

REPRINTED

FILED FEB 27 1996

SENATE FILE 2341  
BY COMMITTEE ON BUSINESS AND  
LABOR RELATIONS

(SUCCESSOR TO SSB 2217)

(P.820)  
Passed Senate, Date 3/18/96 Passed House, Date \_\_\_\_\_  
Vote: Ayes 29 Nays 20 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the components of the unemployment insurance  
2 system concerning the job service advisory council, voluntary  
3 income tax withholding from unemployment benefits, relieving  
4 certain employers from certain unemployment insurance charges,  
5 collection of unemployment compensation benefits through  
6 misrepresentation, definitions of employment and wages for  
7 members of limited liability companies, and unemployment  
8 insurance tax liability for corporate officers, and providing  
9 an effective and applicability date.

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

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S.F. 2341

REPRINTED

1 Section 1. Section 96.3, Code Supplement 1995, is amended  
2 by adding the following new subsection:

3 NEW SUBSECTION. 10. VOLUNTARY INCOME TAX WITHHOLDING.

4 All payments of benefits made after December 31, 1996, are  
5 subject to the following:

6 a. An individual filing a new application for benefits  
7 shall, at the time of filing the application, be advised of  
8 the following:

9 (1) Benefits paid under this chapter are subject to  
10 federal and state income tax.

11 (2) Legal requirements exist pertaining to estimated tax  
12 payments.

13 (3) The individual may elect to have federal income tax  
14 deducted and withheld from the individual's payment of  
15 benefits at the amount specified in the Internal Revenue Code  
16 as defined in section 422.3.

17 (4) The individual may elect to have Iowa state income tax  
18 deducted and withheld from the individual's payment of  
19 benefits at the rate of five percent.

20 (5) The individual shall be permitted to change the  
21 individual's previously elected withholding status.

22 b. Amounts deducted and withheld from benefits shall  
23 remain in the unemployment compensation fund until transferred  
24 to the appropriate taxing authority as a payment of income  
25 tax.

26 c. The commissioner shall follow all procedures specified  
27 by the United States department of labor, the federal internal  
28 revenue service, and the department of revenue and finance  
29 pertaining to the deducting and withholding of income tax.

30 d. Amounts shall be deducted and withheld under this  
31 subsection only after amounts are deducted and withheld for  
32 any overpayment of benefits, child support obligations, and  
33 any other amounts authorized to be deducted and withheld under  
34 federal or state law.

35 Sec. 2. Section 96.5, subsection 1, paragraph i, Code

1 Supplement 1995, is amended to read as follows:

2 i. The individual is unemployed as a result of the  
3 individual's employer selling or otherwise transferring a  
4 clearly segregable and identifiable part of the employer's  
5 business or enterprise to another employer which does not make  
6 an offer of suitable work to the individual as provided under  
7 subsection 3~~,-however.~~ However, if the individual does  
8 accept, and works in and is paid wages for, suitable work with  
9 the acquiring employer, the ~~acquiring-employer-immediately~~  
10 ~~becomes-chargeable-for-the~~ benefits paid which are based on  
11 the wages paid by the transferring employer shall be charged  
12 to the unemployment compensation fund provided that the  
13 acquiring employer has not received, or will not receive, a  
14 partial transfer of experience under the provisions of section  
15 96.7, subsection 2, paragraph "b". Relief of charges under  
16 this paragraph applies to both contributory and reimbursable  
17 employers, notwithstanding section 96.8, subsection 5.

18 Sec. 3. Section 96.11, subsection 5, Code 1995, is amended  
19 by striking the subsection.

20 Sec. 4. Section 96.11, subsection 6, Code 1995, is amended  
21 to read as follows:

22 6. EMPLOYMENT STABILIZATION. The commissioner, with the  
23 advice and aid of ~~the-advisory-council,-and-through~~ the  
24 appropriate bureaus of the division, shall take all  
25 appropriate steps to reduce and prevent unemployment; to  
26 encourage and assist in the adoption of practical methods of  
27 vocational training, retraining and vocational guidance; to  
28 investigate, recommend, advise, and assist in the  
29 establishment and operation, by municipalities, counties,  
30 school districts, and the state, of reserves for public works  
31 to be used in times of business depression and unemployment;  
32 to promote the ~~re-employment~~ reemployment of unemployed  
33 workers throughout the state in every other way that may be  
34 feasible; and to these ends to carry on and publish the  
35 results of investigations and research studies.

1 Sec. 5. Section 96.13, subsection 3, paragraph a,  
2 unnumbered paragraph 1, Code 1995, is amended to read as  
3 follows:

4 There is created in the state treasury a special fund to be  
5 known as the special employment security contingency fund.  
6 All interest, fines, and penalties, regardless of when they  
7 become payable, collected ~~from-employers~~ under section 96.14  
8 and section 96.16, subsection 4, shall be paid into the fund.  
9 The moneys shall not be expended or available for expenditure  
10 in any manner which would permit their substitution for  
11 federal funds which would in the absence of the moneys be  
12 available to finance expenditures for the administration of  
13 the department. However, the moneys may be used as a  
14 revolving fund to cover expenditures for which federal funds  
15 have been duly requested but not yet received, subject to the  
16 charging of the expenditures against the funds when received.  
17 The moneys may be used for the payment of costs of  
18 administration which are found not to have been properly and  
19 validly chargeable against federal grants or other funds,  
20 received for the department. The moneys in the fund are  
21 specifically made available to replace, within a reasonable  
22 time, any moneys received by this state in the form of grants  
23 from the federal government for administrative expenses which  
24 because of any action or contingency have been expended for  
25 purposes other than, or in excess of, those necessary for the  
26 proper administration of the department. All moneys in the  
27 fund shall be deposited, administered, and disbursed in the  
28 same manner and under the same conditions and requirements as  
29 are provided by law for other special funds in the state  
30 treasury. Interest earned upon moneys in the fund shall be  
31 deposited in and credited to the fund.

