

101 (i) the number of unauthorized aliens employed by the employer.

102 (ii) any prior misconduct by the employer.
103 (iii) the degree of harm resulting from the violation.
104 (iv) whether the employer made good faith efforts to comply with
105 any applicable requirements.
106 (v) the duration of the violation.
107 (vi) the role of the directors, officers or principals of the employer in
108 the violation.
109 (vii) any other factors the court deems appropriate.

110 2. For a [first violation during a five year period] that is an intentional violation of
111 subsection A, the court shall:

112 (a) order the employer to terminate the employment of all unauthorized
113 aliens.
114 (b) order the employer to be subject to a [five year probationary period.]
115 During the probationary period the employer shall file [quarterly] reports with the county attorney
116 of each new employee who is hired by the employer at the specific location where the
117 unauthorized alien performed work.
118 (c) order the appropriate agencies to suspend all licenses, described in
119 subdivision (d) of this paragraph that are held by the employer for a minimum of [ten days]. The
120 court shall base its decision on the length of the suspension under this subdivision on any evidence
121 or information submitted to it during the action for a violation of this subsection and shall consider
122 the following factors, if relevant:

123 (i) the number of unauthorized aliens employed by the employer.
124 (ii) any prior misconduct by the employer.
125 (iii) the degree of harm resulting from the violation.
126 (iv) whether the employer made good faith efforts to comply with
127 any applicable requirements.
128 (v) the duration of the violation.
129 (vi) the role of the directors, officers or principals of the employer in
130 the violation.
131 (vii) any other factors the court deems appropriate.

132 (d) order the employer to file a signed sworn affidavit with the county
133 attorney. The affidavit shall state that the employer has terminated the employment of all
134 unauthorized aliens and that the employer will not intentionally or knowingly employ an
135 unauthorized alien. All licenses that are suspended under this subdivision shall remain suspended
136 until the employer files a signed sworn affidavit with the county attorney. For the purposes of this
137 subdivision, the licenses that are subject to suspension under this subdivision are all licenses that
138 are held by the employer and that are necessary to operate the employer's business at the
139 employer's business location where the unauthorized alien performed work. If a license is not
140 necessary to operate the employer's business at the specific location where the unauthorized alien
141 performed work, but a license is necessary to operate the employer's business in general, the
142 licenses that are subject to suspension under this subdivision are all licenses that are held by the
143 employer at the employer's primary place of business. On receipt of the court's order and
144 notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the
145 court's order. The court shall send a copy of the court's order to the [attorney general] and the
146 [attorney general] shall maintain the copy pursuant to subsection G.

147 3. For a [second violation of subsection A during the period of probation], the court
148 shall order the appropriate agencies to permanently revoke all licenses that are held by the
149 employer and that are necessary to operate the employer's business at the employer's business
150 location where the unauthorized alien performed work. If a license is not necessary to operate the

151 employer's business at the specific location where the unauthorized alien performed work, but a
152 license is necessary to operate the employer's business in general, the court shall order the
153 appropriate agencies to permanently revoke all licenses that are held by the employer at the
154 employer's primary place of business. On receipt of the order and notwithstanding any other law,
155 the appropriate agencies shall immediately revoke the licenses.

156 G. The [attorney general] shall maintain copies of court orders that are received pursuant to
157 subsection F and shall maintain a database of the employers who have a first violation of
158 subsection A and make the court orders available on the [attorney general's] website.

159 H. On determining whether an employee is an unauthorized alien, the court shall consider
160 only the federal government's determination pursuant to 8 United States Code Section 1373(c).
161 The federal government's determination creates a rebuttable presumption of the employee's lawful
162 status. The court may take judicial notice of the federal government's determination and may
163 request the federal government to provide automated or testimonial verification pursuant to 8
164 United States Code Section 1373(c).

165 I. For the purposes of this section, proof of verifying the employment authorization of an
166 employee through the Basic Pilot Program creates a rebuttable presumption that an employer did
167 not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

168 J. For the purposes of this section, an employer who establishes that it has complied in
169 good faith with the requirements of 8 United States Code Section 1324b establishes an affirmative
170 defense that the employer did not intentionally or knowingly employ an unauthorized alien.

