

HOUSE BILL NO. 297

INTRODUCED BY D. HOWARD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL
5 UNDER STATE LAW; REQUIRING EMPLOYERS TO VERIFY EMPLOYMENT ELIGIBILITY; PROVIDING
6 ENFORCEMENT PROCEDURES AND PENALTIES; PROVIDING FOR THE SUSPENSION OF BUSINESS
7 LICENSES OF EMPLOYERS WHO EMPLOY UNAUTHORIZED ALIENS; PROVIDING THAT AN EMPLOYER
8 HAS NOT UNLAWFULLY HIRED AN UNAUTHORIZED ALIEN IF THE EMPLOYER VERIFIES THE ALLEGED
9 UNAUTHORIZED ALIEN'S EMPLOYMENT STATUS THROUGH THE FEDERAL EMPLOYMENT
10 AUTHORIZATION PROGRAM; PROVIDING AN AFFIRMATIVE DEFENSE FOR EMPLOYERS WHO HAVE
11 COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF FEDERAL LAW; PROVIDING RULEMAKING
12 AUTHORITY; REPEALING SECTION 39-2-305, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
13 APPLICABILITY DATE."

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

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17 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions
18 apply:

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

21 (2) "Department" means the department of justice provided for in 2-15-2001.

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

24 (4) "Employer" means any individual or organization that transacts business in this state, that holds or
25 has applied for a license issued by an agency in this state, and that employs individuals who perform employment
26 services in this state. The term does not include an entity that hires an independent contractor to perform work
27 or the occupant or owner of a private residence who hires casual, domestic labor to perform work customarily
28 performed by a homeowner entirely within a private residence.

29 (5) "Employment authorization program" means the federal electronic verification of work authorization
30 program, known as the e-verify program as authorized by 8 U.S.C. 1324a, formally the basic pilot program under

1 Public Law 104-208, or any successor program designated by the federal government for verification that an
2 employee is not an unauthorized alien.

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

6 (7) "License" means any agency license, permit, certificate, approval, registration, charter, or similar form
7 of authorization that is required by law and that is issued by any agency for the purposes of operating a business
8 in this state, except a license exempted under the provisions of [section 6], and includes articles of incorporation,
9 certificates of partnership, and partnership registrations required to be filed with the secretary of state under Title
10 35.

11 (8) "Unauthorized alien" has the meaning provided in 8 U.S.C. 1324a(h)(3).

12
13 **NEW SECTION. Section 2. Verification of employment eligibility -- e-verify program.** (1) An
14 employer shall, after making an offer of employment that has been accepted by an employee, verify the
15 employment eligibility of each prospective employee:

16 (a) through the employment authorization program; and

17 (b) by requesting, receiving, and documenting lawful resident verification information from the
18 prospective employee in compliance with the requirements of 8 U.S.C. 1324a(b).

19 (2) The verification pursuant to subsection (1) must be made within the time period stipulated by federal
20 law after the person is hired. An employee hired prior to [the effective date of this act] that continues to be
21 employed after [the effective date of this act] is exempt from [sections 1 through 7].

22
23 **NEW SECTION. Section 3. Employment of unauthorized aliens -- prohibition -- false and frivolous**
24 **complaints.** (1) An employer may not knowingly employ an unauthorized alien.

25 (2) (a) If a person has actual or constructive knowledge that an employer employs or has within 90 days
26 employed an unauthorized alien, the person may file a complaint with the department.

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

29 (3) Upon receipt of a complaint filed under subsection (2)(a), the department shall:

30 (a) notify the employer that a complaint has been filed;

1 (b) direct the employer to notify any employee referred to in the complaint that a complaint has been
2 filed; and

3 (c) investigate whether a violation of subsection (1) has occurred.

4 (4) When investigating whether a violation of subsection (1) has occurred, the department shall request
5 the federal government to verify, pursuant to 8 U.S.C. 1373(c), the employment authorization status of the alleged
6 unauthorized alien referred to in the complaint. The department may not attempt to independently make a final
7 determination of whether an alien is authorized to work in the United States.

8 (5) If the department determines that the complaint is not false or frivolous, the department shall:

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

11 (b) notify the local law enforcement agency of the presence of the unauthorized alien in the jurisdiction;
12 and

13 (c) hold an administrative hearing at which the employer may present information regarding the alleged
14 violation of subsection (1).

15 (6) An employer has not violated this section if the employer verified the employment authorization status
16 of the employee by using the employment authorization program. An employer who establishes that the employer
17 has complied in good faith with the requirements of 8 U.S.C. 1324a(b) establishes an affirmative defense that
18 the employer did not violate subsection (1). An employer is considered to have complied with the requirements
19 of 8 U.S.C. 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to meet
20 the requirements, if there is a good faith attempt to comply with the requirements.

21
22 **NEW SECTION. Section 4. Violations -- penalties -- orders -- affidavit -- license suspension --**

23 **enforcement.** (1) If after holding a hearing the department finds that an employer has violated [section 3(1)], the
24 department shall immediately issue a cease and desist order requiring the employer:

25 (a) to terminate the employment of all unauthorized aliens in the state; and

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

28 (i) terminating the employment of unauthorized aliens;

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

1 (iii) demonstrating that an attempt to terminate the employment of any unauthorized alien has been
2 challenged in a court of competent jurisdiction.

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

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

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

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

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

11 (b) during any period in which the federal government allows an alien to challenge the federal
12 government's determination of the alien's immigration status or employment authorization.

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

19 (5) Upon determining that there is evidence of a second or subsequent violation of [section 3] within a
20 2-year period, the department shall, after providing an opportunity for a hearing as provided in [section 3], order
21 the appropriate agencies to suspend, for at least 30 days or for a longer period of time as directed by the
22 department, all licenses held by the employer that are necessary to operate the employer's business at the
23 employer's business location where the unauthorized alien performed work. If a license is not necessary to
24 operate the employer's business at the specific location where the unauthorized alien performed work, but a
25 license is necessary to operate the employer's business in general, the department shall order the appropriate
26 agencies to suspend all licenses held by the employer at the employer's primary place of business. On receipt
27 of an order, an agency shall immediately suspend a license for at least 30 days or for a longer period as directed
28 by the department.

29 (6) The department shall maintain a database of the employers who have violated [section 3(1)],
30 including the number and location of violations.

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

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5 **NEW SECTION. Section 5. District court jurisdiction.** The district courts have jurisdiction to decide
6 challenges against the enforcement of [sections 1 through 7] brought by an employer subject to a complaint under
7 [sections 1 through 7] or by the employee who is alleged to be an unauthorized alien and to enforce an order of
8 the department as provided in [section 4].

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10 **NEW SECTION. Section 6. License exemption -- length of suspension -- rules.** The department
11 shall, no later than 12 months after [the effective date of this act], adopt rules:

12 (1) establishing a procedure to be used by an agency to exempt certain licenses issued by the agency
13 from the provisions of [sections 1 through 7] that have been determined, with the concurrence of the department,
14 to be unrelated to operating a business in this state;

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

16 (3) establishing investigation, notice, and hearing procedures.

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18 **NEW SECTION. Section 7. Construction.** The provisions of [sections 1 through 7] must be construed
19 without regard to race or national origin and in a manner that is fully consistent with applicable federal law.

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21 **NEW SECTION. Section 8. Repealer.** The following section of the Montana Code Annotated is
22 repealed:

23 39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited.

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25 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified
26 as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 7].

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28 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
30 the part remains in effect in all valid applications that are severable from the invalid applications.

