

FILED MAR 05 1991

SENATE FILE 302
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 139)

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

A BILL FOR

1 An Act relating to this state's labor laws administered by the
2 labor commissioner by amending provisions of the Code
3 concerning occupational safety and health penalties, boiler
4 inspections, child labor laws, minimum wage laws, and out-of-
5 state contractor bonding requirements.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 302

1 Section 1. Section 88.14, subsections 1 and 2, Code 1991,
2 are amended to read as follows:

3 1. WILLFUL VIOLATIONS. Any employer who willfully or
4 repeatedly violates the requirements of section 88.4, any
5 standard, rule, or order ~~promulgated~~ adopted or issued
6 pursuant to section 88.5, or regulations prescribed pursuant
7 to this chapter, may be assessed a civil penalty of not less
8 than five thousand dollars and not more than ten seventy
9 thousand dollars for each violation.

10 2. SERIOUS VIOLATIONS. Any employer who has received a
11 citation for a serious violation of the requirements of
12 section 88.4, of any standard, rule, or order ~~promulgated~~
13 adopted or issued pursuant to section 88.5, or of any
14 regulations prescribed pursuant to this chapter, shall be
15 assessed a civil penalty of up to ~~one~~ seven thousand dollars
16 for each such violation.

17 Sec. 2. Section 89.7, subsection 4, Code 1991, is amended
18 to read as follows:

19 4. The special inspector shall notify the user and the
20 commissioner of any equipment or appurtenance found to be
21 unsafe or unfit for operation in writing, setting forth the
22 nature and extent of such defects and condition. The
23 commissioner shall indicate to the user whether or not the
24 equipment may be used without making repair or replacement of
25 defective parts, or whether or how the equipment may be used
26 in a limited capacity before repairs or replacements are made,
27 and the commissioner may permit the user a reasonable time to
28 make such repairs or replacements. The failure of a special
29 inspector to inform the commissioner of violations shall not
30 subject the commissioner to liability for any damages
31 incurred.

32 Sec. 3. Section 91C.7, Code 1991, is amended to read as
33 follows:

34 91C.7 CONTRACTS -- CONTRACTOR'S BOND.

35 i. A contractor who is not registered with the labor

1 commissioner as required by this chapter shall not be awarded
2 a contract to perform work for the state or an agency of the
3 state.

4 2. An out-of-state contractor, before commencing a
5 contract in excess of five thousand dollars in value in Iowa,
6 shall file a bond with the division of labor services of the
7 department of employment services. The surety bond shall be
8 executed by a surety company authorized to do business in this
9 state, and the bond shall be continuous in nature until
10 canceled by the surety with not less than thirty days' written
11 notice to the contractor and to the division of labor services
12 of the department of employment services indicating the
13 surety's desire to cancel the bond. The surety company shall
14 not be liable under the bond for any contract commenced after
15 the cancellation of the bond. The bond shall be in the sum of
16 the greater of the following:

- 17 a. One thousand dollars.
- 18 b. Five percent of the contract price.

19 An out-of-state contractor may file a blanket bond in an
20 amount at least equal to fifty thousand dollars for the regis-
21 tration period established under section 91C.4 in lieu of
22 filing an individual bond for each contract. The division of
23 labor services of the department of employment services may
24 increase the bond amount after a hearing.

25 3. Release of the bond shall be conditioned upon the
26 payment of all taxes, including contributions due under the
27 unemployment compensation insurance system, penalties,
28 interest, and related fees, which may accrue to the state of
29 Iowa ~~or its subdivisions on account of the execution and~~
30 ~~performance of the contract.~~ If at any time during the term
31 of the bond, the department of revenue and finance or the
32 department of employment services determines that the amount
33 of the bond is not sufficient to cover the tax liabilities
34 accruing to the state of Iowa ~~or its subdivisions,~~ the
35 department labor commissioner shall require the bond to be

1 increased by an amount the department labor commissioner deems
2 sufficient to cover the tax liabilities accrued and ~~to-accrue~~
3 ~~under-the-contract~~ accruing.