32 Sec. 6. Section 96.16, subsection 4, Code 1995, is amended  
33 to read as follows:

34 4. MISREPRESENTATION. An individual who, by reason of the  
35 nondisclosure or misrepresentation ~~by-the-individual-or-by~~

1 another of a material fact, has received ~~any-sum-as~~ an amount  
2 of benefits under this chapter while any conditions for the  
3 receipt of benefits imposed-by-this-chapter were not fulfilled  
4 ~~in-the-individual's-case,-or-while-the-individual-was~~  
5 ~~disqualified-from-receiving-benefits,~~ shall, in the discretion  
6 of the division ~~of-job-service,~~ either be liable to have the  
7 sum amount deducted from any future benefits payable to the  
8 individual ~~under-this-chapter~~ or shall be liable to repay to  
9 the division for the unemployment compensation fund, ~~a-sum~~ an  
10 amount equal to the amount so received by the individual. If  
11 the individual fails to repay the overpayment in full within  
12 ninety days from the date the overpayment becomes final, or  
13 within ninety days after the date of sentencing in a  
14 prosecution concerning the overpayment, the individual shall  
15 also pay a penalty equal to thirty percent of the overpayment  
16 amount. If the division seeks to recover the amount of the  
17 benefits or penalty by having the individual pay-to repay the  
18 division ~~a-sum-equal-to-that-amount,~~ the division may file a  
19 lien with the county recorder in favor of the state on the  
20 individual's property and rights to property, whether real or  
21 personal. The amount of the lien shall be collected in a  
22 manner similar to the provisions for the collection of past-  
23 due contributions in section 96.14, subsection 3. All  
24 penalties on overpayments of benefits collected under this  
25 chapter shall be deposited in the special employment security  
26 fund created pursuant to section 96.13, subsection 3.

27 Sec. 7. Section 96.19, subsection 18, paragraph a, Code  
28 Supplement 1995, is amended by adding the following new  
29 subparagraph:

30 NEW SUBPARAGRAPH. (9) A member of a limited liability  
31 company. For such a member, the term "employment" shall not  
32 include any portion of such service that is performed in lieu  
33 of making a contribution of cash or property to acquire a  
34 membership interest in the limited liability company.

35 Sec. 8. Section 96.19, subsection 18, paragraph f, Code

1 Supplement 1995, is amended to read as follows:

2 f. (1) Services performed by an individual for wages  
3 shall be deemed to be employment subject to this chapter  
4 unless and until it is shown to the satisfaction of the  
5 division ~~of-job-service~~ that such individual has been and will  
6 continue to be free from control or direction over the  
7 performance of such services, both under the individual's  
8 contract of service and in fact.

9 (2) Services performed by an individual for two or more  
10 employing units shall be deemed to be employment to each  
11 employing unit for which the services are performed. However,  
12 an individual who concurrently performs services as a  
13 corporate officer for two or more related corporations and who  
14 is paid through a common paymaster that is one of the related  
15 corporations may, at the discretion of such related  
16 corporations, be considered to be in the employment of only  
17 the common paymaster.

18 Sec. 9. Section 96.19, subsection 41, Code Supplement  
19 1995, is amended by adding the following new paragraph:

20 NEW PARAGRAPH. e. Any portion of the remuneration to a  
21 member of a limited liability company based on a membership  
22 interest in the company provided that the remuneration is  
23 allocated among members, and among classes of members, in  
24 proportion to their respective investments in the company. If  
25 the amount of remuneration attributable to a membership  
26 interest cannot be determined, the entire amount of  
27 remuneration shall be deemed to be based on services  
28 performed.

29 Sec. 10. EFFECTIVE AND APPLICABILITY DATE. Section 1 of  
30 this Act takes effect on January 1, 1997, and is applicable to  
31 unemployment compensation benefits paid on or after that date.

32 EXPLANATION

33 Section 1 permits the department of employment services to  
34 deduct and withhold federal and state income tax from  
35 unemployment compensation benefits if the claimant chooses.

1 This section takes effect January 1, 1997, and applies to  
2 unemployment compensation benefits paid on or after that date.

3 Section 2 allows employers who purchase part of a business  
4 to be relieved of unemployment insurance charges unless the  
5 acquiring employer requests and is granted a partial transfer  
6 of experience. This section of the bill also treats  
7 reimbursable and contributory employers the same.

