

SENATE BILL NO. 329

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMPLOYMENT LAW; REQUIRING EMPLOYERS TO E-VERIFY NEW EMPLOYEES; PROVIDING DEFINITIONS; PROVIDING THE ATTORNEY GENERAL WITH ENFORCEMENT POWER; PROVIDING PENALTIES; PROHIBITING LOCAL GOVERNMENTS FROM ENACTING LAWS IN CONTRAVENTION OF THE ACT; PROVIDING AN EXCEPTION FROM WRONGFUL TERMINATION LAWS; AMENDING SECTION 7-1-111, MCA; AND PROVIDING 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 9], the following definitions apply:

(1) "Attorney general" means the Montana attorney general as provided in Title 2, chapter 15, part 5.

(2) "Employee" means a person directed, allowed, or permitted to perform labor or services of any kind by an employer.

(3) "Employer" means a person, company, corporation, government department, board, bureau, or agency THAT IS licensed pursuant to statute or regulation to operate in the state, that employs or seeks to employ any person as an employee, AND THAT HAS MORE THAN 50 EMPLOYEES.

(4) "Employment verification" means the electronic verification system known as e-verify, operated by United States citizenship and immigration services or its successor program, as authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, 8 U.S.C. 1324a.

(5) "Unauthorized worker" is a worker as described in 8 U.S.C. 1324a(h)(3) who is either not lawfully admitted for permanent residence or is otherwise not authorized to be employed in the United States.

NEW SECTION. Section 2. Requirement to verify all new employees. (1) (a) Except as provided in subsection (2), an employer shall:

- (i) register and create an e-verify employer account;
- (ii) after hiring a new employee, submit the employee's name and information for employment verification, even if the employment is terminated less than 3 business days after it began; and
- (iii) keep a record of the verified work authorization for the duration of the new employee's employment or for 3 years, whichever is longer.

(b) (i) A new employee's employment is considered provisional until the employee's work authorization has been verified as provided in subsection (1)(a)(ii).

(ii) If a new employee's work authorization is not verified as provided in subsection (1)(a)(ii), a private employer may not employ, continue to employ, or reemploy the new employee.

(2) An employer is not required to comply with subsection (1) if:

- (a) an employee was hired by the employer prior to October 1, 2025;
- (b) the employer is not required to verify the employee's eligibility to work pursuant to federal law.

NEW SECTION. Section 3. Compliance with federal immigration law. Nothing in [sections 1 through 9] abrogates an employer's obligation to comply with federal immigration laws, including the completion and maintenance of federal employment eligibility verification forms or documents.

NEW SECTION. Section 4. Employment of unauthorized workers. An employer may not employ an unauthorized worker. Failure to comply with requirements in [sections 2 or 3] are violations of this section.

NEW SECTION. Section 5. Investigation by attorney general. (1) (a) The attorney general shall prescribe a complaint form for an individual to allege a violation of [section 4] that must be submitted to the attorney general. ~~The complaint form may not require individuals to list personal identifying information or to have the form notarized.~~ Except as prohibited by law, the attorney general shall investigate any alleged violation that has been submitted in a complaint form.

~~(b) The attorney general may, at the attorney general's discretion, investigate a complaint form~~

submitted by an anonymous complainant.

(e)(B) The attorney general may not investigate any complaint filed that is based on race, color, national origin, or any other discriminatory factor.

(2) If the attorney general conducts an investigation under this section and determines that reasonable evidence exists that an employer has violated a provision of [sections 1 through 9], the attorney general shall take the following actions:

(a) provide notice of the alleged violation to the employer and provide the employer with an opportunity to comment;

(b) if, upon notice, the attorney general determines that this is the employer's first violation and it constitutes only a single unverified or unauthorized worker, the attorney general may, upon the employer presenting proof that the violation has been corrected, issue a formal warning letter to the employer and close the matter;

(c) if, upon notice, the attorney general determines that this violation constitutes either a second violation for the employer or constitutes two or more unverified or unauthorized workers, the attorney general shall order the employer to pay a fine of ~~\$2,500~~ \$1,000 per violation; and

(d) if, upon notice, the attorney general determines that this violation constitutes a third or subsequent violation for the employer, the attorney general shall order the employer to pay a fine of ~~\$5,000~~ \$2,500 per violation and shall institute proceedings before the district court with jurisdiction over the judicial district where the employer's business is incorporated to suspend or revoke the employer's license to transact business in the state.

(3) An employer who is assessed fines under this section may appeal that determination to the district court with jurisdiction over the judicial district where the employer's business is incorporated but is required to pay an appeal bond equal to the amount of the fine. If the court finds for the employer, the bond will be released, and the violation will not count as a previous violation for purposes of a subsequent investigation.

(4) The attorney general shall bring proper action against an employer who does not comply with the order to pay the fine and who does not appeal the assessment. If the court determines that the employer is liable, the court may assess double the fine of what was ordered by the attorney general.

(5) The attorney general, in consultation with the department of labor and industry, shall maintain a

list of every employer assessed a fine under subsection (2)(c) and (2)(d). An employer shall remain on the list for a period not to exceed 1 year and during that period the employer is not eligible to bid for or participate in any state contract. Following the 1-year period, the employer is eligible to bid for and participate in state contracts if the employer files a sworn affidavit with the attorney general that 1 year or more has elapsed since the order described in this section and that the employer has not violated any provision of [sections 1 through 9] during that period.

NEW SECTION. Section 6. Safe harbor for compliance in good faith. For the purposes of [sections 1 through 9], an employer who, in good faith, verifies the employment eligibility of a new employee pursuant to the provisions of [sections 1 through 9] is presumed to have complied with all of the provisions of [sections 1 through 9].

NEW SECTION. Section 7. Prevention of sanctuary policies. A political subdivision of the state may not enact an ordinance or policy, whether written or oral, that limits or otherwise acts in contravention of the attorney general's ability to enforce the provisions of [sections 1 through 9].

NEW SECTION. Section 8. Inapplicability of wrongful discharge of employment provisions. An employer who terminates an employee in order to comply with the provisions of [sections 1 through 9] is not subject to a civil action for wrongful discharge of the employee as provided in Title 39, chapter 2, part 9, or subject to any illegal discrimination claim based in Title 49.

NEW SECTION. Section 9. Right of entry and inspection by inspectors. The attorney general or the attorney general's inspectors, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, may enter at reasonable times and have the right to question either publicly or privately any employer, owner, manager, or agent and the employees of the private employer and inspect, investigate, reproduce, or photograph original business records relevant to determining compliance with the provisions of [sections 1 through 9].

Section 10. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24, 25, and 33; or

(b) any power to deviate from or add to the exclusive application of the provisions of:

(i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;

(ii) residential tenants' security deposit law in Title 70, chapter 25; or

(iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(4);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv);

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1);

(26) any power to control the amount of rent charged for private residential or commercial property. Private residential property does not include property in which the local government unit has a property interest or in which the local government unit has an interest through a housing authority.

(27) any power to require additional licensing when the state is the original issuer of the license;

(28) any power to prohibit or impede the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider;

(29) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools, or commercial and residential appliances that burn or transport petroleum fuels; or

(30) any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles; or

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