

HOUSE BILL NO. 496

INTRODUCED BY D. HOWARD

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A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO UNAUTHORIZED ALIENS; PROHIBITING THE EMPLOYMENT OF AND ISSUANCE OF STATE IDENTIFICATION CARDS TO UNAUTHORIZED ALIENS; CREATING AN OFFENSE AND PROVIDING PENALTIES; AND AMENDING SECTIONS 39-9-401 AND 61-12-501, MCA."

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

NEW SECTION. **Section 1. Suspension for employing unauthorized aliens.** Upon the order of a court suspending articles of incorporation because of the employment of an unauthorized alien as provided in [sections 20 through 23], the rights, powers, and privileges of a corporation to conduct business in this state are suspended or revoked as provided in the order.

NEW SECTION. **Section 2. Suspension for employing unauthorized aliens.** Upon the order of a court suspending a certificate of authority because of the employment of an unauthorized alien as provided in [sections 20 through 23], the rights, powers, and privileges of a foreign corporation to conduct business in this state are suspended or revoked as provided in the order.

NEW SECTION. **Section 3. Suspension for employing unauthorized aliens.** Upon the order of a court suspending articles of incorporation because of the employment of an unauthorized alien as provided in [sections 20 through 23], the rights, powers, and privileges of a corporation to conduct business in this state are suspended or revoked as provided in the order.

NEW SECTION. **Section 4. Suspension for employing unauthorized aliens.** Upon the order of a court suspending a certificate of authority because of the employment of an unauthorized alien as provided in [sections 20 through 23], the rights, powers, and privileges of a foreign corporation to conduct business in this state are suspended or revoked as provided in the order.

1 NEW SECTION. **Section 5. Suspension for employing unauthorized aliens.** Upon the order of a
2 court suspending a certificate of incorporation because of the employment of an unauthorized alien as provided
3 in [sections 20 through 23], the rights, powers, and privileges of a corporation sole to conduct business in this
4 state are suspended or revoked as provided in the order.

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6 NEW SECTION. **Section 6. Suspension for employing unauthorized aliens.** Upon the order of a
7 court suspending articles of incorporation because of the employment of an unauthorized alien as provided in
8 [sections 20 through 23], the rights, powers, and privileges of a professional corporation to conduct business in
9 this state are suspended or revoked as provided in the order.

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11 NEW SECTION. **Section 7. Suspension for employing unauthorized aliens.** Upon the order of a
12 court suspending a certificate of authority because of the employment of an unauthorized alien as provided in
13 [sections 20 through 23], the rights, powers, and privileges of a foreign professional corporation to conduct
14 business in this state are suspended or revoked as provided in the order.

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16 NEW SECTION. **Section 8. Suspension for employing unauthorized aliens.** Upon the order of a
17 court suspending a certificate of organization because of the employment of an unauthorized alien as provided
18 in [sections 20 through 23], the rights, powers, and privileges of a domestic business trust to conduct business
19 in this state are suspended or revoked as provided in the order.

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21 NEW SECTION. **Section 9. Suspension for employing unauthorized aliens.** Upon the order of a
22 court suspending a license to do business because of the employment of an unauthorized alien as provided in
23 [sections 20 through 23], the rights, powers, and privileges of a foreign business trust to conduct business in this
24 state are suspended or revoked as provided in the order.

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26 NEW SECTION. **Section 10. Suspension for employing unauthorized aliens.** Upon the order of a
27 court suspending articles of organization because of the employment of an unauthorized alien as provided in
28 [sections 20 through 23], the rights, powers, and privileges of a limited liability company to conduct business in
29 this state are suspended or revoked as provided in the order.

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1 NEW SECTION. **Section 11. Suspension for employing unauthorized aliens.** Upon the order of a
2 court suspending a certificate of authority because of the employment of an unauthorized alien as provided in
3 [sections 20 through 23], the rights, powers, and privileges of a foreign limited liability company to conduct
4 business in this state are suspended or revoked as provided in the order.

5
6 NEW SECTION. **Section 12. Suspension for employing unauthorized aliens.** Upon the order of a
7 court suspending articles of incorporation because of the employment of an unauthorized alien as provided in
8 [sections 20 through 23], the rights, powers, and privileges of a statutory close corporation to conduct business
9 in this state are suspended or revoked as provided in the order.

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11 NEW SECTION. **Section 13. Suspension for employing unauthorized aliens.** Upon the order of a
12 court suspending a statement of partnership authority because of the employment of an unauthorized alien as
13 provided in [sections 20 through 23], the rights, powers, and privileges of a partnership to conduct business in
14 this state are suspended or revoked as provided in the order.

