

House Study Bill 717

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON LABOR
BILL BY CHAIRPERSON OLSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the employer=employee relationship by
2 preventing identity theft in the procurement of employment,
3 providing for the employment classification of individuals,
4 and providing penalties and an effective date.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 DIVISION I
1 2 IDENTITY THEFT
1 3 Section 1. NEW SECTION. 91F.1 IDENTITY THEFT PREVENTION
1 4 == EMPLOYERS.
1 5 1. a. An employer, as defined in section 91A.2, or the
1 6 employer's designee shall certify under oath or affirmation by
1 7 signing the form described in subsection 2, under penalty of
1 8 perjury under subsection 3, that the employer or the
1 9 employer's designee has examined, within ten business days of
1 10 hiring a new employee, as defined in section 91A.2, to work in
1 11 this state, the Iowa=issued driver's license or nonoperator's
1 12 identification card of the new employee for facial validity in
1 13 order to verify the new employee's identity.
1 14 b. The employer or the employer's designee shall make two
1 15 photocopies of the new employee's Iowa=issued driver's license
1 16 or nonoperator's identification card. The employer or the
1 17 employer's designee shall make a photocopy of the executed
1 18 form described in subsection 2. The employer or employer's
1 19 designee shall retain one photocopy of the Iowa driver's
1 20 license or nonoperator's identification card and the photocopy
1 21 of the executed form for the period of the employee's
1 22 employment and for one year after termination of the
1 23 employee's employment. The employer or the employer's
1 24 designee shall mail the executed form and the second photocopy
1 25 of the Iowa driver's license or nonoperator's identification
1 26 card to the division of labor services of the department of
1 27 workforce development within thirty days of the new employee's
1 28 hiring.
1 29 c. (1) An employer may delegate the examination,
1 30 certification, and recordkeeping to a designee, but shall be
1 31 obligated to review and shall remain responsible for the
1 32 designee's actions in paragraphs "a" and "b" relating to
1 33 examination, certification, recordkeeping, and hiring.
1 34 (2) Failure to fulfill the requirements pursuant to
2 1 paragraphs "a" and "b" shall subject an employer or an
2 2 employer's designee to a civil penalty not to exceed one
2 3 thousand two hundred fifty dollars for a first violation as
2 4 determined by the labor commissioner. An employer or
2 5 employer's designee who commits a second violation within six
2 6 years of the first violation shall be subject to a civil
2 7 penalty not to exceed one thousand eight hundred seventy=five
2 8 dollars as determined by the labor commissioner. An employer
2 9 or employer's designee who commits a third or subsequent
2 10 violation within six years of the first violation shall be
2 11 subject to a civil penalty not to exceed three thousand one
2 12 hundred twenty=five dollars as determined by the labor
2 13 commissioner.
2 14 (3) If the labor commissioner determines an employer's
2 15 designee is responsible for a violation of paragraph "a" or
2 16 "b" and assigns a civil penalty to the designee, the labor
2 17 commissioner may assign a second civil penalty up to the same
2 18 amount to the employer in accordance with the employer's

2 18 responsibility under subparagraph (1).

2 19 2. The division of labor services shall prescribe and
2 20 provide a form that the employer or employer's designee shall
2 21 sign for each new employee. The form shall include a
2 22 statement that the employer or the employer's designee has
2 23 personally certified under oath or affirmation that the
2 24 employer or the employer's designee has examined the new
2 25 employee's Iowa-issued driver's license or nonoperator's
2 26 identification card and determined that the license or card
2 27 was facially valid to the best of the employer's or employer's
2 28 designee's knowledge, information, and belief, under penalty
2 29 of perjury under subsection 3. The form shall include a place
2 30 for the signee to identify whether the signee is the employer
2 31 or the employer's designee. For informational purposes for
2 32 the employer or the employer's designee, the form shall
2 33 include color examples of the back and front of an Iowa
2 34 driver's license and the back and front of an Iowa
2 35 nonoperator's identification card.

3 1 3. a. A person who certifies under oath or affirmation a
3 2 false statement under subsection 1 commits a class "D" felony.

3 3 b. A person who procures or offers any inducement to
3 4 another to certify under oath or affirmation the requirements
3 5 of subsection 1 with the intent that the other will conceal
3 6 material facts commits a class "D" felony.

3 7 Sec. 2. NEW SECTION. 91F.2 ENFORCEMENT.

3 8 1. The labor commissioner and inspectors of the division
3 9 of labor services of the department of workforce development
3 10 have jurisdiction for investigation and enforcement in cases
3 11 where employers may be in violation of the requirements of
3 12 this chapter or rules adopted pursuant to this chapter.

3 13 2. If, upon investigation, the labor commissioner or the
3 14 labor commissioner's authorized representative believes that
3 15 an employer or an employer's designee has violated this
3 16 chapter, the labor commissioner shall with reasonable
3 17 promptness issue a citation and civil penalty.

3 18 3. Each citation shall be in writing and shall describe
3 19 with particularity the nature of the violation, including a
3 20 reference to the provision of the statute alleged to have been
3 21 violated.

