

Montana Contractors' Association, Inc.

March 23, 2007

Opposition to SB 346 (Shockley) Prohibiting certain contracts with illegal aliens
Presented by Gail Abercrombie

Montana Contractors' Association opposes SB 346

There is great concern that the provisions in SB 346 could punish our members who follow all of the laws for checking employee identification and mistakenly hire an unauthorized alien. Having a contract terminated or being prohibited from bidding on contracts is severe punishment for following the law and being hoodwinked. Further, contractors do not have access to employment records of subcontractor and must rely on the subcontractors' statements of hiring compliance, yet the contractor could be punished for that subcontractor's employment of an unauthorized alien.

The construction contracts that MCA members execute with public agencies, such as the Department of Transportation, are lengthy and involved. The provision in SB 346 allowing the contract be terminated would be detrimental, not only to the contractor, but to the contracting agency.

Public contracting laws are rigorous and minimize subjectivity, favoritism, and cronyism. This protects the contractor and is meant, as well, to protect the expenditure of taxpayer dollars. MCA is reluctant to bring up the possibility of vindictive actions that could arise from the contract terminating provisions in SB 346, but it is not beyond supposition that a contractor who has lost a bid could urge the contracting agency to investigate the winning contractor because he "knows that the contractor is using illegals".

There is a lack of a process in SB 346 whereby a contractor who is accused, is given an opportunity for defense, and is either convicted or absolved of employing an unauthorized alien. SB 346 can punish employers who make every effort to comply with the law. Can an employer who follows the law by requiring new employees to complete I-9s, to submit the appropriate IDs and social security numbers, and asks questions that are legally allowed to be asked, escape the "knowingly" or "should have know" accusations in SB 346, should it subsequently be found that the employee had fake or altered stolen ID? I don't see where SB 346 allows that.

Also applicable to the "should have known" provision in SB 346 is what happened in the Swift packing plant situation. When job applicants started showing up with what the company suspected were false papers, it tried inquiring into their backgrounds — only to be sued for discrimination by the Justice Department.

HB 185 (Jopek) Injunction and license revocation procedures for hiring illegal aliens, which has passed the House, at least refers to "violations" of existing 39-2-305. *Employment of aliens not lawfully authorized to accept employment prohibited*, and provides a "three strikes and your out" before its "temporary or permanent injunction prohibiting an employer ... from transacting any business in this state" goes into effect.

The Montana Contractors' Association appreciates the importance of assuring employees are citizens or authorized alien workers. The issue is of national importance, and MCA supports the efforts of the Association of General Contractors (www.agc.org) to work with Congress to ensure that employers have a viable and reliable employee verification system and that enforcement laws are fair to general contractors.

Because of the uncertainties, lack of due process and onerous punishments in SB 346, the Montana Contractors' Association urge a do not concur.

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HB 185 (Jopek) Injunction and license revocation procedures for hiring illegal aliens
Passed House, 94-5

TITLE 39. LABOR
CHAPTER 2. THE EMPLOYMENT RELATIONSHIP
Part 3. General Prohibitions on Employers

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) ~~No~~ An employer may not knowingly employ an alien who is not lawfully authorized to accept employment.

(2) ~~A person convicted of violating this section shall~~ An employer who has violated the provisions of subsection (1) may be fined no more than by the department of labor and industry up to \$300 for each violation.

(3) ~~The department of labor and industry, the attorney general, or a person harmed by a violation of this section~~ subsection (1) may sue bring an action to enjoin an employer from ~~violating this section~~ employing unauthorized aliens and to gain other appropriate relief.

