

SENATE BILL NO. 329

INTRODUCED BY F. MANDEVILLE, D. HARVEY, M. REGIER, S. FITZPATRICK, K. ZOLNIKOV, T.

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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~~

1 ~~submitted by an anonymous complainant.~~

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

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

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

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

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

16 (d) if, upon notice, the attorney general determines that this violation constitutes a third or
17 subsequent violation for the employer, the attorney general shall order the employer to pay a fine of ~~\$5,000~~
18 \$2,500 per violation and shall institute proceedings before the district court with jurisdiction over the judicial
19 district where the employer's business is incorporated to suspend or revoke the employer's license to transact
20 business in the state.

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

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

28 (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].