3 22 4. If a citation is issued, the labor commissioner shall,
3 23 within seven days, notify the employer or employer's designee
3 24 by service in the same manner as an original notice or by
3 25 certified mail of the civil penalty, if any, proposed to be
3 26 assessed.

3 27 5. A determination by the labor commissioner as to whether
3 28 a violation of this chapter or rules adopted pursuant to this
3 29 chapter has occurred shall be considered final agency action.

3 30 6. Judicial review of any final agency action of the labor
3 31 commissioner taken pursuant to this chapter may be sought in
3 32 accordance with the terms of chapter 17A. If a petition for
3 33 judicial review is not filed within thirty days after service
3 34 of the determination of the labor commissioner, the labor
3 35 commissioner's determination shall be conclusive in connection
4 1 with any petition for enforcement which is filed by the labor
4 2 commissioner after the expiration of the thirty-day period.
4 3 In such case, the clerk of court, unless otherwise ordered by
4 4 the court, shall forthwith enter a decree enforcing the order
4 5 and shall transmit a copy of the decree to the labor
4 6 commissioner and the employer or employer's designee named in
4 7 the petition.

4 8 Sec. 3. Section 321.190, subsection 1, paragraph b, Code
4 9 2007, is amended to read as follows:

4 10 b. The department shall not issue a card to a person
4 11 holding ~~a~~ an Iowa driver's license. However, a card may be
4 12 issued to a person holding a temporary permit under section
4 13 321.181. A card may be issued to a nonresident as otherwise
4 14 prescribed in this section for the purpose of identity

4 15 verification for employment, pursuant to section 91F.1. The
4 16 card shall be identical in form to a driver's license issued
4 17 under section 321.189 except the word "nonoperator" shall
4 18 appear prominently on the face of the card. A nonoperator's
4 19 identification card issued to a person under eighteen years of
4 20 age shall contain the same information as any other
4 21 nonoperator's identification card except that the words "under
4 22 eighteen" shall appear prominently on the face of the card. A
4 23 nonoperator's identification card issued to a person eighteen
4 24 years of age or older but under twenty-one years of age shall
4 25 contain the same information as any other nonoperator's
4 26 identification card except that the words "under twenty-one"
4 27 shall appear prominently on the face of the card.

4 28 Sec. 4. Section 715A.8, subsections 2 and 3, Code 2007,

4 29 are amended to read as follows:

4 30 2. A person commits the offense of identity theft if the
4 31 person fraudulently uses or attempts to fraudulently use
4 32 identification information of another person or fictitious
4 33 person, with the intent to contract for or to obtain credit,
4 34 property, services, employment, or other benefit.

4 35 3. If the value of the credit, property, ~~or~~ services,
5 1 employment, or other benefits exceeds one thousand dollars,
5 2 the person commits a class "D" felony. If the value of the
5 3 credit, property, ~~or~~ services, employment, or other benefits
5 4 does not exceed one thousand dollars or if a value cannot be
5 5 determined, the person commits an aggravated misdemeanor.

5 6 Sec. 5. Section 715A.9, Code 2007, is amended to read as
5 7 follows:

5 8 715A.9 VALUE FOR PURPOSES OF IDENTITY THEFT.

5 9 The value of property, ~~or~~ services, employment, or other
5 10 benefits is ~~its~~ the highest value by any reasonable standard
5 11 at the time the identity theft is committed. Any reasonable
5 12 standard includes but is not limited to market value within
5 13 the community, actual value, or replacement value.

5 14 If credit, property, ~~or~~ services, employment, or other
5 15 benefits are obtained by two or more acts from the same person
5 16 or location, or from different persons by two or more acts
5 17 which occur in approximately the same location or time period
5 18 so that the identity thefts are attributable to a single
5 19 scheme, plan, or conspiracy, the acts may be considered as a
5 20 single identity theft and the value may be the total value of
5 21 all credit, property, ~~and~~ services, employment, or other
5 22 benefits involved.

5 23 DIVISION II
5 24 EMPLOYEE CLASSIFICATION

5 25 Sec. 6. NEW SECTION. 91G.1 PURPOSE.

5 26 The purpose of this chapter is to address the practice of
5 27 misclassifying employees as independent contractors.

5 28 Sec. 7. NEW SECTION. 91G.2 DEFINITIONS.

5 29 1. "Commissioner" means the labor commissioner appointed
5 30 pursuant to section 91.2 or the labor commissioner's designee.

5 31 2. "Construction" means any constructing, altering,
5 32 reconstructing, repairing, rehabilitating, refinishing,
5 33 refurbishing, remodeling, remediating, renovating, custom
5 34 fabricating, maintenance, landscaping, improving, wrecking,
5 35 painting, decorating, demolishing, and adding to or
6 1 subtracting from any building, structure, airport facility,
6 2 highway, roadway, street, alley, bridge, sewer, drain, ditch,
6 3 sewage disposal plant, water works, parking facility,
6 4 railroad, excavation or other project, development, real
6 5 property, or improvement, or to do any part thereof, whether
6 6 or not the performance of the work described in this
6 7 subsection involves an addition to, or fabrication into, any
6 8 structure, project, development, real property, or improvement
6 9 described in this subsection of any material or article of
6 10 merchandise.