4 4. The department of revenue and finance and the division
5 of job service of the department of employment services shall
6 adopt rules for the collection of the forfeiture. Notice
7 shall be provided to the surety and to the contractor. Notice
8 to the contractor shall be mailed to the contractor's last
9 known address and to the contractor's registered agent for
10 service of process, if any, within the state. The contractor
11 or surety shall have the opportunity to apply to the director
12 of revenue and finance for a hearing within thirty days after
13 the giving of such notice. Upon the failure to timely request
14 a hearing, the bond shall be forfeited. If, after the hearing
15 upon timely request, the department of revenue and finance or
16 the division of job service of the department of employment
17 services finds that the contractor has failed to pay the total
18 of all taxes payable, the department of revenue and finance or
19 the department of employment services shall order the bond
20 forfeited. The amount of the forfeiture shall be the amount
21 of taxes payable or the amount of the bond, whichever is less.
22 For purposes of this section "taxes payable" means all tax,
23 penalties, interest, and fees that the department of revenue
24 and finance has previously determined to be due to the state
25 ~~or-a-subdivision-of-the-state~~ by assessment or in an appeal of
26 an assessment, including contributions to the unemployment
27 compensation insurance system.

28 5. If it is determined that this subsection section may
29 cause denial of federal funds which would otherwise be
30 available, or would otherwise be inconsistent with
31 requirements of federal law, this subsection shall be
32 suspended, but only to the extent necessary to prevent denial
33 of the funds or to eliminate the inconsistency with federal
34 requirements.

35 Sec. 4. Section 91D.1, subsection 2, Code 1991, is amended

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1 to read as follows:

2 2. The exemptions from the minimum wage requirements
3 stated in 29 U.S.C. § 213 shall apply, except that the
4 exemption in 29 U.S.C. § 213(a)(2) shall only apply to an
5 enterprise which is comprised of one or more retail or service
6 establishments whose annual gross volume of sales made or
7 business done is less than sixty percent of the amount stated
8 in 29 U.S.C. § 203(s)(2), ~~exclusive of excise taxes at the~~
9 ~~retail level that are separately stated.~~

10 Sec. 5. Section 92.2, Code 1991, is amended by striking
11 the section and inserting in lieu thereof the following:

12 92.2 OVER TEN AND UNDER SIXTEEN YEARS OF AGE.

13 A person over ten and under sixteen years of age cannot be
14 employed, with or without compensation, in street occupations
15 or migratory labor as defined in section 92.1, unless the
16 person holds a work permit issued pursuant to this chapter and
17 the school the person attends has certified that the person is
18 regularly attending school and the potential employment will
19 not interfere with the person's progress in school.

20 1. Notwithstanding section 92.7, a person with a permit to
21 engage in migratory labor shall only work between five a.m.
22 and seven-thirty p.m. from Labor Day through June 1, and
23 between five a.m. and nine p.m. for the remainder of the year.

24 2. Notwithstanding section 92.7, a person with a permit to
25 engage in street occupations shall only work between four a.m.
26 and seven-thirty p.m. when local public schools are in session
27 and between four a.m. and eight-thirty p.m. for the remainder
28 of the year.

29 The requirements of section 92.10 shall not apply to a
30 person, firm, or corporation employing a person engaged in
31 street occupations pursuant to this section.

32 Sec. 6. Section 92.7, Code 1991, is amended to read as
33 follows:

34 92.7 UNDER SIXTEEN -- HOURS PERMITTED.

35 No A person under sixteen years of age shall not be

1 employed with or without compensation, except as provided in
2 ~~section~~ sections 92.2 and 92.3, before the hour of seven
3 o'clock a.m. or after seven o'clock p.m., except during the
4 period from June 1 through Labor Day when the hours may be
5 extended to nine o'clock p.m. If such person is employed for
6 a period of five hours or more each day, an intermission of
7 not less than thirty minutes shall be given. ~~No-such~~ Such a
8 person shall not be employed for more than eight hours in one
9 day, exclusive of intermission, ~~nor~~ and shall ~~such-person~~ not
10 be employed for more than forty hours in one week. The hours
11 of work of persons under sixteen years of age employed outside
12 school hours shall not exceed four in one day or twenty-eight
13 in one week while school is in session.