171
172 Section 4. [*Employer Actions; Federal or State Law Compliance.*] This Act shall not be
173 construed to require an employer to take any action that the employer believes in good faith would
174 violate federal or state law.

175
176 Section 5. [*Verification of Employment Eligibility; Basic Pilot Program.*] After [December
177 31, 2007], every employer, after hiring an employee, shall verify the employment eligibility of the
178 employee through the Basic Pilot Program.

179
180 Section 6. [*Employer Notice.*] On or before [October 1, 2007], the [department of revenue]
181 shall provide a notice to every employer that is required to withhold tax pursuant to [insert
182 citation]. The notice shall explain the requirements of this Act, including the following:

183 1. A new state law prohibits employers from intentionally employing an unauthorized alien
184 or knowingly employing an unauthorized alien.

185 2. For a [first violation] of this new state law during a [three year period] that is a knowing
186 violation, the court will order the appropriate licensing agencies to suspend all licenses held by the
187 employer unless the employer files a signed sworn affidavit with the county attorney within [three
188 business days]. The filed affidavit must state that the employer has terminated the employment of
189 all unauthorized aliens and that the employer will not intentionally or knowingly employ an
190 unauthorized alien. A license that is suspended will remain suspended until the employer files a
191 signed sworn affidavit with the county attorney. A copy of the court order will be made available
192 on the [attorney general's] website.

193 3. For a [first violation] of this new state law during a [five year period] that is an
194 intentional violation, the court will order the appropriate licensing agencies to suspend all licenses
195 held by the employer for a minimum of [ten days]. The employer must file a signed sworn
196 affidavit with the county attorney. The filed affidavit must state that the employer has terminated
197 the employment of all unauthorized aliens and that the employer will not intentionally or
198 knowingly employ an unauthorized alien. A license that is suspended will remain suspended until

199 the employer files a signed sworn affidavit with the county attorney. A copy of the court order will
200 be made available on the [attorney general's] website.

201 4. For a [second violation] of this new state law, the court will order the appropriate
202 licensing agencies to permanently revoke all licenses that are held by the employer.

203 5. Proof of verifying the employment authorization of an employee through the Basic Pilot
204 Program, as defined in this Act, will create a rebuttable presumption that an employer did not
205 violate the new state law.

206 6. After [December 31, 2007], every employer, after hiring an employee, is required to
207 verify the employment eligibility of the employee through the basic pilot program as defined in
208 this Act.

209 7. Instructions for the employer on how to enroll in the Basic Pilot Program, as defined in
210 this Act.

211
212 Section 7. [*Employer Sanctions Legislative Study Committee.*]

213 A. An [Employer Sanctions Legislative Study Committee] is established consisting of the
214 following members:

215 1. [Three members of the senate who are appointed by the president of the senate,
216 not more than two of whom shall be members of the same political party. The president of the
217 senate shall designate one of these members to co-chair the committee].

218 2. [Three members of the house of representatives who are appointed by the
219 speaker of the house of representatives, not more than two of whom shall be members of the same
220 political party. The speaker of the house of representatives shall designate one of these members to
221 co-chair the committee].

222 3. A citizen of this state appointed by the [president of the senate] who owns a
223 business in this state with no more than [30 employees].

224 4. A citizen of this state appointed by the [speaker of the house of representatives]
225 who owns a business in this state with more than [30 employees].

226 B. The [Committee] shall:

227 1. Examine the laws and regulations pertaining to employers sanctions in this state.
228 2. Examine the effects of these laws and whether such laws are being properly
229 implemented.

230 3. Examine if these laws are being applied to all businesses in this state in a fair
231 manner.

232 4. Examine if the complaint process is being implemented in a fair and just manner.

233 5. Submit a report of its findings and recommendations to the [governor, the
234 president of the senate and speaker of the house of representatives on or before December 31,
235 2008] and submit a copy of its report to the [secretary of state] and the [director of the state,
236 library archives and public records].