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16 NEW SECTION. **Section 14. Suspension for employing unauthorized aliens.** Upon the order of a
17 court suspending an application for registration of an assumed business name because of the employment of
18 an unauthorized alien as provided in [sections 20 through 23], the rights, powers, and privileges of a limited
19 liability partnership to conduct business in this state are suspended or revoked as provided in the order.

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21 NEW SECTION. **Section 15. Suspension for employing unauthorized aliens.** Upon the order of a
22 court suspending a certificate of limited partnership because of the employment of an unauthorized alien as
23 provided in [sections 20 through 23], the rights, powers, and privileges of a limited partnership to conduct
24 business in this state are suspended or revoked as provided in the order.

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26 NEW SECTION. **Section 16. Suspension for employing unauthorized aliens.** Upon the order of a
27 court suspending a certificate of registration because of the employment of an unauthorized alien as provided
28 in [sections 20 through 23], the rights, powers, and privileges of a foreign limited partnership to conduct business
29 in this state are suspended or revoked as provided in the order.

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1 NEW SECTION. **Section 17. Suspension for employing unauthorized aliens.** Upon the order of a
2 court suspending the creation of a mining partnership because of the employment of an unauthorized alien as
3 provided in [sections 20 through 23], the rights, powers, and privileges of a mining partnership to conduct
4 business in this state are suspended or revoked as provided in the order.

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6 NEW SECTION. **Section 18. Suspension for employing unauthorized aliens.** Upon the order of a
7 court suspending a certificate of completed organization because of the employment of an unauthorized alien
8 as provided in [sections 20 through 23], the rights, powers, and privileges of a cooperative association to conduct
9 business in this state are suspended or revoked as provided in the order.

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11 NEW SECTION. **Section 19. Suspension for employing unauthorized aliens.** Upon the order of a
12 court suspending a certificate of incorporation because of the employment of an unauthorized alien as provided
13 in [sections 20 through 23], the rights, powers, and privileges of a corporation or a district to conduct business
14 in this state are suspended or revoked as provided in the order.

15
16 NEW SECTION. **Section 20. Short title.** [Sections 20 through 23] may be cited as the "Legal Montana
17 Workers Act".

18
19 NEW SECTION. **Section 21. Definitions.** As used in [sections 20 through 23], the following definitions
20 apply:

21 (1) "Agency" means a board, commission, committee, office, bureau, division, or department of this state
22 or of a county, city, town, or consolidated local government.

23 (2) "Business license" means:

24 (a) a license issued by an agency authorizing an employer to operate the employer's business at the
25 location where an unauthorized alien was employed; or

26 (b) if no license is required for the operation of the employer's business at the location where the
27 unauthorized alien was employed, a license issued by an agency authorizing an employer to conduct business
28 generally within the jurisdiction of the agency.

29 (3) "Employee" means a person who performs services for an employer pursuant to an employment
30 relationship between the employee and employer.

1 (4) "Employer" means an individual or entity that transacts business in this state and that employs one
2 or more employees.

3 (5) "Knowingly" has the meaning provided in 45-2-101.

4 (6) (a) "License":

5 (i) means an agency permit, certificate, approval, registration, charter, or similar form of authorization
6 that is required by law and is issued by an agency for the purposes of operating a business in this state;

7 (ii) includes:

8 (A) articles of incorporation, a certificate of authority, a statement of partnership authority, the designation
9 of a registered agent, or a similar document filed with the secretary of state pursuant to Title 35;

10 (B) a registration made pursuant to 39-9-201; and

11 (C) a license issued pursuant to Title 50, chapter 51, part 2.

12 (b) The term does not include:

13 (i) a license issued pursuant to Title 75 or Title 85 or rules adopted pursuant to Title 75 or Title 85; or

14 (ii) a professional or occupational license issued pursuant to Title 37.

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

16

17 **NEW SECTION. Section 22. Prohibition on employment of unauthorized alien -- enforcement by**
18 **attorney general or county attorney -- penalty.** (1) An employer may not intentionally or knowingly employ an
19 unauthorized alien.

20 (2) On receipt of a complaint that an employer has intentionally or knowingly employed an unauthorized
21 alien, the attorney general or county attorney shall investigate whether the employer has violated subsection (1).
22 When investigating a complaint of a violation of subsection (1), the attorney general or county attorney shall verify
23 the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C.
24 1373(c). A state, county, or local official may not independently make or attempt to make a final determination
25 of whether an alien is authorized to work in the United States. A person who files a complaint under this section
26 may not be sued in a civil or criminal action for the making of the complaint. However, a person who knowingly
27 files a false or frivolous complaint under this subsection may be sued in a civil action for any available remedy
28 and upon conviction is guilty of a misdemeanor punishable as provided in 46-18-212.