14 Sec. 7. Section 92.10, unnumbered paragraph 1, Code 1991,
15 is amended to read as follows:

16 ~~No~~ Except as provided in section 92.2, a person under
17 sixteen years of age shall not be employed or permitted to
18 work with or without compensation unless the person, firm, or
19 corporation employing such ~~persons~~ person receives and keeps
20 on file accessible to any officer charged with the enforcement
21 of this chapter, a work permit issued as ~~hereinafter~~ provided
22 in this chapter, and keeps a complete list of the names and
23 ages of all such persons under sixteen years of age employed.

24 EXPLANATION

25 Section 1 of the bill increases the maximum occupational
26 safety and health Act (OSHA) penalties for serious and willful
27 violations and imposes a minimum penalty for willful
28 violations.

29 Section 2 limits the liability of the labor commissioner
30 when special boiler inspectors fail to inform the commissioner
31 of violations.

32 Section 3 allows out-of-state contractors to purchase a
33 blanket bond for all projects in Iowa. Currently, out-of-
34 state contractors are required to post a bond for each Iowa
35 contract.

1 Section 4 corrects the citation to federal law in Iowa's
2 minimum wage law.

3 Section 5 reorganizes child labor law concerning persons
4 over 10 and under 16 years of age. This section also
5 eliminates the distinction regarding employment of such
6 persons in street occupations between cities with a population
7 of less than 10,000 and cities with a population of more than
8 10,000. The section also eliminates the requirement that work
9 permits be printed on different color paper each year.

10 Sections 6 and 7 are corresponding amendments to section 5
11 of the bill.

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SENATE FILE 302

S-3094

1 Amend Senate File 302 as follows:
2 1. Page 3, by inserting after line 34, the
3 following:
4 "Sec. ____ . Section 91D.1, subsection 1, paragraph
5 c, Code 1991, is amended to read as follows:
6 c. For purposes of determining whether an employee
7 of a restaurant, hotel, motel, inn, or cabin, who
8 customarily and regularly receives more than thirty
9 dollars a month in tips is receiving the minimum
10 hourly wage rate prescribed by this section, the
11 amount paid the employee by the employer shall be
12 deemed to be increased on account of the tips by an
13 amount determined by the employer, not to exceed forty
14 fifty percent of the applicable minimum wage. An
15 employee may file a written appeal with the labor
16 commissioner if the amount of tips received by the
17 employee is less than the amount determined by the
18 employer under this subsection."
19 2. Renumber as necessary.

By JIM LIND

S-3094 FILED MARCH 7, 1991

SENATE FILE 302

S-3098

1 Amend Senate File 302 as follows:
2 1. Page 3, by inserting after line 34, the
3 following:
4 "Sec. ____ . Section 91D.1, subsection 1, paragraph
5 a, Code 1991, is amended to read as follows:
6 a. The hourly wage stated in the federal minimum
7 wage law, pursuant to 29 U.S.C. § 206, shall be
8 increased to \$3.85 on January 1 of 1990, \$4.25 on
9 January 1 of 1991, and \$4.65 on January 1 of 1992."
10 2. Page 4, by striking lines 2 through 9, and
11 inserting the following:
12 "2. The exemptions from the minimum wage
13 requirements stated in 29 U.S.C. § 213 shall apply,
14 ~~except that the exemption in 29 U.S.C. § 213(a)(2)~~
15 ~~shall only apply to an enterprise which is comprised~~
16 ~~of one or more retail or service establishments whose~~
17 ~~annual gross volume of sales made or business done is~~
18 ~~less than sixty percent of the amount stated in 29~~
19 ~~U.S.C. § 263(s)(2), exclusive of excise taxes at the~~
20 ~~retail level that are separately stated."~~
21 3. By renumbering as necessary.

