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

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

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

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

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

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

7. “license:”
   (a) means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.
   (b) includes:
      (i) articles of incorporation under [insert citation].
      (ii) a certificate of partnership, a partnership registration or articles of organization under [insert citation].
      (iii) a grant of authority issued under [insert citation].
      (iv) any transaction privilege tax license.
   (c) does not include:
      (i) any license issued pursuant to [insert citation] or rules adopted pursuant to those [titles].
      (ii) any professional license.

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

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

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

B. 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 whether the employer has violated subsection A. 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). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a [class 3 misdemeanor].

C. If, after an investigation, the [attorney general] or county attorney determines that the complaint is not frivolous:
1. The [attorney general] or county attorney shall notify the United States Immigration and Customs Enforcement of the unauthorized alien.

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

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

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

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

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

1. For a [first violation during a three year period] that is a knowing violation of subsection A, the court:
   (a) shall order the employer to terminate the employment of all unauthorized aliens.
   (b) shall order the employer to be subject to a [three year probationary period]. During the probationary period the employer shall file [quarterly] reports with the county attorney of each new employee who is hired by the employer at the specific location where the unauthorized alien performed work.
   (c) shall order the employer to file a signed sworn affidavit with the county attorney within [three business days] after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within [three business days] after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies for the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer for not to exceed ten business days. The court shall base its decision to suspend under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:
   (i) the number of unauthorized aliens employed by the employer.

2. The [attorney general] or county attorney shall notify the local law enforcement agency of the unauthorized alien.
(ii) any prior misconduct by the employer.

(iii) the degree of harm resulting from the violation.

(iv) whether the employer made good faith efforts to comply with any applicable requirements.

(v) the duration of the violation.

(vi) the role of the directors, officers or principals of the employer in the violation.

(vii) any other factors the court deems appropriate.

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

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

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

(c) order the appropriate agencies to suspend all licenses, described in subdivision (d) of this paragraph that are held by the employer for a minimum of [ten days]. The court shall base its decision on the length of the suspension under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

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

(ii) any prior misconduct by the employer.

(iii) the degree of harm resulting from the violation.

(iv) whether the employer made good faith efforts to comply with any applicable requirements.

(v) the duration of the violation.

(vi) the role of the directors, officers or principals of the employer in the violation.

(vii) any other factors the court deems appropriate.

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

3. For a [second violation of subsection A during the period of probation], the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer and that are necessary to operate the employer’s business at the employer’s business location where the unauthorized alien performed work. If a license is not necessary to operate the
employer’s business at the specific location where the unauthorized alien performed work, but a
license is necessary to operate the employer’s business in general, the court shall order the
appropriate agencies to permanently revoke all licenses that are held by the employer at the
employer’s primary place of business. On receipt of the order and notwithstanding any other law,
the appropriate agencies shall immediately revoke the licenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. [Employer Sanctions Legislative Study Committee.]
A. An [Employer Sanctions Legislative Study Committee] is established consisting of the
following members:

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

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

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

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

B. The [Committee] shall:

1. Examine the laws and regulations pertaining to employers sanctions in this state.

2. Examine the effects of these laws and whether such laws are being properly implemented.

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

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

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

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

Section 8. [Appropriation; Attorney General Enforcement; Exemption.]
A. The sum of [$100,000] is appropriated from the [state general fund] in [fiscal year 2007-2008] to the [attorney general] for the purpose of enforcing any immigration related matters added by this Act.

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

C. The sum of [$2,430,000] is appropriated from the [state general fund] in [fiscal year 2007-2008] to the [department of administration] to be distributed to the county attorneys in this
state for the purpose of enforcing any immigration related matters and this Act. The [department of administration] shall distribute these monies to each county attorney as follows:

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

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

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

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

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

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

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

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.)

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

Section 2. [Legislative Findings.] The [General Assembly] recognizes that the submission of false or fraudulent claims to the state Medicaid Program can and does cause the state treasury to incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is intended to provide a partial remedy for this problem by providing specific procedures whereby this state, and private citizens acting for and on behalf of this 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 this Act, “whistleblowers” are encouraged to come forward when they have information about the submission of false claims to the Medicaid Program, and rewarded when their initiative results in civil recoveries for this state.

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

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