(4) ~~(a) In addition to the remedies provided for in subsection (3), the department of labor and industry or the attorney general may bring an action to obtain a temporary or permanent injunction prohibiting an employer who has violated the provisions of subsection (1) three times or more from transacting any business in this state.~~

~~(b) If a court issues a temporary or permanent injunction pursuant to the provisions of subsection (4)(a), the court may suspend or revoke the license of the employer that authorizes the employer to conduct business in this state."~~

SB 258 (Shockley) Deny licenses and license renewal to illegal aliens
Senate passed, 31-19
House Business & Labor hearing 3-20-07

TITLE 37. PROFESSIONS AND OCCUPATIONS
CHAPTER 1. GENERAL PROVISIONS
Part 1. Duties and Authority of Department, Director, and Boards

NEW SECTION. Section 1. Unlawful alien not to be licensed. (1) Before granting a license for the first time after [the effective date of this act] or renewing an expired or lapsed license on or after that date, a board, or the department for a department program, shall determine whether the individual to be licensed or renewed ~~is an unlawful alien~~ HAS A UNIQUE SOCIAL SECURITY NUMBER OR TAX IDENTIFICATION NUMBER. If a board or department determines that the individual ~~is an unlawful alien~~ DOES NOT HAVE A UNIQUE SOCIAL SECURITY NUMBER OR TAX IDENTIFICATION NUMBER, the board or department SHALL REQUEST MORE INFORMATION TO DETERMINE IF THE INDIVIDUAL IS AN UNLAWFUL ALIEN. IF THE INDIVIDUAL IS AN UNLAWFUL ALIEN, THE BOARD OR DEPARTMENT may not grant or renew the license.

(2) This section:

(a) does not authorize or require a board or the department to take disciplinary action, such as the revocation of a license, against an individual only because the individual is an unlawful alien;

(b) does not prevent a board or the department from taking appropriate action against a licensee or applicant who is an unlawful alien who has misrepresented the unlawful alien's immigration status or otherwise committed unprofessional conduct, of the type specified in 37-1-316, with regard to that status and a license application or renewal; and

(c) applies to licenses granted by:

- (i) a board or the department pursuant to this title;
- (ii) the board of athletics, provided for in 2-15-1772, pursuant to Title 23, chapter 3;
- (iii) the department pursuant to Title 50, chapter 74, part 3; and
- (iv) the department pursuant to Title 50, chapter 76, part 1.

(3) (A) As used in this section, "unlawful alien" is an individual determined by the federal government to be deportable, under federal law, from the United States.

(B) THE TERM DOES NOT INCLUDE AN INDIVIDUAL WHO HAS:

(I) A U.S. PASSPORT, A TRIBAL PHOTO IDENTIFICATION, OR A BIRTH CERTIFICATE ISSUED BY A STATE, COUNTY, MUNICIPAL AUTHORITY, OR OUTLYING POSSESSION OF THE UNITED STATES AND BEARING AN OFFICIAL SEAL; OR

(II) A FEDERALLY ISSUED DOCUMENT USED TO VERIFY EMPLOYMENT ELIGIBILITY, INCLUDING:

(A) A U.S. CITIZEN IDENTIFICATION CARD (INS FORM I-197);

(B) AN IDENTIFICATION CARD OF A RESIDENT CITIZEN OF THE UNITED STATES (INS FORM I-179);

(C) A CERTIFICATE OF U.S. CITIZENSHIP (INS FORM N-560 OR N-561);

(D) A CERTIFICATE OF NATURALIZATION (INS FORM N-550 OR N-570);

(E) AN UNEXPIRED FOREIGN PASSPORT WITH I-551 STAMP OR ATTACHED INS FORM I-94;

(F) AN UNEXPIRED TEMPORARY RESIDENT CARD (INS FORM I-688);

(G) AN UNEXPIRED EMPLOYMENT AUTHORIZATION CARD OR DOCUMENT (INS FORM I-688A OR I-688B WITH A PHOTOGRAPH);

(H) A PERMANENT RESIDENT CARD OR ALIEN REGISTRATION RECEIPT CARD WITH PHOTOGRAPH (INS FORM I-151 OR I-551);

(I) A DEPARTMENT OF DEFENSE DD FORM 214 OR AN ACTIVE MILITARY IDENTIFICATION CARD IF ON ACTIVE DUTY; OR

(J) AN UNEXPIRED REENTRY PERMIT (INS FORM I-327) OR UNEXPIRED REFUGEE TRAVEL DOCUMENT (INS FORM I-571).