6 11 3. "Contractor" means any person, as defined in section
6 12 4.1, engaged in construction. "Contractor" includes general
6 13 contractors, subcontractors, and the state of Iowa and its
6 14 officers, agencies, and political subdivisions.

6 15 4. "Division" means the division of labor services of the
6 16 department of workforce development.

6 17 5. "Interested party" means an individual performing
6 18 services for a contractor who alleges a violation of this
6 19 chapter.

6 20 6. "Performing services" means any constructing, altering,
6 21 reconstructing, repairing, rehabilitating, refinishing,
6 22 refurbishing, remodeling, remediating, renovating, custom
6 23 fabricating, maintenance, landscaping, improving, wrecking,
6 24 painting, decorating, demolishing, and adding to or
6 25 subtracting from any building, structure, airport facility,
6 26 highway, roadway, street, alley, bridge, sewer, drain, ditch,
6 27 sewage disposal plant, water works, parking facility,
6 28 railroad, excavation or other project, development, real
6 29 property, or improvement, or to do any part thereof, whether
6 30 or not the performance of the work described in this
6 31 subsection involves an addition to, or fabrication into, any
6 32 structure, project, development, real property, or improvement
6 33 described in this subsection of any material or article of
6 34 merchandise.

6 35 Sec. 8. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS
7 1 PERFORMING SERVICES.

7 2 1. An individual performing services shall be classified
7 3 as an employee if all of the following conditions in relation
7 4 to a contractor apply:

7 5 a. The individual performs services under the control or
7 6 direction of the contractor.

7 7 b. The contractor is responsible for the payment of the
7 8 individual's wages.

7 9 c. The right to discharge or terminate the working
7 10 relationship lies between the individual and the contractor.

7 11 d. The contractor is the authority in charge of the work
7 12 or for whose benefit the work is being performed.

7 13 2. An individual classified as an employee under this
7 14 section shall also be classified as an employee pursuant to
7 15 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits
7 16 a violation of this chapter by not treating the individual so
7 17 classified under this chapter as an employee pursuant to
7 18 chapters 85, 85A, 85B, 88, 91A, and 96.

7 19 3. An individual who is an owner-operator as described in
7 20 section 85.61, subsection 11, and not deemed an employee under
7 21 that subsection shall not be classified as an employee under
7 22 this section.

7 23 Sec. 9. NEW SECTION. 91G.4 NOTICE OF LAW.

7 24 1. The commissioner shall create posters in both English
7 25 and Spanish summarizing the requirements of this chapter. The
7 26 English and Spanish versions of the poster shall be posted on
7 27 the division's internet site and on bulletin boards in the
7 28 workforce centers.

7 29 2. The commissioner shall provide the posters without
7 30 charge to contractors upon request.

7 31 3. If a contractor violates section 916.3 or 916.8 or
7 32 rules adopted pursuant to any of those sections, the
7 33 contractor shall post the English and Spanish versions of the
7 34 poster created by the commissioner. The posters shall be
7 35 posted in conspicuous locations at the places where notices to
8 1 employees are normally posted at each job site and office of
8 2 the contractor.

8 3 Sec. 10. NEW SECTION. 91G.5 ENFORCEMENT.

8 4 1. An interested party may file a complaint with the
8 5 commissioner alleging a violation of section 91G.3, 91G.4, or
8 6 91G.8 or rules adopted pursuant to any of those sections. An
8 7 interested party who makes a complaint when the interested
8 8 party knows such representation to be false commits a simple
8 9 misdemeanor.

8 10 2. The commissioner shall adopt rules pursuant to and
8 11 consistent with chapter 17A regarding investigations to
8 12 determine whether a contractor has violated any provisions of
8 13 this chapter or any rules adopted pursuant to this chapter.

8 14 3. The commissioner shall enforce the provisions of this
8 15 chapter. The commissioner may conduct investigations in
8 16 connection with the administration and enforcement of this
8 17 chapter and may visit and inspect, at all reasonable times,
8 18 any places where individuals are performing services for a
8 19 contractor and may inspect, at all reasonable times, documents
8 20 related to the determination of whether an individual is an
8 21 employee under section 91G.3.

8 22 4. The commissioner and an employee of the commissioner
8 23 shall be indemnified for any damages and legal expenses
8 24 incurred as a result of the good-faith performance of the
8 25 employee's official duties under this chapter, in regard to
8 26 any claim for civil damages not specifically covered by the
8 27 Iowa tort claims Act, chapter 669.

8 28 5. The commissioner may compel by subpoena the attendance
8 29 and testimony of witnesses and the production of books,
8 30 payrolls, records, papers, and other evidence in an
8 31 investigation and may administer oaths to witnesses.

8 32 6. Upon the failure or refusal of any person to obey a
8 33 subpoena, the commissioner may petition a district court of
8 34 competent jurisdiction, and upon proper showing, the court may
8 35 enter an order compelling the witness to appear and testify or
9 1 produce documentary evidence. Failure to obey the court order
9 2 is punishable as contempt of court.

9 3 7. A determination by the commissioner as to whether a
9 4 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
9 5 pursuant to any of those sections has occurred shall be
9 6 considered final agency action under chapter 17A.

