

HOUSE BILL NO. 536

INTRODUCED BY L. SCHUBERT, M. VINTON, K. LOVE, G. OVERSTREET, T. SHARP, E. BYRNE, J. FULLER, C. HINKLE, N. NICOL, B. LER, J. SCHILLINGER, L. DEMING, F. NAVE, B. USHER, P. FIELDER, J.

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE HIRING, RECRUITING, REFERRING, OR EMPLOYING OF ALIENS NOT LAWFULLY AUTHORIZED TO ACCEPT EMPLOYMENT; PROVIDING FOR REVOCATION AND SUSPENSION OF LICENSING; PROVIDING A CAUSE OF ACTION; PROVIDING STATUTORY DAMAGES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 39-2-305, MCA."

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

Section 1. Section 39-2-305, MCA, is amended to read:

"39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1)

~~No employer~~ A person may knowingly ~~not hire, recruit, refer, or employ, either for the person's self or on behalf of another person,~~ an alien who is not lawfully authorized to accept employment.

~~(2) — A person convicted of violating this section shall be fined no more than \$300.~~

~~(2) (a) A court shall issue an order suspending or revoking all licenses of a person who knowingly violates subsection (1) as follows:~~

~~(i) for a first violation, 1 year;~~

~~(ii) for a second violation, 3 years; and~~

~~(iii) for a third or subsequent violation, 20 years.~~

~~(b) During the period of suspension or revocation in subsections (2)(a)(i) through (2)(a)(iii), a license issued to the person by another state may not be recognized in Montana.~~

~~(c) FOR THE PURPOSES OF DETERMINING THE NUMBER OF VIOLATIONS UNDER THIS SUBSECTION (2), IT IS A SINGLE VIOLATION OF SUBSECTION (1) WHEN A PERSON HIRES, RECRUITS, REFERS, OR EMPLOYS, EITHER FOR THE PERSON'S SELF OR ON BEHALF OF ANOTHER PERSON, MORE THAN ONE ALIEN SIMULTANEOUSLY WHO IS NOT AUTHORIZED~~

1 TO ACCEPT EMPLOYMENT.

2 (3) A person who solicits, commands, encourages, or facilitates a violation of subsection (1) with
3 the intention that a violation of subsection (1) occur shall be punished as provided under subsection (2).

4 (4) A person who attempts to violate subsection (1) by taking an action toward committing a
5 violation of subsection (1) with the intention of violating that subsection shall be punished as provided under
6 subsection (2).

7 (5) The attorney general, a county attorney, or the department of labor may sue to enforce
8 subsections (1) through (4).

9 (6) The prosecuting county attorney, attorney general, or department of labor shall notify all
10 licensing authorities in writing of the revocation order in subsection (2). A licensing authority shall take action on
11 the order as required under [section 2].

12 ~~(3)(7)~~ The department of labor and industry or a person harmed by a violation of this section may sue
13 to enjoin an employer from violating this section and to gain other appropriate relief.

14 (8) (a) A person harmed by a violation of this section may sue to enjoin a person from violating this
15 section and to gain other appropriate relief. A successful plaintiff is entitled to actual damages or the following
16 amounts, whichever is greater:

17 (i) for a negligent violation of subsection (1), ~~\$ 500~~ \$200 for each day an alien who is not
18 authorized to accept employment performed any amount of work; or

19 (ii) for a knowing violation of subsection (1), \$2,000 for each day an alien who is not authorized to
20 accept employment performed any amount of work.

21 (b) A person may be awarded damages under only one category of statutory damages provided in
22 subsections (8)(a)(i) and (8)(a)(ii).

23 (C) AS AN AFFIRMATIVE DEFENSE TO SUIT UNDER SUBSECTION (8)(A)(I), THE DEFENDANT MAY SHOW THAT
24 THE DEFENDANT OBTAINED VERIFIED WORK AUTHORIZATION BY MEANS OF E-VERIFY FOR THE PERSON WHOSE
25 AUTHORIZATION TO ACCEPT EMPLOYMENT IS IN QUESTION.

26 (9) A peace officer of this state may investigate potential violations of this section.

27 (10) For the purposes of [section 2] and this section, the following definitions apply:

28 (A) "E-VERIFY" MEANS THE ELECTRONIC VERIFICATION SYSTEM KNOWN AS E-VERIFY, OPERATED BY THE

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.

(a) (B) "License" means a license, certificate, registration, permit, approval, charter, membership, or
any other authorization issued by an agency of the state granting a person a right or privilege to engage in a
business, occupation, profession, conservation activity, or any other privilege that is subject to suspension,
revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to
its date of expiration.

(b) (C) "Licensing authority" means a department, division, board, agency, or instrumentality of this
state that issues a license.

(e) (D) "Peace officer" has the same meaning as provided in 46-1-202.

(d) (E) "Person" has the same meaning as provided in 1-1-201."

**NEW SECTION. Section 2. Revocation, suspension, denial, termination, and nonrenewal of
licenses for hiring, recruiting, referring, or employing aliens not lawfully authorized to accept
employment.** (1) On receipt of the notice of revocation or suspension of the license pursuant to 39-2-305, a
licensing authority shall implement the revocation or suspension of the license by:

(a) determining if the licensing authority has issued a license to the person whose name appears
on the notice;

(b) entering the revocation or suspension on the appropriate records;

(c) reporting the revocation or suspension as appropriate; and

(d) if required by law, demanding surrender of the revoked or suspended license.

(2) The order revoking or suspending the license and notice of revocation or suspension pursuant
to 39-2-305 must be processed by the licensing authority without an additional review or hearing involving the
licensing authority concerning revocation or suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of revocation, suspension, denial,
termination, or nonrenewal of a license, an order issued pursuant to 39-2-305 revoking a license or suspending
a license must be implemented by the licensing authority and continues until the time period provided in the
order expires.

(4) In the event that a license is revoked or suspended, any funds paid by the person to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the person.

(5) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order revoking a license or the order suspending a license pursuant to 39-2-305.

(6) To the extent that inconsistencies exist between this part and the procedural requirements for revocation or suspension of a license by a licensing agency, this part supersedes those requirements. The provisions of 2-4-631 do not apply.

(7) A licensing authority may not issue a new license to the person during the time a license is revoked or suspended pursuant to 39-2-305.

(8) A licensing authority shall adopt rules necessary for the implementation and administration of this section.

NEW SECTION. Section 3. Appropriation. The following money is appropriated from the general fund to the department of justice for the purpose of INVESTIGATING AND PROSECUTING VIOLATIONS OF 39-2-305 AND assisting county attorneys in enforcing 39-2-305:

Fiscal year 2026	\$5,000,000 <u>\$2,500,000</u>
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Fiscal year 2027	\$5,000,000 <u>\$2,500,000</u>
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NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 39, chapter 2, part 3, and the provisions of Title 39, chapter 2, part 3, apply to [section 2].

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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