

HOUSE BILL NO. 274

INTRODUCED BY D. HOWARD

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL UNDER STATE LAW; REQUIRING EMPLOYERS TO USE THE FEDERAL E-VERIFY SYSTEM; PROVIDING ENFORCEMENT PROCEDURES AND FOR SUSPENSION OF BUSINESS LICENSES OF EMPLOYERS WHO EMPLOY UNAUTHORIZED ALIENS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Agency" means any state, county, city, or other local government agency, department, board, or commission that issues a license for purposes of operating a business in this state.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employee" means any person who performs employment services within the state for an employer pursuant to an employment relationship between the employee and employer.

(4) (a) "Employer" means any individual or organization that transacts business in this state, that holds or has applied for a license issued by an agency in this state, and that employs individuals who perform employment services in this state.

(b) The term does not include an entity that hires an independent contractor to perform work or the occupant or owner of a private residence who hires casual, domestic labor to perform work customarily performed by a homeowner entirely within a private residence.

(5) "Employment authorization program" means the federal electronic verification of work authorization program, known as the e-verify program, 8 U.S.C. 1324a.

(6) "Knowingly employ an unauthorized alien" means to employ an unauthorized alien in violation of 8 U.S.C. 1324a. This term must be interpreted consistently with that section and any federal rules and regulations adopted pursuant to that section.

(7) "License" means any agency license, 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

1 in this state, except a license exempted under the provisions of [section 7], and includes articles of incorporation,
2 certificates of partnership, and partnership registrations required to be filed with the secretary of state under Title
3 35.

4 (8) "Unauthorized alien" has the meaning provided in 8 U.S.C. 1324a(h)(3).
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6 **NEW SECTION. Section 2. Verification of employment eligibility -- e-verify program.** (1) An
7 employer shall, after making an offer of employment that has been accepted by an employee, verify the
8 employment eligibility of each prospective employee using the employment authorization program. The
9 verification must be made within the time period stipulated by federal law after the person is hired. A continuing
10 employee hired prior to the date the employer registers with the program is exempt from the requirements of this
11 section.

12 (2) For purposes of [sections 1 through 8], there is a rebuttable presumption that an employer who used
13 the employment authorization program in compliance with this section did not knowingly employ an unauthorized
14 alien in violation of [section 3].
15

16 **NEW SECTION. Section 3. Employment of unauthorized aliens -- prohibition -- false and frivolous**
17 **complaints.** (1) An employer may not knowingly employ an unauthorized alien.

18 (2) (a) A person may file a complaint with the department if the person has actual or constructive
19 knowledge that:

20 (i) an employer employs or has within 90 days employed an unauthorized alien; or

21 (ii) an unauthorized alien is employed by an employer.

22 (b) A person who knowingly files a false or frivolous complaint under this subsection (2) is, upon
23 conviction, guilty of a misdemeanor.

24 (3) Upon receipt of a complaint filed under subsection (2)(a), the department shall notify the employer
25 and shall direct the employer to notify any employee referred to in the complaint. The department shall investigate
26 whether a violation has occurred and, if the allegations are substantiated, shall hold an administrative hearing
27 at which the employer may present information. An employer has the right to be represented by counsel at the
28 hearing. The department shall request verification under the employment authorization program of the
29 employment authorization status of an employee referred to in the complaint. The department may not attempt
30 to independently make a final determination of whether an alien is authorized to be employed in the United States.

1 The department shall rely upon verification of employment authorization provided by the federal government.

2 (4) The attorney general, a county attorney, a county sheriff, or a peace officer of any other local law
3 enforcement agency may issue subpoenas for the employer's records that relate to the employment of an
4 unauthorized alien.

5 (5) If after a hearing it is found that the employer has employed an unauthorized alien and the
6 department determines that the complaint is not frivolous, the department shall notify:

7 (a) the United States immigration and customs enforcement agency of the identity of the unauthorized
8 alien and the alien's address or location in the state, if known; and

9 (b) the local law enforcement agency of the presence of the unauthorized alien in the jurisdiction.