By RAY TAYLOR

S-3098 FILED MARCH 11, 1991

Running, Ch.
Furman
Palmer

SSB 139
BUSINESS & LABOR RELATIONS

SENATE/HOUSE FILE 302
BY (PROPOSED DEPARTMENT OF
EMPLOYMENT SERVICES BILL)

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

A BILL FOR

1 An Act relating to this state's labor laws administered by the
2 labor commissioner by amending provisions of the Code
3 concerning occupational safety and health penalties, boiler
4 inspections, child labor laws, minimum wage laws, and out-of-
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4 repeatedly violates the requirements of section 88.4, any
5 standard, rule, or order promulgated adopted or issued
6 pursuant to section 88.5, or regulations prescribed pursuant
7 to this chapter, may be assessed a civil penalty of not less
8 than five thousand dollars and not more than ten seventy
9 thousand dollars for each violation.

10 2. SERIOUS VIOLATIONS. Any employer who has received a
11 citation for a serious violation of the requirements of
12 section 88.4, of any standard, rule, or order promulgated
13 adopted or issued pursuant to section 88.5, or of any
14 regulations prescribed pursuant to this chapter, shall be
15 assessed a civil penalty of up to one seven thousand dollars
16 for each such violation.

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19 4. The special inspector shall notify the user and the
20 commissioner of any equipment or appurtenance found to be
21 unsafe or unfit for operation in writing, setting forth the
22 nature and extent of such defects and condition. The
23 commissioner shall indicate to the user whether or not the
24 equipment may be used without making repair or replacement of
25 defective parts, or whether or how the equipment may be used
26 in a limited capacity before repairs or replacements are made,
27 and the commissioner may permit the user a reasonable time to
28 make such repairs or replacements. The failure of a special
29 inspector to inform the commissioner of violations shall not
30 subject the commissioner to liability for any damages
31 incurred.

32 Sec. 3. Section 91C.7, Code 1991, is amended to read as
33 follows:

34 91C.7 CONTRACTS -- CONTRACTOR'S BOND.

35 1. A contractor who is not registered with the labor

1 commissioner as required by this chapter shall not be awarded
2 a contract to perform work for the state or an agency of the
3 state.

4 2. An out-of-state contractor, before commencing a
5 contract in excess of five thousand dollars in value in Iowa,
6 shall file a bond with the division of labor services of the
7 department of employment services. The surety bond shall be
8 executed by a surety company authorized to do business in this
9 state, and the bond shall be continuous in nature until
10 canceled by the surety with not less than thirty days' written
11 notice to the contractor and to the division of labor services
12 of the department of employment services indicating the
13 surety's desire to cancel the bond. The surety company shall
14 not be liable under the bond for any contract commenced after
15 the cancellation of the bond. The bond shall be in the sum of
16 the greater of the following:

- 17 a. One thousand dollars.
18 b. Five percent of the contract price.

19 An out-of-state contractor may file a blanket bond in an
20 amount at least equal to fifty thousand dollars for the regis-
21 tration period established under section 91C.4 in lieu of
22 filing an individual bond for each contract. The division of
23 labor services of the department of employment services may
24 increase the bond amount after a hearing.

25 3. Release of the bond shall be conditioned upon the
26 payment of all taxes, including contributions due under the
27 unemployment compensation insurance system, penalties,
28 interest, and related fees, which may accrue to the state of
29 Iowa ~~or its subdivisions on account of the execution and~~
30 ~~performance of the contract.~~ If at any time during the term
31 of the bond, the department of revenue and finance or the
32 department of employment services determines that the amount
33 of the bond is not sufficient to cover the tax liabilities
34 accruing to the state of Iowa ~~or its subdivisions~~, the
35 department labor commissioner shall require the bond to be

1 increased by an amount the department labor commissioner deems
2 sufficient to cover the tax liabilities accrued and ~~to-accrue~~
3 ~~under-the-contract~~ accruing.

