

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board
—in recent past or present

- AT&T Services, Inc.
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 - Johnson & Johnson
 - Coca-Cola Company
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 - Salt River Project
 - Altria Client Services, Inc.
 - American Bail Coalition
 - State Farm Insurance
- For more on these corporations, search at www.SourceWatch.org.

& MEETINGS

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Home → Model Legislation → Public Safety and Elections

Fair and Legal Employment Act

Did you know the NRA--the National Rifle Association--was the corporate co-chair in 2011?

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Short Title.}

This act may be cited as the "Fair and Legal Employment Act".

Section 2. { Taking or Knowingly Accepting Identity of Another Person or Entity; Classification }

(A) A person commits taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment.

(B) A person commits knowingly accepting the identity of another person if the person, in hiring an employee, knowingly does both of the following:

(1) Accepts any personal identifying information of another person from an individual and knows that the individual is not the actual person identified by that information.

(2) Uses that identity information for the purpose of determining whether the individual who presented that identity information has the legal right or authorization under federal law to work in the United States as described and determined under the processes and procedures under 8 United States code section 1324a.

(C) On the request of a person or entity, a peace officer in any jurisdiction in which an element of an offense under this section is committed, a result of an offense under this section occurs or the person or entity whose identity is taken or accepted resides or is located shall take a report. The peace officer may provide a copy of the report to any other law enforcement agency that is located in a jurisdiction in which a violation of this section occurred.

(D) If a defendant is alleged to have committed multiple violations of this section within the same county, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any precinct in which a violation is alleged to have occurred. If a defendant is alleged to have committed multiple violations of this section within the state, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any county in which a violation is alleged to have occurred.

(E) Taking the identity of another person or entity or knowingly accepting the identity of another person is a class 4 felony.

Section 3. {Trafficking in the identity of another person or entity; classification.}

(A) A person commits trafficking in the identity of another person or entity if the person knowingly sells, transfers or transmits any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of the other person or entity for any unlawful purpose or to cause loss to the person or entity whether or not the other person or entity actually suffers any economic loss, or allowing another person to obtain or continue employment.

(B) Trafficking in the identity of another person or entity is a class 2 felony.

Section 4. { Definitions. }

(A) In this article, unless the context otherwise requires:

(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) "Employ" means hiring an employee after [Insert Date].

(3) "Employee":

(i) Means any person who provides services or labor for an employer in this state for wages or other remuneration.

(ii) Does not include an independent contractor.

(B) "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 employees in this state. Employer includes this state, any political subdivision of this state and self employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses the contract labor.

(C) "E-verify program" means the employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or any of its successor programs.

(D) "Independent contractor" means any individual or entity that carries on an independent business, that contracts to do a piece of work according to the individual's or entity's own means and methods and that is subject to control only as to results. Whether an individual or entity is an independent contractor is determined on a case-by-case basis through various factors, including whether the individual or entity:

(1) Supplies the tools or materials.

(2) Makes services available to the general public.

(3) Works or may work for a number of clients at the same time.

(4) Has an opportunity for profit or loss as a result of labor or service provided.

(5) Invests in the facilities for work.

(6) Directs the order or sequence in which the work is completed.

(7) Determines the hours when the work is completed.

(E) "Knowingly employ an unauthorized alien" means the actions described in 8 United States Code section 1324a. This term shall be interpreted consistently with United States Code section 1324a and any applicable federal rules and regulations.

(F) "License":

(1) 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.

(G) "Social security number verification service" means the program administered by the social security administration or any of its successor programs.

(H) "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 5. {Knowingly Employing Unauthorized Aliens; Prohibition; False and Frivolous Complaints; Violation; Classification; License Suspension and Revocation; Affirmative Defense.}

(A) An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

(B) The attorney general shall prescribe a complaint form for a person to allege a violation of subsection A. of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. 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 false and 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 of this section 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 or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection A of this section that occurs before [Insert Date]. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection A or state law.

(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 of this section:

(1) For a first violation, as described in subsection 3 of this section, the court:

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

(1)(b) Shall order the employer to be subject to a three year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports in the form provided in section 3 with the county attorney of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.

(1)(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 in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. 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 specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business 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 of this section.