8 Sections 3 and 4 eliminate the job service advisory  
9 council.

10 Section 6 establishes a 30 percent penalty for an  
11 individual who is determined to have collected unemployment  
12 compensation benefits through misrepresentation or  
13 nondisclosure of a material fact and who has not repaid the  
14 overpayment within 90 days. Sections 5 and 6 provide that the  
15 amount of penalty collected will be deposited in the special  
16 employment security contingency fund.

17 Section 7 defines services performed by a member of a  
18 limited liability company, beyond services performed in making  
19 a contribution to the membership interest in the company, as  
20 employment.

21 Section 8 allows an individual who is concurrently a  
22 corporate officer of two or more related corporations, and who  
23 is paid through only one of those corporations, to be reported  
24 as an employee of only the corporation that issues the  
25 paycheck.

26 Section 9 limits the definition of wages for purposes of  
27 unemployment compensation to only the remuneration received by  
28 limited liability company members above their contributions to  
29 their membership interest in the company.

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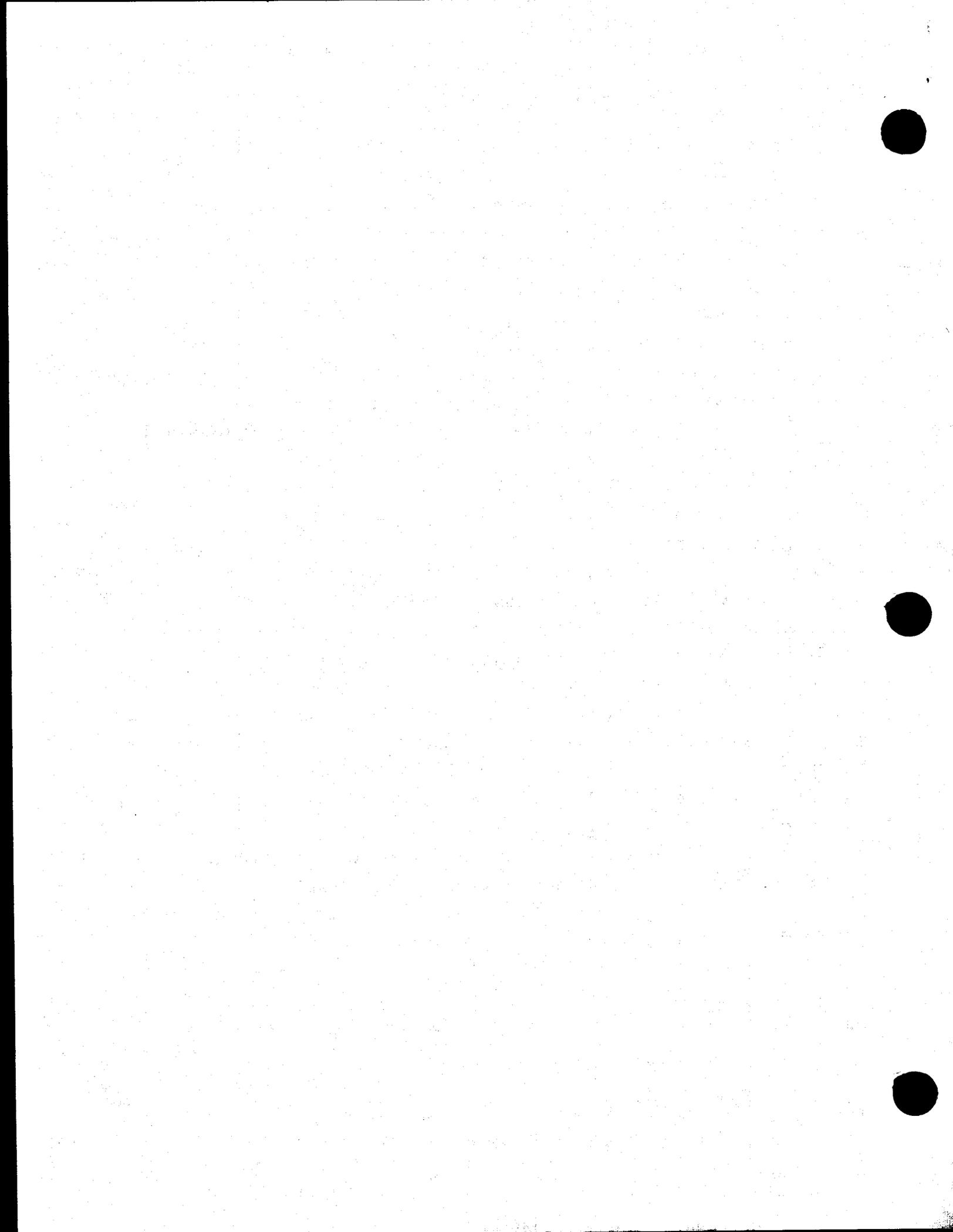
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S-5360

1 Amend Senate File 2341 as follows:

2 1. Page 2, by inserting after line 17 the  
3 following:

4 "Sec. \_\_\_\_ Section 96.5, subsection 2, Code  
5 Supplement 1995, is amended by adding the following  
6 new paragraph:

7 NEW PARAGRAPH. d. For purposes of this  
8 subsection, "misconduct" includes, but is not limited  
9 to, the nondisclosure or misrepresentation of relevant  
10 information on the individual's application for  
11 employment, the failure to comply with the employer's  
12 work-related rules, and the failure to comply with the  
13 provisions of an employee handbook if the handbook was  
14 provided to the individual upon commencing employment  
15 or during the individual's probationary period with  
16 the employer."