9 7 8. If the commissioner determines upon investigation that
9 8 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
9 9 pursuant to any of those sections has occurred, the
9 10 commissioner may do any of the following:

9 11 a. Issue and cause to be served on any party an order to
9 12 cease and desist from any further violation.

9 13 b. Take affirmative or other action as deemed reasonable
9 14 to eliminate the effect of any violation.

9 15 c. Collect the amount of any wages, salary, employment

9 16 benefits, or other compensation denied or lost to an
9 17 individual.
9 18 d. Assess any civil penalty allowed by this chapter.
9 19 e. Refer matters to the county attorney upon determining
9 20 that a criminal violation may have occurred.
9 21 9. Judicial review of any final agency action of the
9 22 commissioner taken pursuant to this section may be sought in
9 23 accordance with the terms of chapter 17A. If a petition for
9 24 judicial review is not filed within thirty days after service
9 25 of the determination of the commissioner, the commissioner's
9 26 determination shall be conclusive in connection with any
9 27 petition for enforcement filed by the commissioner and in such
9 28 case, the clerk of court, unless otherwise ordered by the
9 29 court, shall forthwith enter a decree enforcing the
9 30 commissioner's determination and shall transmit a copy of the
9 31 decree to the commissioner and the contractor named in the
9 32 petition.
9 33 10. A contractor shall not be liable under this chapter
9 34 for any other contractor's failure to properly classify
9 35 individuals.

10 1 11. In any civil action to enforce the provisions of this
10 2 chapter, the commissioner may be represented by an attorney
10 3 employed by the division or, at the commissioner's request, by
10 4 the attorney general.

10 5 Sec. 11. NEW SECTION. 91G.6 PENALTIES.

10 6 1. A contractor who violates section 91G.3, 91G.4, or
10 7 91G.8 or rules adopted pursuant to one of those sections is
10 8 subject to a civil penalty not to exceed one thousand two
10 9 hundred fifty dollars for a first violation as determined by
10 10 the commissioner. A contractor is subject to a civil penalty
10 11 not to exceed one thousand eight hundred seventy-five dollars
10 12 for a second violation occurring within six years of a first
10 13 violation as determined by the commissioner. A contractor
10 14 shall be subject to a civil penalty not to exceed three
10 15 thousand one hundred twenty-five dollars for a third or
10 16 successive violation occurring within six years of a first
10 17 violation as determined by the commissioner.

10 18 2. A contractor who violates any provision of section
10 19 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of
10 20 those sections commits a simple misdemeanor. A contractor who
10 21 commits such a second violation within six years of a first
10 22 violation commits a serious misdemeanor. A contractor who
10 23 commits such a third or subsequent violation within six years
10 24 of a first violation commits an aggravated misdemeanor.

10 25 3. A contractor who obstructs the commissioner, the
10 26 employee of the commission, or another person authorized to
10 27 inspect places where individuals are performing services for a
10 28 contractor is subject to a civil penalty not to exceed one
10 29 thousand eight hundred seventy-five dollars.

10 30 4. Each violation described in this section for each
10 31 individual and for each day the violation continues
10 32 constitutes a separate and distinct violation. In determining
10 33 the amount of a civil penalty, the commissioner shall consider
10 34 the appropriateness of the civil penalty to the contractor and
10 35 the gravity of the violation.

11 1 Sec. 12. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.

11 2 For a second or subsequent violation of section 916.3 or
11 3 916.4 determined by the commissioner to have occurred within
11 4 six years of an earlier violation or for a first or subsequent
11 5 violation of section 91G.8, the commissioner shall add the
11 6 contractor's name to a list to be posted on the division's
11 7 internet site and notify the violating contractor of the
11 8 posting. A state contract shall not be awarded to a
11 9 contractor whose name appears on the list until three years
11 10 have elapsed from the date of the determination of the last
11 11 violation.

11 12 Sec. 13. NEW SECTION. 91G.8 RETALIATION.

11 13 1. A contractor or contractor's agent shall not retaliate
11 14 through discharge or in any other manner against an individual
11 15 for any of the following:

11 16 a. Making a good-faith complaint to the commissioner or to
11 17 a state or federal agency regarding a violation of section
11 18 91G.3 or 91G.4.

11 19 b. Testifying or otherwise cooperating in an investigation
11 20 or proceeding under this chapter.

11 21 2. Such retaliation shall subject a contractor or
11 22 contractor's agent to civil penalties and a prohibition on
11 23 being awarded state contracts pursuant to this chapter and may
11 24 give rise to a private right of action.

11 25 Sec. 14. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.

11 26 Any penalties assessed and collected by the commissioner

11 27 pursuant to this chapter shall be deposited in the general
11 28 fund of the state.

11 29 Sec. 15. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

11 30 1. An individual, who has not received compensatory
11 31 damages under section 91G.5, alleging a contractor's violation
11 32 of this chapter or a rule adopted pursuant to this chapter and
11 33 damages may file suit in district court against the
11 34 contractor, in the county where the alleged violation
11 35 occurred, or where any person who is party to the action
12 1 resides, without regard to exhaustion of any alternative
12 2 administrative remedies provided in this chapter. Actions may
12 3 be brought by one or more aggrieved individuals for and on
12 4 behalf of themselves and other individuals similarly situated.

