

SENATE BILL NO. 346
INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PERSON WHO CONTRACTS WITH THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FROM CONTRACTING WITH AN ILLEGAL ALIEN AND PROHIBITING AN ILLEGAL ALIEN FROM MAKING CERTAIN CONTRACTS WITHIN THE STATE; PROVIDING A PENALTY; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, it is the policy of the United States, as expressed in 8 U.S.C. 1324a, that it is unlawful for an employer to employ an illegal alien; and

WHEREAS, the Montana Supreme Court held in *McManus v. Fulton*, 85 Mont. 170, 278 P. 126 (1929), that a contract against public policy is void; and

WHEREAS, section 28-2-702, MCA, provides that a contract provision, the fulfillment of which is illegal, is a void provision; and

WHEREAS, the federal government has insufficient officers and agents required to effectively police the country for aliens who have arrived or remain in this country in violation of federal law; and

WHEREAS, Montana should support the actions of the federal government in reducing the incidence of illegal alien employment in the United States, and it is a compelling state interest for Montana to support the federal government by prohibiting contractors with the state, or political subdivisions of the state, from employing illegal aliens and by making it a criminal offense for an illegal alien to contract for employment with a public or private sector employer.

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

NEW SECTION. Section 1. State and local contractors not to employ or contract with illegal 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.

NEW SECTION. Section 2. Employment contract with illegal aliens prohibited -- void contract -- misdemeanor. (1) An alien who the United States has determined to be deportable 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) 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].

NEW SECTION. Section 4. Applicability. [This act] applies to a contract entered into on or after October 1, 2007.

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