17 2. Title page, line 4, by inserting after the  
18 word "charges," the following: "disqualification of  
19 benefits due to discharge of an individual for  
20 misconduct,".

21 3. By renumbering as necessary.

By ALLEN BORLAUG

S-5360 FILED MARCH 14, 1996

*As drafted by Matt Hermone*

3/18/96

(p. 819)

SENATE FILE 2341

S-5236

- 1 Amend Senate File 2341 as follows:  
2 1. Page 1, by inserting after line 34 the  
3 following:  
4 "Sec. \_\_\_\_ . Section 96.4, subsection 4, unnumbered  
5 paragraph 1, Code 1995, is amended to read as follows:  
6 The individual has been paid wages for insured work  
7 during the individual's base period ~~in an amount at~~  
8 ~~least one and one quarter times the wages paid to the~~  
9 ~~individual during that quarter of the individual's~~  
10 ~~base period in which the individual's wages were~~  
11 highest; provided that the individual has been paid  
12 wages for insured work totaling at least three and  
13 five-tenths percent of the statewide average annual  
14 wage for insured work, computed for the preceding  
15 calendar year if the individual's benefit year begins  
16 on or after the first full week in July and computed  
17 for the second preceding calendar year if the  
18 individual's benefit year begins before the first full  
19 week in July, in that calendar quarter in the  
20 individual's base period in which the individual's  
21 wages were highest, and the individual has been paid  
22 wages for insured work totaling at least one-half of  
23 the amount of wages required under this subsection in  
24 the calendar quarter of the base period in which the  
25 individual's wages were highest, in a calendar quarter  
26 in the individual's base period other than the  
27 calendar quarter in which the individual's wages were  
28 highest. The calendar quarter wage requirements shall  
29 be rounded to the nearest multiple of ten dollars."  
30 2. By renumbering as necessary.

By TOM VILSACK

S-5236 FILED MARCH 6, 1996

SENATE FILE 2341

S-5211

- 1 Amend Senate File 2341 as follows:  
2 1. Page 4, line 16, by inserting after the word  
3 "amount." the following: "If the individual repays  
4 the overpayment within ninety days, section 96.5,  
5 subsection 8, shall not apply unless the individual  
6 had an overpayment which occurred in five or more  
7 weeks or the individual had a prior overpayment for  
8 nondisclosure or misrepresentation."  
9 2. Page 5, by inserting after line 31 the  
10 following:  
11 "Sec. \_\_\_\_ . APPLICABILITY PROVISION. Any  
12 overpayments to an individual due to nondisclosure or  
13 misrepresentation pursuant to section 96.16,  
14 subsection 4, that occurred prior to the effective  
15 date of the amendment to section 96.16, subsection 4,  
16 in this Act, shall constitute a prior overpayment for  
17 nondisclosure or misrepresentation as provided in the  
18 amendment to section 96.16, subsection 4, as provided  
19 in this Act."  
20 3. By renumbering as necessary.

By DICK L. DEARDEN

S-5211 FILED MARCH 5, 1996

(p. 819)

*Adopted 3/18/96*

*Adopted 3/18/96 (p. 820)*



1 Section 1. Section 96.3, Code Supplement 1995, is amended  
2 by adding the following new subsection:

3 NEW SUBSECTION. 10. VOLUNTARY INCOME TAX WITHHOLDING.

4 All payments of benefits made after December 31, 1996, are  
5 subject to the following:

6 a. An individual filing a new application for benefits  
7 shall, at the time of filing the application, be advised of  
8 the following:

9 (1) Benefits paid under this chapter are subject to  
10 federal and state income tax.

11 (2) Legal requirements exist pertaining to estimated tax  
12 payments.

13 (3) The individual may elect to have federal income tax  
14 deducted and withheld from the individual's payment of  
15 benefits at the amount specified in the Internal Revenue Code  
16 as defined in section 422.3.

17 (4) The individual may elect to have Iowa state income tax  
18 deducted and withheld from the individual's payment of  
19 benefits at the rate of five percent.

20 (5) The individual shall be permitted to change the  
21 individual's previously elected withholding status.

22 b. Amounts deducted and withheld from benefits shall  
23 remain in the unemployment compensation fund until transferred  
24 to the appropriate taxing authority as a payment of income  
25 tax.

26 c. The commissioner shall follow all procedures specified  
27 by the United States department of labor, the federal internal  
28 revenue service, and the department of revenue and finance  
29 pertaining to the deducting and withholding of income tax.

30 d. Amounts shall be deducted and withheld under this  
31 subsection only after amounts are deducted and withheld for  
32 any overpayment of benefits, child support obligations, and  
33 any other amounts authorized to be deducted and withheld under  
34 federal or state law.