12 5 2. If it is established that an individual has been
12 6 damaged through a proceeding under subsection 1 by a
12 7 contractor who has violated a provision of this chapter or a
12 8 rule adopted pursuant to this chapter, the individual shall be
12 9 entitled to collect the following:

12 10 a. The amount of any wages, salary, employment benefits,
12 11 or other compensation denied or lost to the individual due to
12 12 the violation or a retaliatory action, and court costs and
12 13 interest at the statutory rate from the date of filing.

12 14 b. Punitive damages, not to exceed five times the amount
12 15 awarded in paragraph "a".

12 16 3. The right of a damaged individual to bring an action
12 17 under this section terminates five years from the date of the
12 18 alleged violation by the contractor.

12 19 Sec. 16. NEW SECTION. 91G.11 COOPERATION.

12 20 1. The commissioner, the division of the department of
12 21 workforce development that administers unemployment insurance
12 22 services, the division of workers' compensation, and the
12 23 department of revenue shall cooperate under this chapter by
12 24 sharing information concerning possible misclassification by a
12 25 contractor of one or more of the contractor's employees as
12 26 independent contractors.

12 27 2. Upon determining that a contractor misclassified one or
12 28 more employees as independent contractors in violation of this
12 29 chapter, the commissioner shall notify the division
12 30 administering unemployment insurance services, the division of
12 31 workers' compensation, and the department of revenue, each of
12 32 which shall investigate the contractor's compliance with
12 33 applicable laws.

12 34 3. Cooperation under this chapter shall be considered a
12 35 duty of office for the commissioner or the commissioner's
13 1 designee and the heads of the state agencies named in
13 2 subsection 1 or their designees. Failure to so cooperate
13 3 constitutes a violation of section 721.2, subsection 6.

13 4 Sec. 17. Section 85.61, subsection 11, paragraph b, Code
13 5 Supplement 2007, is amended to read as follows:

13 6 b. (1) "Worker" or "employee" includes an inmate as
13 7 defined in section 85.59 and a person described in section
13 8 85.60.

13 9 (2) "Worker" or "employee" includes an individual who is
13 10 classified as an employee pursuant to section 91G.3.

13 11 Sec. 18. Section 86.45, subsection 2, Code 2007, is
13 12 amended by adding the following new paragraph:

13 13 NEW PARAGRAPH. j. To cooperate with the division of labor
13 14 services, the division of the department of workforce
13 15 development that administers unemployment insurance services,
13 16 and the department of revenue pursuant to chapter 91G by
13 17 sharing information concerning possible misclassification of
13 18 one or more employees as independent contractors.

13 19 Sec. 19. Section 88.3, subsection 4, Code 2007, is amended
13 20 to read as follows:

13 21 4. "Employee" means an employee of an employer who is
13 22 employed in a business of the employer. "Employee" also means
13 23 an inmate as defined in section 85.59, when the inmate works
13 24 in connection with the maintenance of the institution, in an
13 25 industry maintained in the institution, or while otherwise on
13 26 detail to perform services for pay. "Employee" also means a
13 27 volunteer involved in responses to hazardous waste incidences.
13 28 The employer of a volunteer is that entity which provides or
13 29 which is required to provide workers' compensation coverage
13 30 for the volunteer. "Employee" includes an individual who is
13 31 classified as an employee pursuant to section 91G.3.

13 32 Sec. 20. Section 91A.2, subsection 3, unnumbered paragraph
13 33 1, Code 2007, is amended to read as follows:

13 34 "Employee" means a natural person who is employed in this
13 35 state for wages by an employer. Employee also includes a
14 1 commission salesperson who takes orders or performs services
14 2 on behalf of a principal and who is paid on the basis of

14 3 commissions but does not include persons who purchase for
14 4 their own account for resale. "Employee" includes an
14 5 individual who is classified as an employee pursuant to
14 6 section 91G.3. For the purposes of this chapter, the
14 7 following persons engaged in agriculture are not employees:

14 8 Sec. 21. Section 96.11, Code Supplement 2007, is amended

14 9 by adding the following new subsection:

14 10 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.

14 11 a. The director and the department shall cooperate with
14 12 the division of labor services, the division of workers'
14 13 compensation, and the department of revenue pursuant to

14 14 chapter 91G by sharing information concerning possible
14 15 misclassification of employees as independent contractors.
14 16 b. Cooperation under this chapter shall be considered a
14 17 duty of office for the heads of the state agencies named in
14 18 subsection 1 or their designees. Failure to so cooperate
14 19 constitutes a violation of section 721.2, subsection 6.

14 20 Sec. 22. Section 96.19, subsection 18, paragraph a,
14 21 subparagraph (2), Code 2007, is amended to read as follows:

14 22 (2) Any individual who, under the usual common law rules
14 23 applicable in determining the employer=employee relationship,
14 24 has the status of an employee, or any individual who is
14 25 classified as an employee pursuant to section 91G.3, or

14 26 DIVISION III
14 27 CORRESPONDING AMENDMENTS

14 28 Sec. 23. Section 84A.5, subsection 4, Code Supplement
14 29 2007, is amended to read as follows:

14 30 4. The division of labor services is responsible for the
14 31 administration of the laws of this state under chapters 88,
14 32 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 91G,
14 33 92, and 94A, and section 85.68. The executive head of the
14 34 division is the labor commissioner, appointed pursuant to
14 35 section 91.2.