4 4. The department of revenue and finance and the division
5 of job service of the department of employment services shall
6 adopt rules for the collection of the forfeiture. Notice
7 shall be provided to the surety and to the contractor. Notice
8 to the contractor shall be mailed to the contractor's last
9 known address and to the contractor's registered agent for
10 service of process, if any, within the state. The contractor
11 or surety shall have the opportunity to apply to the director
12 of revenue and finance for a hearing within thirty days after
13 the giving of such notice. Upon the failure to timely request
14 a hearing, the bond shall be forfeited. If, after the hearing
15 upon timely request, the department of revenue and finance or
16 the division of job service of the department of employment
17 services finds that the contractor has failed to pay the total
18 of all taxes payable, the department of revenue and finance or
19 the department of employment services shall order the bond
20 forfeited. The amount of the forfeiture shall be the amount
21 of taxes payable or the amount of the bond, whichever is less.
22 For purposes of this section "taxes payable" means all tax,
23 penalties, interest, and fees that the department of revenue
24 and finance has previously determined to be due to the state
25 ~~or-a-subdivision-of-the-state~~ by assessment or in an appeal of
26 an assessment, including contributions to the unemployment
27 compensation insurance system.

28 5. If it is determined that this ~~subsection~~ section may
29 cause denial of federal funds which would otherwise be
30 available, or would otherwise be inconsistent with
31 requirements of federal law, this subsection shall be
32 suspended, but only to the extent necessary to prevent denial
33 of the funds or to eliminate the inconsistency with federal
34 requirements.

35 Sec. 4. Section 91D.1, subsection 2, Code 1991, is amended

1 to read as follows:

2 2. The exemptions from the minimum wage requirements
3 stated in 29 U.S.C. § 213 shall apply, except that the
4 exemption in 29 U.S.C. § 213(a)(2) shall only apply to an
5 enterprise which is comprised of one or more retail or service
6 establishments whose annual gross volume of sales made or
7 business done is less than sixty percent of the amount stated
8 in 29 U.S.C. § 203(s)(2) ~~exclusive of excise taxes at the~~
9 ~~retail level that are separately stated.~~

10 Sec. 5. Section 92.2, Code 1991, is amended by striking
11 the section and inserting in lieu thereof the following:

12 92.2 OVER TEN AND UNDER SIXTEEN YEARS OF AGE.

13 A person over ten and under sixteen years of age cannot be
14 employed, with or without compensation, in street occupations
15 or migratory labor as defined in section 92.1, unless the
16 person holds a work permit issued pursuant to this chapter and
17 the school the person attends has certified that the person is
18 regularly attending school and the potential employment will
19 not interfere with the person's progress in school.

20 1. Notwithstanding section 92.7, a person with a permit to
21 engage in migratory labor shall only work between five a.m.
22 and seven-thirty p.m. from Labor Day through June 1, and
23 between five a.m. and nine p.m. for the remainder of the year.

24 2. Notwithstanding section 92.7, a person with a permit to
25 engage in street occupations shall only work between four a.m.
26 and seven-thirty p.m. when local public schools are in session
27 and between four a.m. and eight-thirty p.m. for the remainder
28 of the year.

29 The requirements of section 92.10 shall not apply to a
30 person, firm, or corporation employing a person engaged in
31 street occupations pursuant to this section.

32 Sec. 6. Section 92.7, Code 1991, is amended to read as
33 follows:

34 92.7 UNDER SIXTEEN -- HOURS PERMITTED.

35 No A person under sixteen years of age shall not be

1 employed with or without compensation, except as provided in
2 ~~section~~ sections 92.2 and 92.3, before the hour of seven
3 o'clock a.m. or after seven o'clock p.m., except during the
4 period from June 1 through Labor Day when the hours may be
5 extended to nine o'clock p.m. If such person is employed for
6 a period of five hours or more each day, an intermission of
7 not less than thirty minutes shall be given. ~~No-such~~ Such a
8 person shall not be employed for more than eight hours in one
9 day, exclusive of intermission, ~~nor and shall such-person not~~
10 be employed for more than forty hours in one week. The hours
11 of work of persons under sixteen years of age employed outside
12 school hours shall not exceed four in one day or twenty-eight
13 in one week while school is in session.