35 Sec. 2. Section 96.4, subsection 4, unnumbered paragraph

1 1, Code 1995, is amended to read as follows:

2 The individual has been paid wages for insured work during  
3 the individual's base period in an amount at least one and  
4 one-quarter times the wages paid to the individual during that  
5 quarter of the individual's base period in which the  
6 individual's wages were highest; provided that the individual  
7 has been paid wages for insured work totaling at least three  
8 and five-tenths percent of the statewide average annual wage  
9 for insured work, computed for the preceding calendar year if  
10 the individual's benefit year begins on or after the first  
11 full week in July and computed for the second preceding  
12 calendar year if the individual's benefit year begins before  
13 the first full week in July, in that calendar quarter in the  
14 individual's base period in which the individual's wages were  
15 highest, and the individual has been paid wages for insured  
16 work totaling at least one-half of the amount of wages  
17 required under this subsection in the calendar quarter of the  
18 base period in which the individual's wages were highest, in a  
19 calendar quarter in the individual's base period other than  
20 the calendar quarter in which the individual's wages were  
21 highest. The calendar quarter wage requirements shall be  
22 rounded to the nearest multiple of ten dollars.

23 Sec. 3. Section 96.5, subsection 1, paragraph i, Code  
24 Supplement 1995, is amended to read as follows:

25 i. The individual is unemployed as a result of the  
26 individual's employer selling or otherwise transferring a  
27 clearly segregable and identifiable part of the employer's  
28 business or enterprise to another employer which does not make  
29 an offer of suitable work to the individual as provided under  
30 subsection 3, however. However, if the individual does  
31 accept, and works in and is paid wages for, suitable work with  
32 the acquiring employer, the acquiring employer immediately  
33 becomes chargeable for the benefits paid which are based on  
34 the wages paid by the transferring employer shall be charged  
35 to the unemployment compensation fund provided that the

1 acquiring employer has not received, or will not receive, a  
2 partial transfer of experience under the provisions of section  
3 96.7, subsection 2, paragraph "b". Relief of charges under  
4 this paragraph applies to both contributory and reimbursable  
5 employers, notwithstanding section 96.8, subsection 5.

6 Sec. 4. Section 96.11, subsection 5, Code 1995, is amended  
7 by striking the subsection.

8 Sec. 5. Section 96.11, subsection 6, Code 1995, is amended  
9 to read as follows:

10 6. EMPLOYMENT STABILIZATION. The commissioner, with the  
11 advice and aid of ~~the advisory council, and through~~ the  
12 appropriate bureaus of the division, shall take all  
13 appropriate steps to reduce and prevent unemployment; to  
14 encourage and assist in the adoption of practical methods of  
15 vocational training, retraining and vocational guidance; to  
16 investigate, recommend, advise, and assist in the  
17 establishment and operation, by municipalities, counties,  
18 school districts, and the state, of reserves for public works  
19 to be used in times of business depression and unemployment;  
20 to promote the ~~re-employment~~ reemployment of unemployed  
21 workers throughout the state in every other way that may be  
22 feasible; and to these ends to carry on and publish the  
23 results of investigations and research studies.

24 Sec. 6. Section 96.13, subsection 3, paragraph a,  
25 unnumbered paragraph 1, Code 1995, is amended to read as  
26 follows:

27 There is created in the state treasury a special fund to be  
28 known as the special employment security contingency fund.  
29 All interest, fines, and penalties, regardless of when they  
30 become payable, collected ~~from employers~~ under section 96.14  
31 and section 96.16, subsection 4, shall be paid into the fund.  
32 The moneys shall not be expended or available for expenditure  
33 in any manner which would permit their substitution for  
34 federal funds which would in the absence of the moneys be  
35 available to finance expenditures for the administration of

1 the department. However, the moneys may be used as a  
2 revolving fund to cover expenditures for which federal funds  
3 have been duly requested but not yet received, subject to the  
4 charging of the expenditures against the funds when received.  
5 The moneys may be used for the payment of costs of  
6 administration which are found not to have been properly and  
7 validly chargeable against federal grants or other funds,  
8 received for the department. The moneys in the fund are  
9 specifically made available to replace, within a reasonable  
10 time, any moneys received by this state in the form of grants  
11 from the federal government for administrative expenses which  
12 because of any action or contingency have been expended for  
13 purposes other than, or in excess of, those necessary for the  
14 proper administration of the department. All moneys in the  
15 fund shall be deposited, administered, and disbursed in the  
16 same manner and under the same conditions and requirements as  
17 are provided by law for other special funds in the state  
18 treasury. Interest earned upon moneys in the fund shall be  
19 deposited in and credited to the fund.