15 1 Sec. 24. Section 91.4, subsection 5, Code Supplement 2007,
15 2 is amended to read as follows:

15 3 5. The director of the department of workforce
15 4 development, in consultation with the labor commissioner,
15 5 shall, at the time provided by law, make an annual report to
15 6 the governor setting forth in appropriate form the business
15 7 and expense of the division of labor services for the
15 8 preceding year, the number of disputes or violations processed
15 9 by the division and the disposition of the disputes or
15 10 violations, and other matters pertaining to the division which
15 11 are of public interest, together with recommendations for
15 12 change or amendment of the laws in this chapter and chapters
15 13 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91F, 91G,
15 14 92, and 94A, and section 85.68, and the recommendations, if
15 15 any, shall be transmitted by the governor to the first general
15 16 assembly in session after the report is filed.

15 17 DIVISION IV
15 18 SEVERABILITY AND EFFECTIVE DATE

15 19 Sec. 25. SEVERABILITY. The provisions of this Act are
15 20 severable in the manner provided by section 4.12.

15 21 Sec. 26. EFFECTIVE DATE. This Act takes effect January 1,
15 22 2009.

15 23 EXPLANATION

15 24 DIVISION I. This division of this bill creates new Code
15 25 chapter 91F and relates to the crime of identity theft for the
15 26 benefit of gaining employment in this state.

15 27 Code section 91F.1(1) requires employers to verify the
15 28 identity of each new employee hired to work in the state by
15 29 examining an Iowa-issued driver's license or nonoperator's
15 30 identification card for facial validity within 10 days after
15 31 hiring. The employer or employer's designee must certify
15 32 under oath or affirmation by signing a form under penalty of
15 33 perjury that the license or card was examined. The employer
15 34 or employer's designee is required to photocopy the license or
15 35 card and the executed form and retain a photocopy of each for
16 1 the duration of the employee's employment and one year after
16 2 the end of the employee's employment. The employer or
16 3 employer's designee must mail the original executed form and a
16 4 photocopy of the license or card to the division of labor
16 5 services of the department of workforce development within 30
16 6 days of the new employee's hiring. An employer may give
16 7 someone else the authority to hire new employees, examine the
16 8 license or card, and handle recordkeeping duties but the
16 9 employer shall remain responsible for the designee's actions.

16 10 If the form and photocopy are not sent to the division, the
16 11 employer or employer's designee faces civil penalties that are
16 12 detailed in the bill. If the labor commissioner determines
16 13 that the employer's designee is responsible for the violation,

16 14 the employer may face a corresponding civil penalty.
16 15 Code section 91F.1(2) requires the division of labor to
16 16 create a form that the employer or employer's designee must
16 17 sign for each new employee. The form will include a statement
16 18 that the employer or employer's designee has personally
16 19 certified under oath or affirmation under penalty of perjury
16 20 that the employer or employer's designee examined an
16 21 Iowa-issued driver's license or nonoperator's identification
16 22 card and determined that the license or card was facially
16 23 valid to the best of the employer's or designee's knowledge,
16 24 information, and belief. The form must indicate if the signee
16 25 is the employer or the employer's designee. The form shall
16 26 include color examples of the front and back of both an Iowa
16 27 driver's license and nonoperator's identification card.
16 28 Code section 91F.1(3) states that a person who commits
16 29 perjury under Code section 91F.1(1) commits a class "D"
16 30 felony. Additionally, a person who suborns perjury also
16 31 commits a class "D" felony. A class "D" felony is punishable
16 32 by confinement for no more than five years and a fine of at
16 33 least \$750 but not more than \$7,500.
16 34 Code section 91F.2 sets out the enforcement provisions of
16 35 Code chapter 91F. The labor commissioner and the division of
17 1 labor services of the department of workforce development will
17 2 investigate and enforce cases where an employer or employer's
17 3 designee violates the requirements of or rules adopted
17 4 pursuant to Code chapter 91F.
17 5 If upon investigation, the commissioner believes that an
17 6 employer or employer's designee has violated Code chapter 91F,
17 7 the commissioner will issue a citation and civil penalty. The
17 8 citation will be in writing and describe the nature of the
17 9 violation. A determination by the commissioner as to whether
17 10 a violation of Code chapter 91F or rules adopted pursuant to
17 11 the Code chapter has occurred is considered final agency
17 12 action.
17 13 Judicial review of a final agency action by the
17 14 commissioner may be taken within 30 days according to the
17 15 terms of Code chapter 17A. If no petition for judicial review
17 16 is filed within 30 days, the commissioner's determination is
17 17 considered conclusive for any petition for enforcement that
17 18 the commissioner may file. Upon petition by the commissioner,
17 19 the clerk of court, unless otherwise ordered by the court,
17 20 shall enter a decree enforcing the order.
17 21 Currently an Iowa operator's identification card cannot be
17 22 issued to anyone who has a driver's license from any other
17 23 state. Code section 321.190(1)(b) is amended to continue to
17 24 prohibit only a person with an Iowa driver's license from
17 25 receiving a nonoperator's identification card. The amendment
17 26 allows a card to be issued to a resident with a temporary
17 27 permit or to a nonresident, with or without a non-Iowa
17 28 driver's license, for the purpose of identity verification for
17 29 employment.
17 30 Code section 715A.8(2), which creates the crime of identity
17 31 theft, is amended to include the elements of attempting to
17 32 fraudulently use the identification information of a
17 33 fictitious person to contract for various benefits, including
17 34 to obtain employment. Code section 715A.8(3) is amended to
17 35 include employment and other benefits as value derived from
18 1 committing identity theft and to provide that if identity
18 2 theft is committed but no value can be determined, the person
18 3 commits an aggravated misdemeanor, which is punishable by
18 4 confinement for no more than two years and a fine of at least
18 5 \$625 but not more than \$6,250.
18 6 Code section 715A.9 is amended to include employment and
18 7 other benefits for determining the value derived from
18 8 committing identity theft.
18 9 DIVISION II. This division of the bill creates Code
18 10 chapter 91G and relates to the classification of individuals
18 11 as employees or independent contractors.
18 12 Code section 91G.1 addresses the purpose of the chapter.
18 13 Code section 91G.2 includes definitions pertinent to the
18 14 chapter.
18 15 Code section 91G.3 classifies the status of individuals
18 16 performing services. Code section 91G.3(1) provides the
18 17 criteria for determining the status of an individual as an
18 18 employee. Code section 91G.3(2) provides that an individual
18 19 classified as an employee under this Code section also
18 20 qualifies as an employee for the purposes of Code chapters 85,
18 21 85A, and 85B (workers' compensation), 88 (occupational safety
18 22 and health), 91A (wage payment collection), and 96
18 23 (unemployment compensation). It is a violation of Code
18 24 chapter 91G to fail to properly classify an individual as an