29 (3) If, after an investigation, the attorney general or county attorney determines that the complaint is not
30 frivolous:

1 (a) the attorney general or county attorney shall notify United States immigration and customs
2 enforcement of the unauthorized alien;

3 (b) the attorney general or county attorney shall notify the local law enforcement agency of the
4 unauthorized alien;

5 (c) if the complaint was originally filed with the attorney general, the attorney general shall notify the
6 appropriate county attorney of the unauthorized alien and direct the county attorney, as the other priorities of the
7 county attorney allow, to bring an action pursuant to this section; and

8 (d) if the complaint was originally filed with the county attorney, the county attorney shall, as the other
9 priorities of the county attorney allow, bring an action pursuant to this section to suspend or revoke the business
10 license of the employer of the unauthorized alien.

11 (4) An action for a violation of subsection (1) must, as provided in this section, be brought in the district
12 court against the employer by the county attorney in the county where the unauthorized alien is employed. The
13 county attorney may not bring an action against an employer for a first violation of subsection (1) that occurs
14 before October 1, 2009. A second or subsequent violation of subsection (1) may be based only on an
15 unauthorized alien who is employed by the employer after a first action has been brought for a violation of
16 subsection (1) as provided in this subsection.

17 (5) The district court shall expedite an action brought pursuant to this section, including assigning any
18 hearing or trial before the court at the earliest practicable date.

19 (6) On a finding of a violation of subsection (1):

20 (a) for a first violation, the court shall:

21 (i) order the employer to terminate the employment of the unauthorized alien and any other employee
22 the court determines is an unauthorized alien in the employment of the employer; and

23 (ii) order the agency issuing the employer's business license to suspend that license for not more than
24 7 days;

25 (b) for a second violation in a 3-year period, the court shall:

26 (i) order the employer to terminate the employment of the unauthorized alien and any other employee
27 the court determines is an unauthorized alien in the employment of the employer; and

28 (ii) order the agency issuing the employer's business license to suspend that license for not more than
29 30 days; and

30 (c) for a third violation in a 3-year period, the court shall:

1 (i) order the employer to terminate the employment of the unauthorized alien and any other employee
2 the court determines is an unauthorized alien in the employment of the employer; and

3 (ii) order the agency issuing the employer's business license to suspend the employer's business license
4 for not more than 180 days.

5 (7) On receipt of the court's order, the agency issuing the employer's business license shall suspend
6 the license according to the court's order.

7 (8) The court shall base its decision on the length of the suspension under subsection (6)(a), (6)(b), or
8 (6)(c) on evidence or information submitted to it during the action for a violation of subsection (1) relating to the
9 following factors:

10 (a) the number of unauthorized aliens employed by the employer;

11 (b) any prior misconduct by the employer;

12 (c) the degree of harm resulting from the violation;

13 (d) whether the employer made good faith efforts to comply with any applicable requirements;

14 (e) the duration of the violation;

15 (f) the role of the directors, officers, or principals of the employer in the violation; and

16 (g) any other factor the court determines is appropriate.

17 (9) In determining whether an employee is an unauthorized alien, the court shall consider only the federal
18 government's determination and response pursuant to 8 U.S.C. 1373(c). The federal government's determination
19 creates a rebuttable presumption of the employee's lawful or unlawful status. The court may take judicial notice
20 of the federal government's determination and may request the federal government to provide further written or
21 testimonial evidence of the determination of the alien's status and response pursuant to 8 U.S.C. 1373(c).

22 (10) For the purposes of this section, an employer who establishes that it has complied in good faith with
23 the requirements of 8 U.S.C. 1324b has an affirmative defense that the employer did not intentionally or knowingly
24 employ an unauthorized alien.

25
26 **NEW SECTION. Section 23. Employer violation of law not required.** [Sections 20 through 23] do not
27 require an employer to take any action that the employer believes in good faith would violate federal or state law.

28
29 **Section 24.** Section 39-9-401, MCA, is amended to read:

30 **"39-9-401. Violation -- infraction -- penalty -- disposition.** (1) It is a violation of this chapter and an

1 infraction for any construction contractor to:

2 (a) perform work as a construction contractor without being registered as required by this chapter;

3 (b) perform work as a construction contractor when the construction contractor's registration is
4 suspended; ~~or~~

5 (c) transfer a valid registration to an unregistered construction contractor or allow an unregistered
6 construction contractor to work under a registration issued to another construction contractor; or

7 (d) perform work in violation of a court order issued pursuant to [sections 20 through 23].