20 Sec. 7. Section 96.16, subsection 4, Code 1995, is amended  
21 to read as follows:

22 4. MISREPRESENTATION. An individual who, by reason of the  
23 nondisclosure or misrepresentation ~~by the individual or by~~  
24 ~~another~~ of a material fact, has received any sum as an amount  
25 of benefits under this chapter while any conditions for the  
26 receipt of benefits ~~imposed by this chapter~~ were not fulfilled  
27 ~~in the individual's case, or while the individual was~~  
28 ~~disqualified from receiving benefits~~, shall, in the discretion  
29 of the division ~~of job service~~, either be liable to have the  
30 sum amount deducted from any future benefits payable to the  
31 individual ~~under this chapter~~ or shall be liable to repay to  
32 the division for the unemployment compensation fund, ~~a sum an~~ an  
33 amount equal to the amount ~~so~~ received by the individual. If  
34 the individual fails to repay the overpayment in full within  
35 ninety days from the date the overpayment becomes final, or

1 within ninety days after the date of sentencing in a  
2 prosecution concerning the overpayment, the individual shall  
3 also pay a penalty equal to thirty percent of the overpayment  
4 amount. If the individual repays the overpayment within  
5 ninety days, section 96.5, subsection 8, shall not apply  
6 unless the individual had an overpayment which occurred in  
7 five or more weeks or the individual had a prior overpayment  
8 for nondisclosure or misrepresentation. If the division seeks  
9 to recover the amount of the benefits or penalty by having the  
10 individual ~~pay to repay~~ the division ~~a sum equal to that~~  
11 amount, the division may file a lien with the county recorder  
12 in favor of the state on the individual's property and rights  
13 to property, whether real or personal. The amount of the lien  
14 shall be collected in a manner similar to the provisions for  
15 the collection of past-due contributions in section 96.14,  
16 subsection 3. All penalties on overpayments of benefits  
17 collected under this chapter shall be deposited in the special  
18 employment security fund created pursuant to section 96.13,  
19 subsection 3.

20 Sec. 8. Section 96.19, subsection 18, paragraph a, Code  
21 Supplement 1995, is amended by adding the following new  
22 subparagraph:

23 NEW SUBPARAGRAPH. (9) A member of a limited liability  
24 company. For such a member, the term "employment" shall not  
25 include any portion of such service that is performed in lieu  
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11 Sec. 10. Section 96.19, subsection 41, Code Supplement  
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17 proportion to their respective investments in the company. If  
18 the amount of remuneration attributable to a membership  
19 interest cannot be determined, the entire amount of  
20 remuneration shall be deemed to be based on services  
21 performed.

22 Sec. 11. EFFECTIVE AND APPLICABILITY DATE. Section 1 of  
23 this Act takes effect on January 1, 1997, and is applicable to  
24 unemployment compensation benefits paid on or after that date.

25 Sec. 12. APPLICABILITY PROVISION. Any overpayments to an  
26 individual due to nondisclosure or misrepresentation pursuant  
27 to section 96.16, subsection 4, that occurred prior to the  
28 effective date of the amendment to section 96.16, subsection  
29 4, in this Act, shall constitute a prior overpayment for  
30 nondisclosure or misrepresentation as provided in the  
31 amendment to section 96.16, subsection 4, as provided in this  
32 Act.

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Dvorsky  
Dearden  
Iverson, Jr.

SSB-2217

Business & Labor

Succeeded By

SENATE/HOUSE FILE HF 2341

BY (PROPOSED DEPARTMENT OF  
EMPLOYMENT SERVICES BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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184 3

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13 (3) The individual may elect to have federal income tax  
14 deducted and withheld from the individual's payment of  
15 benefits at the amount specified in the Internal Revenue Code  
16 as defined in section 422.3.

17 (4) The individual may elect to have Iowa state income tax  
18 deducted and withheld from the individual's payment of  
19 benefits at the rate of five percent.

20 (5) The individual shall be permitted to change the  
21 individual's previously elected withholding status.

22 b. Amounts deducted and withheld from benefits shall  
23 remain in the unemployment compensation fund until transferred  
24 to the appropriate taxing authority as a payment of income  
25 tax.

26 c. The commissioner shall follow all procedures specified  
27 by the United States department of labor, the federal internal  
28 revenue service, and the department of revenue and finance  
29 pertaining to the deducting and withholding of income tax.

30 d. Amounts shall be deducted and withheld under this  
31 subsection only after amounts are deducted and withheld for  
32 any overpayment of benefits, child support obligations, and  
33 any other amounts authorized to be deducted and withheld under  
34 federal or state law.

35 Sec. 2. Section 96.5, subsection 1, paragraph i, Code

1 Supplement 1995, is amended to read as follows:

2 i. The individual is unemployed as a result of the  
3 individual's employer selling or otherwise transferring a  
4 clearly segregable and identifiable part of the employer's  
5 business or enterprise to another employer which does not make  
6 an offer of suitable work to the individual as provided under  
7 subsection 3~~7~~-however. However, if the individual does  
8 accept, and works in and is paid wages for, suitable work with  
9 the acquiring employer, the ~~acquiring-employer-immediately~~  
10 ~~becomes-chargeable-for-the~~ benefits paid which are based on  
11 the wages paid by the transferring employer shall be charged  
12 to the unemployment compensation fund provided that the  
13 acquiring employer has not received, or will not receive, a  
14 partial transfer of experience under the provisions of section  
15 96.7, subsection 2, paragraph "b". Relief of charges under  
16 this paragraph applies to both contributory and reimbursable  
17 employers, notwithstanding section 96.8, subsection 5.