18 25 employee under these Code chapters. Code section 91G.3(3)
18 26 provides that an individual who is an owner-operator as
18 27 described in Code section 85.61(11) shall not be classified as
18 28 an employee under Code section 91G.3.

18 29 Code section 91G.4 requires the commissioner to create
18 30 posters in both English and Spanish that summarize the Code
18 31 chapter requirements. If a contractor is found to have
18 32 violated Code sections 91G.3 or 91G.8, the contractor must
18 33 post the posters in both languages in conspicuous places at
18 34 all job sites and offices.

18 35 Code section 91G.5 provides enforcement provisions. In
19 1 Code section 91G.5(1), an interested party may file a
19 2 complaint alleging a violation of this Code chapter. However,
19 3 a party who knowingly makes a false complaint commits a simple
19 4 misdemeanor, which is punishable by confinement for no more
19 5 than 30 days or a fine of at least \$65 but not more than \$625
19 6 or by both. Under Code section 91G.5(2), the commissioner is
19 7 charged with establishing rules consistent with Code chapter
19 8 17A. In Code section 91G.5(3), the commissioner is charged
19 9 with investigating complaints and conducting investigations.

19 10 Under Code section 91G.5(4), the commissioner and employees
19 11 are indemnified for damages and legal expenses incurred as a
19 12 result of the good-faith performance of their job duties
19 13 against any claims not covered by Code chapter 669, the Iowa
19 14 tort claims Act. Under Code section 91G.5(5), the
19 15 commissioner may administer oaths and issue subpoenas to
19 16 access witnesses and documents, payroll records, and other
19 17 evidence in order to advance an investigation. Code section
19 18 91G.5(6) allows the commissioner or the commissioner's
19 19 investigators to commence a contempt action in court
19 20 commanding a person to obey the order of the commissioner
19 21 issued under Code chapter 91G or be adjudged guilty of
19 22 contempt of court.

19 23 Under Code section 91G.5(7), a determination by the
19 24 commissioner about whether a violation has occurred is final
19 25 agency action. Under Code section 91G.5(8), when the
19 26 commissioner determines there has been a violation, the
19 27 commissioner may take specific actions, including cease and
19 28 desist, individual compensatory, and civil penalty remedies.

19 29 Under Code section 91G.5(9), judicial review of a final
19 30 agency action by the commissioner may be instituted within 30
19 31 days according to the terms of Code chapter 17A. If no
19 32 petition of review is filed within 30 days, the commissioner's
19 33 findings are considered conclusive for any petition for
19 34 enforcement that the commissioner may file. Upon petition by
19 35 the commissioner, the clerk of the court, unless otherwise
20 1 ordered by the court, shall enter a decree enforcing the
20 2 order.

20 3 In Code section 91G.5(10), a contractor is not responsible
20 4 for any other contractor's failure to properly classify
20 5 individuals who perform services for the contractor. In Code
20 6 section 91G.5(11), in a civil action, the commissioner may
20 7 choose to be represented by a departmental attorney or the
20 8 attorney general.

20 9 Code section 91G.6 deals with the penalties. In Code
20 10 section 91G.6(1), a contractor who violates this Code chapter
20 11 or any rule adopted pursuant to this Code chapter shall be
20 12 subject to a civil penalty not to exceed \$1,250 for the first
20 13 violation, up to \$1,875 for a second violation within six
20 14 years of the first, and up to \$3,125 for a third or successive
20 15 violation within six years of the first violation.