(1)(d) May order the appropriate agencies to suspend all licenses described in subdivision (c) of this paragraph 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.
- (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 second violation, as described in subsection 3 of this section, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. The employer does not hold a license specific to the business 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.

(3) The violation shall be considered:

(a) A first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under state law for that employer's business location.

(b) A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under state law for that employer's business location.

(G) The attorney general shall maintain copies of court orders that are received pursuant to subsection f of this section and shall maintain a database of the employers and business locations that have a first violation of subsection A of this section 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 e-verify program creates a rebuttable presumption that an employer did knowingly employ an unauthorized alien.

(J) for the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States code section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. an employer is considered to have complied with the requirements of 8 United States code section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

Section 7. {Verification of employment eligibility; E-verify program; economic development incentives; list of registered employers. }

(A) After [insert date], every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e verify program.

(B) In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the e-verify program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the e-verify program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the government entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty days of the final determination. For the purposes of this subsection:

(1) "economic development incentive" means any grant, loan or performance-based incentive from any government entity that is awarded after [Insert Date]. Economic development incentive does not include any tax provision under title 42 or 43.

(2) "Government entity" means this state and any political subdivision of this state that receives and uses tax revenues.

(C) Every three months the attorney general shall request from the United States Department of Homeland Security a list of employers from this state that are registered with the E-verify program. On receipt of the list of employers, the attorney general shall make the list available on the attorney general's website.

Section 8. {Voluntary Employer Enhanced Compliance Program; Program Termination. }

(A) The attorney general shall establish the voluntary employer enhanced compliance program. The program is voluntary and an employer is not required to enroll in the program.

(B) An employer that is on probation may not enroll in the voluntary employer enhanced compliance program. A court shall not consider non-enrollment in the voluntary employer enhanced compliance program as a factor when determining whether to suspend or revoke a license.

(C) To enroll in the voluntary employer enhanced compliance program, an employer shall submit a signed sworn affidavit to the attorney general. The affidavit shall state that the employer agrees to perform all of the following actions in good faith:

(1) After hiring an employee, the employer shall verify the employment eligibility of the employee through the e-verify program.

(2) To ensure the accuracy of reporting wages to the social security administration, the employer shall verify the accuracy of social security numbers through the social security number verification service for any employee who is not verified through the e-verify program. Within thirty days after enrolling in the voluntary employer enhanced compliance program, the employer shall submit the necessary information to the social security number verification service, including

the full name, the social security number, the date of birth and the gender of each employee. On receipt of a failed verification result, the employer shall notify the employee of the date on which the employer received the failed result and instruct the employee to resolve the discrepancy with the social security administration within ninety days after that date. The employer and employee shall resolve any failed result within ninety days after the date on which the employer received the failed result. If the failed result is not resolved within the ninety-day period but the employer and employee are continuing to actively and consistently work toward resolving the failed result with the social security administration, the ninety day period does not apply as long as the employer and employee have documented proof of these ongoing efforts to resolve the failed result in good faith and have provided the documented proof to the attorney general. The employer shall verify the accuracy of the social security numbers and resolve any failed verification results in a consistent manner for all employees.

(3) In response to a written request by the attorney general or county attorney stating the name of an employee for whom a complaint has been received, the employer shall provide the attorney general or county attorney the documents indicating that the employee was verified through the e-verify program or that the accuracy of the employee's wage report was verified through the social security number verification service under this section.

(D) An employer that is enrolled in the voluntary employer enhanced compliance program shall not be in violation of state law if the employer has completed both of the following:

(1) In good faith verified the employment eligibility of the employee named in the complaint through the e-verify program or in good faith verified the accuracy of the social security number of the employee named in the complaint through the social security number verification system as required by subsection C, paragraphs 1 and 2 of this section.

(2) Provided the attorney general or county attorney with the documents, as required by subsection C, paragraph 3 of this section, indicating that the employer verified the employee named in the complaint.

(E) The attorney general shall maintain a list of employers enrolled in the voluntary employer enhanced compliance program and make the list available on the attorney general's website.

(F) The attorney general shall develop a form of recognition that an employer may display to the general public for enrolling in the voluntary employer enhanced compliance program.