18 Sec. 3. Section 96.11, subsection 5, Code 1995, is amended  
19 by striking the subsection.

20 Sec. 4. Section 96.11, subsection 6, Code 1995, is amended  
21 to read as follows:

22 6. EMPLOYMENT STABILIZATION. The commissioner, with the  
23 advice and aid of ~~the-advisory-council; and-through~~ the  
24 appropriate bureaus of the division, shall take all  
25 appropriate steps to reduce and prevent unemployment; to  
26 encourage and assist in the adoption of practical methods of  
27 vocational training, retraining and vocational guidance; to  
28 investigate, recommend, advise, and assist in the  
29 establishment and operation, by municipalities, counties,  
30 school districts, and the state, of reserves for public works  
31 to be used in times of business depression and unemployment;  
32 to promote the ~~re-employment~~ reemployment of unemployed  
33 workers throughout the state in every other way that may be  
34 feasible; and to these ends to carry on and publish the  
35 results of investigations and research studies.

1       Sec. 5. Section 96.13, subsection 3, paragraph a,  
2 unnumbered paragraph 1, Code 1995, is amended to read as  
3 follows:

4       There is created in the state treasury a special fund to be  
5 known as the special employment security contingency fund.  
6 All interest, fines, and penalties, regardless of when they  
7 become payable, collected ~~from employers~~ under section 96.14  
8 and section 96.16, subsection 4, shall be paid into the fund.  
9 The moneys shall not be expended or available for expenditure  
10 in any manner which would permit their substitution for  
11 federal funds which would in the absence of the moneys be  
12 available to finance expenditures for the administration of  
13 the department. However, the moneys may be used as a  
14 revolving fund to cover expenditures for which federal funds  
15 have been duly requested but not yet received, subject to the  
16 charging of the expenditures against the funds when received.  
17 The moneys may be used for the payment of costs of  
18 administration which are found not to have been properly and  
19 validly chargeable against federal grants or other funds,  
20 received for the department. The moneys in the fund are  
21 specifically made available to replace, within a reasonable  
22 time, any moneys received by this state in the form of grants  
23 from the federal government for administrative expenses which  
24 because of any action or contingency have been expended for  
25 purposes other than, or in excess of, those necessary for the  
26 proper administration of the department. All moneys in the  
27 fund shall be deposited, administered, and disbursed in the  
28 same manner and under the same conditions and requirements as  
29 are provided by law for other special funds in the state  
30 treasury. Interest earned upon moneys in the fund shall be  
31 deposited in and credited to the fund.

32       Sec. 6. Section 96.16, subsection 4, Code 1995, is amended  
33 to read as follows:

34       4. MISREPRESENTATION. An individual who, by reason of the  
35 nondisclosure or misrepresentation ~~by the individual or by~~

1 another of a material fact, has received ~~any-sum-as~~ an amount  
2 of benefits under this chapter while any conditions for the  
3 receipt of benefits ~~imposed-by-this-chapter~~ were not fulfilled  
4 ~~in-the-individual's-case,-or-while-the-individual-was~~  
5 ~~disqualified-from-receiving-benefits~~, shall, in the discretion  
6 of the division ~~of-job-service~~, either be liable to have the  
7 ~~sum~~ amount deducted from any future benefits payable to the  
8 individual ~~under-this-chapter~~ or shall be liable to repay to  
9 the division for the unemployment compensation fund, ~~a-sum~~ an  
10 amount equal to the amount ~~so~~ received by the individual. If  
11 the individual fails to repay the overpayment in full within  
12 ninety days from the date the overpayment becomes final, or  
13 within ninety days after the date of sentencing in a  
14 prosecution concerning the overpayment, the individual shall  
15 also pay a penalty equal to thirty percent of the overpayment  
16 amount. If the division seeks to recover the amount of the  
17 benefits or penalty by having the individual ~~pay-to~~ repay the  
18 division ~~a-sum-equal-to-that-amount~~, the division may file a  
19 lien with the county recorder in favor of the state on the  
20 individual's property and rights to property, whether real or  
21 personal. The amount of the lien shall be collected in a  
22 manner similar to the provisions for the collection of past-  
23 due contributions in section 96.14, subsection 3. All  
24 penalties on overpayments of benefits collected under this  
25 chapter shall be deposited in the special employment security  
26 fund created pursuant to section 96.13, subsection 3.

27 Sec. 7. Section 96.19, subsection 18, paragraph a, Code  
28 Supplement 1995, is amended by adding the following new  
29 subparagraph:

30 NEW SUBPARAGRAPH. (9) A member of a limited liability  
31 company. For such a member, the term "employment" shall not  
32 include any portion of such service that is performed in lieu  
33 of making a contribution of cash or property to acquire a  
34 membership interest in the limited liability company.

35 Sec. 8. Section 96.19, subsection 18, paragraph f, Code

1 Supplement 1995, is amended to read as follows:

2 f. (1) Services performed by an individual for wages  
3 shall be deemed to be employment subject to this chapter  
4 unless and until it is shown to the satisfaction of the  
5 division ~~of job-service~~ that such individual has been and will  
6 continue to be free from control or direction over the  
7 performance of such services, both under the individual's  
8 contract of service and in fact.

9 (2) Services performed by an individual for two or more  
10 employing units shall be deemed to be employment to each  
11 employing unit for which the services are performed. However,  
12 an individual who concurrently performs services as a  
13 corporate officer for two or more related corporations and who  
14 is paid through a common paymaster that is one of the related  
15 corporations may, at the discretion of such related  
16 corporations, be considered to be in the employment of only  
17 the common paymaster.