14 Sec. 7. Section 92.10, unnumbered paragraph 1, Code 1991,
15 is amended to read as follows:

16 ~~No~~ Except as provided in section 92.2, a person under
17 sixteen years of age shall not be employed or permitted to
18 work with or without compensation unless the person, firm, or
19 corporation employing such ~~persons~~ person receives and keeps
20 on file accessible to any officer charged with the enforcement
21 of this chapter, a work permit issued as ~~hereinafter~~ provided
22 in this chapter, and keeps a complete list of the names and
23 ages of all such persons under sixteen years of age employed.

24 EXPLANATION

25 Section 1 of the bill increases the maximum occupational
26 safety and health Act (OSHA) penalties for serious and willful
27 violations and imposes a minimum penalty for willful
28 violations.

29 Section 2 limits the liability of the labor commissioner
30 when special boiler inspectors fail to inform the commissioner
31 of violations.

32 Section 3 allows out-of-state contractors to purchase a
33 blanket bond for all projects in Iowa. Currently, out-of-
34 state contractors are required to post a bond for each Iowa
35 contract.

1 Section 4 corrects the citation to federal law in Iowa's
2 minimum wage law.

3 Section 5 reorganizes child labor law concerning persons
4 over 10 and under 16 years of age. This section also
5 eliminates the distinction regarding employment of such
6 persons in street occupations between cities with a population
7 of less than 10,000 and cities with a population of more than
8 10,000. The section also eliminates the requirement that work
9 permits be printed on different color paper each year.

10 Sections 6 and 7 are corresponding amendments to section 5
11 of the bill.

12 BACKGROUND STATEMENT

13 SUBMITTED BY THE AGENCY

14 Section 1 increases OSHA penalties to conform to recently
15 raised federal penalties for serious and willful violations.
16 Congress increased the penalties to encourage employers to
17 provide safe working conditions for employees. The penalties
18 were established in 1972.

19 Section 2 limits the labor commissioner's liability in
20 cases where special boiler inspectors fail to inform the
21 commissioner of violations to the Code related to boiler
22 safety. Special boiler inspectors are licensed by the labor
23 commissioner to inspect boilers in places of public assembly.
24 Inspections of boilers are only to ensure the equipment meets
25 standards, not to ensure safe operations.

26 Section 3 allows out-of-state contractors to purchase a
27 blanket bond for all construction projects in Iowa.
28 Currently, each out-of-state contractor is required to post a
29 bond for each construction contract in Iowa over \$5,000. The
30 bond is for \$1,000 or five percent of the contract price and
31 is to assure the contractor has paid all unemployment
32 insurance taxes and all other taxes to the state and political
33 subdivisions.

34 The job service division and the department of revenue and
35 finance do not keep records on a project basis, but on an

1 employer account basis. Even if taxes were due to the state,
2 the state would have to show that the taxes were due from
3 activities on the specific bonded project to be able to
4 collect. If the contractor uses one bonding company, the
5 contractor probably will pay off. However, if the contractor
6 uses different bonding companies each time, the contractor may
7 attempt to avoid paying taxes unless the taxing agency can
8 prove the connection with the specific project.

9 Section 4 relates to the currently referenced provision in
10 the federal Fair Labor Standards Act which was amended at the
11 federal level by adding substitute language. Section 4 of the
12 bill brings the Iowa law into closer conformity with the
13 federal law, while still maintaining the Iowa covered wage at
14 60 percent of the federal covered wage.

15 Sections 5, 6, and 7 clarify the child labor statute and
16 eliminate the requirement that the permits are printed on a
17 different color paper each year.

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