10
11 **NEW SECTION. Section 4. Violations -- penalties -- orders -- affidavit -- license suspension --**
12 **judicial enforcement.** (1) Upon a finding after hearing that an employer has violated [section 3(1)], the
13 department shall order the employer:

14 (a) to terminate the employment of all unauthorized aliens; and

15 (b) except as provided in subsection (3), within 10 business days after the order is issued to file a signed
16 sworn affidavit with the department attesting that the employer has corrected the violation by:

17 (i) terminating the unauthorized alien's employment;

18 (ii) after consultation with the employee, requesting a secondary or additional verification of employment
19 authorization using the employment authorization program; or

20 (iii) attempting to terminate the unauthorized alien's employment but the termination was challenged in
21 a court of competent jurisdiction.

22 (2) If the employer fails to file the affidavit as required in this section, the department shall order the
23 appropriate agencies to suspend all licenses subject to suspension under subsection (4) that are held by the
24 employer. Except as provided in subsection (5):

25 (a) all licenses that are suspended under this subsection (2) remain suspended until the required affidavit
26 has been filed with the department; and

27 (b) upon the filing of the affidavit, the suspended licenses must be automatically reinstated.

28 (3) The 10-day period for filing an affidavit must be tolled:

29 (a) during the pendency of an action under subsection (1)(b)(iii); and

30 (b) during any contest period in which the federal government may allow an alien to challenge the federal

1 government's determination of the alien's immigration status or employment authorization.

2 (4) Licenses that are subject to suspension under this section are all licenses that are held by the
3 employer and that are necessary to operate the employer's business at the employer's business location where
4 the unauthorized alien performed work. If a license is not necessary to operate the employer's business at the
5 specific location where the unauthorized alien performed work but a license is necessary to operate the
6 employer's business in general, the licenses that are subject to suspension under this section include all licenses
7 that are held by the employer at the employer's principal place of business.

8 (5) Upon a finding after hearing of a second or subsequent violation of [section 3(1)] within a 2-year
9 period, the department shall order the appropriate agencies to suspend, for at least 30 days or for a longer period
10 as directed by the department, all licenses that are held by the employer and that are necessary to operate the
11 employer's business at the employer's business location where the unauthorized alien performed work. If a
12 license is not necessary to operate the employer's business at the specific location where the unauthorized alien
13 performed work but a license is necessary to operate the employer's business in general, the department shall
14 order the appropriate agencies to suspend all licenses that are held by the employer at the employer's primary
15 place of business. On receipt of an order, an agency shall immediately suspend a license for at least 30 days or
16 for a longer period as directed by the department.

17 (6) If an agency or employer refuses to comply with an order issued by the department under this
18 section, the department may file an action in the district court with jurisdiction over the agency or employer for
19 an order directing the agency or employer to comply with the department's order.

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21 **NEW SECTION. Section 5. District court jurisdiction.** The district courts have jurisdiction to decide
22 challenges against the enforcement of [sections 1 through 8] brought by an employer subject to a complaint under
23 [sections 1 through 8] or the employee of the employer who is alleged to be an unauthorized alien and to enforce
24 an order of the department as provided in [section 4].

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26 **NEW SECTION. Section 6. Public database.** The department shall maintain a public database,
27 available on its website, containing copies of all orders issued pursuant to [section 4].

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29 **NEW SECTION. Section 7. License exemption -- length of suspension -- rules.** The department
30 shall, no later than 12 months after [the effective date of this act], adopt rules:

1 (1) establishing a procedure to be used by an agency to exempt certain licenses issued by the agency
2 from the provisions of [sections 1 through 8] that have been determined, with the concurrence of the department,
3 to be unrelated to operating a business in this state;

4 (2) establishing guidelines for the length of suspensions under [section 4(5)]; and

5 (3) establishing investigation and hearing procedures.
6

7 **NEW SECTION. Section 8. Construction.** The provisions of [sections 1 through 8] must be construed
8 without regard to race or national origin and in a manner so as to be fully consistent with applicable federal law.
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10 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
12 remains in effect in all valid applications that are severable from the invalid applications.
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14 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
15 codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 8].
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17 **NEW SECTION. Section 11. Effective date.** [This act] is effective 6 months after the date of passage
18 and approval.
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20 **NEW SECTION. Section 12. Applicability.** [This act] applies to employment decisions made on or after
21 [the effective date of this act]. The department may not act upon a complaint against an employer for a violation
22 that occurs prior to [the effective date of this act].
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