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

SB 346 (Shockley) Prohibiting certain contracts with illegal aliens
Passed Senate, 33-17

TITLE 18. PUBLIC CONTRACTS
CHAPTER 1. PUBLIC CONTRACTS GENERALLY

NEW SECTION. Section 1. State and local contractors not to employ or contract with illegal UNAUTHORIZED aliens. (1) A person who contracts with a public agency may not employ or contract with, for the purposes of fulfilling the person's contractual obligations with the public agency, an alien determined by the federal government to be deportable.

~~(2) A public agency shall terminate a contract with a person determined by the agency to be in violation of subsection (1).~~

~~(3) The requirements of this section are considered to be a term of every contract between a public agency and a person contracting with the public agency. KNOWINGLY EMPLOY OR CONTRACT WITH:~~

(A) AN UNAUTHORIZED ALIEN, AS DEFINED IN 8 U.S.C. 1324A(H)(3), OR WITH A PERSON WHOM THE CONTRACTOR OR SUBCONTRACTOR SHOULD HAVE KNOWN WAS AN UNAUTHORIZED ALIEN; OR

(B) ANOTHER PERSON WHO KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN OR A PERSON WHOM THE EMPLOYER OR CONTRACTOR SHOULD HAVE KNOWN WAS AN UNAUTHORIZED ALIEN.

(2) A PERSON WHO CONTRACTS WITH A PUBLIC AGENCY OR THE SUBCONTRACTOR OF A PERSON WHO CONTRACTS WITH A PUBLIC AGENCY WHO VIOLATES SUBSECTION (1) IS IN MATERIAL BREACH OF THE CONTRACT. IN THE EVENT OF A BREACH, THE PUBLIC AGENCY MAY PURSUE ALL LEGAL CONTRACT REMEDIES, INCLUDING BUT NOT LIMITED TO TERMINATING THE CONTRACT OR SUBCONTRACT. IN ADDITION, THE PUBLIC AGENCY MAY PROHIBIT THE CONTRACTOR OR SUBCONTRACTOR FROM BIDDING ON A CONTRACT OR CONTRACTING WITH THE PUBLIC AGENCY FOR A PERIOD NOT TO EXCEED 3 YEARS.

(3) A CONTRACT OF A PUBLIC AGENCY MUST EXPRESSLY STATE THE REQUIREMENTS OF THIS SECTION.

(4) A PUBLIC AGENCY TERMINATING A CONTRACT PURSUANT TO SUBSECTION (2) SHALL REPORT THE TERMINATION TO THE LEGISLATIVE AUDIT DIVISION, PROVIDED FOR IN 5-13-301, AT THE END OF THE CALENDAR YEAR IN WHICH THE CONTRACT WAS TERMINATED. THE REPORT MUST STATE THE NUMBER AND TYPE OF CONTRACTS TERMINATED AND THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE PERSON CONTRACTING WITH THE PUBLIC AGENCY OR ANOTHER PERSON CONTRACTING WITH THAT PERSON.

TITLE 28. CONTRACTS AND OTHER OBLIGATIONS

CHAPTER 2. CONTRACTS

NEW SECTION. Section 2. Employment contract with ~~illegal~~ **UNAUTHORIZED** aliens prohibited -- void contract -- misdemeanor. (1) An UNAUTHORIZED alien ~~who the United States has determined to be deportable, AS DEFINED IN 8 U.S.C. 1324A(H)(3),~~ may not:

- (a) make a contract for employment in this state; or
- (b) contract, as an independent contractor, with a person for the purposes of fulfilling a contract between the person and a public agency, as defined in 18-1-101.

~~(2) A contract made in violation of this section is void.~~

~~(3)~~(2) An alien who violates this section is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

NEW SECTION. Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 18, chapter 1, and the provisions of Title 18, chapter 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 28, chapter 2, and the provisions of Title 28, chapter 2, apply to [section 2].