237 C. [Committee] members are not eligible to receive compensation or reimbursement of
238 expenses.

239
240 Section 8. [*Appropriation; Attorney General Enforcement; Exemption.*]

241 A. The sum of [\$100,000] is appropriated from the [state general fund] in [fiscal year
242 2007-2008] to the [attorney general] for the purpose of enforcing any immigration related matters
243 added by this Act.

244 B. The appropriation made in subsection A of this section is exempt from the provisions of
245 [insert citation] relating to lapsing of appropriations.

246 C. The sum of [\$2,430,000] is appropriated from the [state general fund] in [fiscal year
247 2007-2008] to the [department of administration] to be distributed to the county attorneys in this

248 state for the purpose of enforcing any immigration related matters and this Act. The [department
249 of administration] shall distribute these monies to each county attorney as follows:

250 1. [\$1,430,000] to each county attorney of a county in this state having a population
251 of [one million five hundred thousand] or more people.

252 2. [\$500,000] to each county attorney of a county in this state having a population
253 of [eight hundred thousand or more people but less than one million five hundred thousand
254 people].

255 3. The remainder of monies to be distributed as equally as possible to each county
256 attorney of counties in this state having a population of less than [five hundred thousand people].

257 B. The sum of [\$70,000] is appropriated from the [state general fund] in [fiscal year 2007-
258 2008] to the [department of revenue] for the purposes prescribed in section 3 of this Act.

259 C. The appropriation made in subsection A of this section is exempt from the provisions of
260 [insert citation] relating to lapsing of appropriations.

261

262 Section 9. [*Severability.*] [Insert severability clause.]

263

264 Section 10. [*Repealer.*] [Insert repealer clause.]

265

266 Section 11. [*Effective Date.*] [Insert effective date.]

False Medicaid Claims

This Act provides a partial remedy for false Medicaid claims by providing specific procedures whereby the state, and private citizens acting for and on behalf of the state, may bring civil actions against people and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. This Act, in its provision for double and sometimes treble damages, is remedial in purpose, and is intended not to punish, but insofar as possible to make the state treasury whole for both the direct and indirect losses caused by the submission of false or fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of the recovery in civil actions brought under the Act, “whistleblowers” are encouraged to come forward when they have information about the submission of false claims to the state Medicaid program, and rewarded when their initiative results in civil recoveries for this state.

Submitted as:

Georgia

[HB 551](#)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be known and may be cited as the “State False
2 Medicaid Claims Act.”

3
4 Section 2. [*Legislative Findings.*] The [General Assembly] recognizes that the submission
5 of false or fraudulent claims to the state Medicaid Program can and does cause the state treasury to
6 incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is
7 intended to provide a partial remedy for this problem by providing specific procedures whereby
8 this state, and private citizens acting for and on behalf of this state, may bring civil actions against
9 people and entities who have obtained state funds through the submission of false or fraudulent
10 claims to state agencies. This Act, in its provision for double and sometimes treble damages, is
11 remedial in purpose, and is intended not to punish, but insofar as possible to make the state
12 treasury whole for both the direct and indirect losses caused by the submission of false or
13 fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of
14 the recovery in civil actions brought under this Act, “whistleblowers” are encouraged to come
15 forward when they have information about the submission of false claims to the Medicaid
16 Program, and rewarded when their initiative results in civil recoveries for this state.

17
18 Section 3. [*Definitions.*] As used in this Act:

19 (1) ‘Claim’ includes any request or demand, whether under a contract or otherwise,
20 for money, property, or services, which is made to the Medicaid Program, or to any officer,
21 employee, fiscal intermediary, grantee or contractor of the Medicaid Program, or to other people
22 or entities if it results in payments by the Medicaid Program, if the Medicaid Program provides or
23 will provide any portion of the money or property requested or demanded, or if the Medicaid
24 Program will reimburse the contractor, grantee, or other recipient for any portion of the money or
25 property requested or demanded. A claim includes a request or demand made orally, in writing,
26 electronically, or magnetically. Each claim may be treated as a separate claim.