(G) If an employer does not fully comply with this section, the attorney general shall terminate the employer's enrollment in the voluntary employer enhanced compliance program. At any time, an employer may voluntarily withdraw from the voluntary employer enhanced compliance program by notifying the attorney general. Beginning on the date of termination or withdrawal, subsection D of this section no longer applies to the employer and the employer shall immediately remove any form of recognition from public display that is authorized under this section.

(H)The program established by this section ends [Insert Date]

(I) Independent contractors; applicability for the purposes of this article, independent contractor status applies to an individual who performs services and is not an employee pursuant to section 3508 of the internal revenue code.

Section 9. { Employer Requirements; Cash Payments; Unlawful Practices; Civil Penalty. }

(A) An employer that has two or more employees and pays hourly wages or salary by cash to any employee shall comply with all of the following:

- (1) The income tax withholding laws prescribed in state law.
- (2) The employer reporting laws prescribed in state law.
- (3) The employment security laws prescribed in state law.
- (4) The workers' compensation laws prescribed in state law.

(B) For a violation of subsection A of this section, the attorney general may bring an action in superior court against an employer. On a finding of a violation of subsection A of this section, the court shall order the employer to pay a civil penalty that is equal to treble the amount of all withholdings, payments, contributions or premiums that the employer failed to remit as prescribed by subsection A of this section or five thousand dollars for each employee for whom a violation was committed, whichever is greater.

(C) The court shall transmit the monies collected pursuant to subsection B of this section to the state treasurer, and the state treasurer shall deposit the monies in the state general fund. Monies deposited in the state general fund pursuant to this subsection shall be equally appropriated to the department of education and the department of health services for the purposes of offsetting increased costs to this state by unauthorized aliens.

(D) The civil penalty under this section is in addition to any other penalties that may be imposed by law.

Section 10. {Licensing Eligibility; Authorized Presence; Documentation; Applicability; Definitions.}

(A) After [insert date], an agency or political subdivision of this state shall not issue a license to an individual if the individual does not present any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:

- (1) An [insert state] driver license
- (2) A driver license issued by a state that verifies lawful presence in the United States.
- (3) A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
- (4) A United States certificate of birth abroad.
- (5) A United States passport.
- (6) A foreign passport with a United States visa.
- (7) An I-94 form with a photograph.
- (8) A United States citizenship and immigration services employment authorization document or refugee travel document.
- (9) A United States certificate of naturalization.
- (10) A United States certificate of citizenship.
- (11) A tribal certificate of Indian blood.
- (12) A tribal or bureau of Indian affairs affidavit of birth.

(B) This section does not apply to an individual, if all of the following apply:

- (1) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.
- (2) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

(C) For the purposes of this section:

- (1) "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state.
- (2) "License" 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.

Section 11. {Government Procurement; E-verify Requirement; Definitions.}

(A) After [insert date], a government entity shall not award a contract to any

contractor or subcontractor that fails to comply with state law. Every government entity shall ensure that every government entity contractor and subcontractor complies with the federal immigration laws and regulations that relate to their employees and state law. Every government entity shall require that every government entity contract include all of the following provisions:

(1) That each contractor and subcontractor warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with state law.

(2) That a breach of a warranty under paragraph 1 shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

(3) That the government entity retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

(B) Every government entity that enters into a contract shall establish procedures to conduct random verification of the employment records of government entity contractors and subcontractors to ensure that the contractors and subcontractors are complying with their warranties.

(C) A government entity shall not deem a government entity contractor or subcontractor in material breach of a contract if the contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274a and 274b of the federal immigration and nationality act and the e-verify requirements.

(D) For the purposes of this section:

(1) "Contract" means all types of government entity agreements, regardless of what they may be called, for the procurement of services in this state.

(2) "Contractor" means any person who has a contract with a government entity.

(3) "E-verify program" means the employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or any of its successor programs.

(4) "Government entity" means this state and any political subdivision of this state that receives and uses tax revenues.

(5) "Services" means the furnishing of labor, time or effort in this state by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement of real property.

(6) "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a government entity.

Section 12. { Severability. }

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 13. { Emergency. }

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Section 14. { Effective Date. }

Adopted by ALEC's Criminal Justice & Homeland Security Task Force at the 2008 Spring Task Force Summit. Approved by the full ALEC Board of Directors June 2008.

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