20 16 Under Code section 91G.6(2), a contractor who violates any
20 17 provision of this Code chapter or any rule adopted pursuant to
20 18 this Code chapter commits a simple misdemeanor, which is
20 19 punishable by confinement for no more than 30 days or a fine
20 20 of at least \$65 but not more than \$625 or by both. A
20 21 contractor who commits a second violation within a six-year
20 22 period commits a serious misdemeanor, which is punishable by
20 23 confinement for no more than one year and a fine of at least
20 24 \$315 but not more than \$1,875. A contractor who commits a
20 25 third or subsequent violation within a six-year period commits
20 26 an aggravated misdemeanor, which is punishable by confinement
20 27 for no more than two years and a fine of at least \$625 but not
20 28 more than \$6,250. Under Code section 91G.6(3), any contractor
20 29 who obstructs the commissioner's inspection of places of
20 30 employment shall be liable for a civil penalty of up to
20 31 \$1,875. Under Code section 91G.6(4), each violation for each
20 32 individual and for each day the violation continues
20 33 constitutes a separate and distinct violation. In determining
20 34 the amount of a penalty, the commissioner shall consider the
20 35 appropriateness of the penalty to the contractor and the

21 1 gravity of the violation.
21 2 Code section 91G.7 provides that if a contractor is found
21 3 to have violated a provision of Code section 91G.3 or 91G.4 a
21 4 second or subsequent time within six years of an earlier
21 5 violation or is found to have violated, for a first or
21 6 subsequent time, Code section 91G.8, the contractor's name
21 7 shall be posted on the division's internet site. A state
21 8 contract shall not be awarded to a contractor whose name
21 9 appears on the posting until three years have passed from the
21 10 date of the last violation determination.
21 11 Code section 91G.8 makes it a violation of the Code chapter
21 12 for a contractor or a contractor's agent to retaliate in any
21 13 way against an individual for making a good-faith complaint or
21 14 cooperating in an investigation. Retaliation subjects the
21 15 contractor to civil penalties, to being banned from state
21 16 contracts, and a possible private right of action.
21 17 Under Code section 91G.9, any civil penalties collected by
21 18 the commissioner shall be deposited in the general fund of the
21 19 state.
21 20 In Code section 91G.10, if an individual has not received
21 21 compensatory damages under Code section 91G.5, then the
21 22 individual who is damaged by an alleged Code chapter 91G
21 23 violation may file suit in district court in the county where
21 24 the alleged violation occurred or where any person who is
21 25 party to the violation resides and may do so without
21 26 exhausting any alternative administrative remedies in Code
21 27 chapter 91G. If it is established that an individual has been
21 28 damaged through a proceeding under Code section 91G.10,
21 29 remedies include compensatory damages, court costs and
21 30 interest, and punitive damages up to five times the amount of
21 31 the compensatory damages and court costs. The right to bring
21 32 a private action terminates five years after the date of the
21 33 alleged violation.
21 34 Code section 91G.11(1) requires the commissioner, the
21 35 division of unemployment insurance, the division of workers'
22 1 compensation, and the department of revenue to all cooperate
22 2 by sharing information about possible misclassifications by
22 3 contractors. Under Code section 91G.11(2), the commissioner
22 4 shall notify the other agencies when a misclassification
22 5 violation is determined, and the other agencies shall
22 6 investigate. Code section 91G.11(3) makes cooperation and
22 7 investigation among the commissioner and the heads of the
22 8 state agencies a duty of office; failing to cooperate,
22 9 pursuant to Code section 721.2(6), results in a simple
22 10 misdemeanor, which is punishable by confinement for no more
22 11 than 30 days or a fine of at least \$65 but not more than \$625
22 12 or by both.
22 13 The definition of "employee" in new Code section 91G.3 is
22 14 essentially incorporated as part of the definitions of
22 15 "employee" in the following amended Code sections: 85.61,
22 16 86.45, 88.3, 91A.2, and 96.19.
22 17 Code section 96.11 is amended by adding a new subsection
22 18 for interagency cooperation. The subsection requires the
22 19 director of the department of workforce development and the
22 20 department of workforce development, the divisions of labor
22 21 and workers' compensation, and the department of revenue to
22 22 all cooperate by sharing information about possible
22 23 misclassifications of employees by contractors. Cooperation
22 24 and investigation among the heads of the state agencies is
22 25 considered a duty of office; failing to cooperate, pursuant to
22 26 Code section 721.2(6), results in a simple misdemeanor, which
22 27 is punishable by confinement for no more than 30 days or a
22 28 fine of at least \$65 but not more than \$625 or by both.
22 29 DIVISION III. In Code sections 84A.5 and 91.4 the division
22 30 of labor of the department of workforce development is given
22 31 responsibility for administration for new Code chapters 91F
22 32 and 91G and filing of annual reports about matters pertaining
22 33 to these Code chapters, respectively.
22 34 DIVISION IV. The provisions of the bill are severable as
22 35 provided by Code section 4.12.
23 1 The bill takes effect January 1, 2009.
23 2 LSB 6463YC 82
23 3 ak/rj/24