8 (2) (a) A determination by the department of a violation of this section subjects the person who commits
9 the violation to a penalty of up to \$500, as determined by the department. A person who has been determined
10 to have violated this section may request that a hearing be held in accordance with the Montana Administrative
11 Procedure Act. The hearing may be held by telephone or videoconference. An appeal of the hearing decision
12 must be made in the same manner as prescribed in 39-51-2403.

13 (b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

14 (c) A penalty collected under this section must be deposited in the uninsured employers' fund established
15 in 39-71-503."

16

17 **NEW SECTION. Section 25. Establishment operating in violation of court order violating chapter.**

18 An establishment that operates in violation of a court order issued pursuant to [sections 20 through 23] operates
19 in violation of this chapter.

20

21 **Section 26.** Section 61-12-501, MCA, is amended to read:

22 **"61-12-501. Authority of department to issue identification cards.** The department may issue
23 identification cards to any person. An identification card may not be issued to a person who does not submit proof
24 satisfactory to the department that the applicant's presence in the United States is authorized under federal law.
25 The department may not accept as a primary source of identification an identification card issued by a state that
26 does not require that the holder of the card be lawfully present in the United States under federal law."

27

28 **NEW SECTION. Section 27. Codification instruction.** (1) [Section 1] is intended to be codified as an
29 integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to [section 1].

30 (2) [Section 2] is intended to be codified as an integral part of Title 35, chapter 1, and the provisions of

- 1 Title 35, chapter 1, apply to [section 2].
- 2 (3) [Section 3] is intended to be codified as an integral part of Title 35, chapter 2, and the provisions of
3 Title 35, chapter 2, apply to [section 3].
- 4 (4) [Section 4] is intended to be codified as an integral part of Title 35, chapter 2, and the provisions of
5 Title 35, chapter 2, apply to [section 4].
- 6 (5) [Section 5] is intended to be codified as an integral part of Title 35, chapter 3, and the provisions of
7 Title 35, chapter 3, apply to [section 5].
- 8 (6) [Section 6] is intended to be codified as an integral part of Title 35, chapter 4, and the provisions of
9 Title 35, chapter 4, apply to [section 6].
- 10 (7) [Section 7] is intended to be codified as an integral part of Title 35, chapter 4, and the provisions of
11 Title 35, chapter 4, apply to [section 7].
- 12 (8) [Section 8] is intended to be codified as an integral part of Title 35, chapter 5, and the provisions of
13 Title 35, chapter 5, apply to [section 8].
- 14 (9) [Section 9] is intended to be codified as an integral part of Title 35, chapter 5, and the provisions of
15 Title 35, chapter 5, apply to [section 9].
- 16 (10) [Section 10] is intended to be codified as an integral part of Title 35, chapter 8, and the provisions
17 of Title 35, chapter 8, apply to [section 10].
- 18 (11) [Section 11] is intended to be codified as an integral part of Title 35, chapter 8, and the provisions
19 of Title 35, chapter 8, apply to [section 11].
- 20 (12) [Section 12] is intended to be codified as an integral part of Title 35, chapter 9, and the provisions
21 of Title 35, chapter 9, apply to [section 12].
- 22 (13) [Section 13] is intended to be codified as an integral part of Title 35, chapter 10, and the provisions
23 of Title 35, chapter 10, apply to [section 13].
- 24 (14) [Section 14] is intended to be codified as an integral part of Title 35, chapter 10, and the provisions
25 of Title 35, chapter 10, apply to [section 14].
- 26 (15) [Section 15] is intended to be codified as an integral part of Title 35, chapter 12, and the provisions
27 of Title 35, chapter 12, apply to [section 15].
- 28 (16) [Section 16] is intended to be codified as an integral part of Title 35, chapter 12, and the provisions
29 of Title 35, chapter 12, apply to [section 16].
- 30 (17) [Section 17] is intended to be codified as an integral part of Title 35, chapter 13, and the provisions

1 of Title 35, chapter 13, apply to [section 17].

2 (18) [Section 18] is intended to be codified as an integral part of Title 35, chapter 15, and the provisions
3 of Title 35, chapter 15, apply to [section 18].

4 (19) [Section 19] is intended to be codified as an integral part of Title 35, chapter 16, and the provisions
5 of Title 35, chapter 16, apply to [section 19].

6 (20) [Sections 20 through 23] are intended to be codified as an integral part of Title 39, chapter 2, and
7 the provisions of Title 39, chapter 2, apply to [sections 20 through 23].

8 (21) [Section 25] is intended to be codified as an integral part of Title 50, chapter 51, and the provisions
9 of Title 50, chapter 51, apply to [section 25].

10 - END -