18 Sec. 9. Section 96.19, subsection 41, Code Supplement  
19 1995, is amended by adding the following new paragraph:

20 NEW PARAGRAPH. e. Any portion of the remuneration to a  
21 member of a limited liability company based on a membership  
22 interest in the company provided that the remuneration is  
23 allocated among members, and among classes of members, in  
24 proportion to their respective investments in the company. If  
25 the amount of remuneration attributable to a membership  
26 interest cannot be determined, the entire amount of  
27 remuneration shall be deemed to be based on services  
28 performed.

29 Sec. 10. EFFECTIVE AND APPLICABILITY DATE. Section 1 of  
30 this Act takes effect on January 1, 1997, and is applicable to  
31 unemployment compensation benefits paid on or after that date.

32 EXPLANATION

33 Section 1 permits the department of employment services to  
34 deduct and withhold federal and state income tax from  
35 unemployment compensation benefits if the claimant chooses.

1 This section takes effect January 1, 1997, and applies to  
2 unemployment compensation benefits paid on or after that date.

3 Section 2 allows employers who purchase part of a business  
4 to be relieved of unemployment insurance charges unless the  
5 acquiring employer requests and is granted a partial transfer  
6 of experience. This section of the bill also treats  
7 reimbursable and contributory employers the same.

8 Sections 3 and 4 eliminate the job service advisory  
9 council.

10 Section 6 establishes a 30 percent penalty for an  
11 individual who is determined to have collected unemployment  
12 compensation benefits through misrepresentation or  
13 nondisclosure of a material fact and who has not repaid the  
14 overpayment within 90 days. Sections 5 and 6 provide that the  
15 amount of penalty collected will be deposited in the special  
16 employment security contingency fund.

17 Section 7 defines services performed by a member of a  
18 limited liability company, beyond services performed in making  
19 a contribution to the membership interest in the company, as  
20 employment.

21 Section 8 allows an individual who is concurrently a  
22 corporate officer of two or more related corporations, and who  
23 is paid through only one of those corporations, to be reported  
24 as an employee of only the corporation that issues the  
25 paycheck.

26 Section 9 limits the definition of wages for purposes of  
27 unemployment compensation to only the remuneration received by  
28 limited liability company members above their contributions to  
29 their membership interest in the company.

30 BACKGROUND STATEMENT

31 SUBMITTED BY THE AGENCY

32 Sections 1 and 10 respond to the General Agreement on  
33 Tariffs and Trade (GATT) federal law which requires states to  
34 deduct and withhold federal income tax from unemployment  
35 compensation benefits if the claimant chooses. The states

1 must adopt this legislation by January 1997. This bill also  
2 authorizes the deduction and withholding of state income taxes  
3 at the same time as the federal income taxes. This will  
4 provide a consistent deduction and will ensure state and  
5 federal income taxes are paid.

6 Section 2 relates to legislation passed in 1995 that  
7 eliminated wage credit liability transfers. The legislation  
8 inadvertently did not address employers who purchase part of a  
9 business. This was unintentional and is corrected in this  
10 bill. One exception continues to exist which is when the  
11 acquiring employer requests and is allowed a partial transfer  
12 of experience. An acquiring employer chooses partial  
13 transfers to reduce its rate and should continue to be charged  
14 since it was a free choice.

15 Sections 5 and 6. Currently, individuals who are  
16 determined to have collected unemployment benefits through  
17 misrepresentation as provided in section 96.16 lose the  
18 ability to collect benefits for up to one year. Those who do  
19 not file for benefits within three years are not penalized at  
20 all and those who do file can be heavily penalized. This  
21 proposal eliminates inconsistencies, is more equitable, and  
22 will be a greater deterrent for persons who might make a  
23 misrepresentation because people will know a penalty exists.  
24 If 100 percent of the penalties are collected, the revenue  
25 could be up to \$465,000 annually, but only a 30 percent  
26 collection rate is expected. Twenty-five states have a  
27 similar penalty or interest provision. The penalty for fraud  
28 in the income tax statutes is 75 percent of the tax owed.  
29 Approximately 70 percent of overpayments due to a  
30 misrepresentation involve one to four weeks of overpayments; a  
31 typical example of this is when a person is working and  
32 collecting unemployment benefits. During 1994, DES set up  
33 3,761 fraud overpayments of \$1,466,150.

34 Section 8. Currently, if a corporate officer works for two  
35 or more related companies and is paid by only one company,

1 each company must report and pay unemployment insurance taxes  
2 on the individuals. This allows one company (the common  
3 paymaster) to report and pay taxes on the corporate officer  
4 only once rather than two or more times.

5 Sections 7 and 9. The use of limited liability companies  
6 has increased since their authorization in Iowa in 1992. The  
7 unemployment insurance tax liability and eligibility for  
8 benefits is not addressed in Iowa law. The department needs  
9 direction in the Code on how to deal with limited liability  
10 company members.

11 These sections require the member to be considered employed  
12 and earning wages if the member is working for the limited  
13 liability company above the member's contribution to the  
14 business. The limited liability company is required to pay  
15 unemployment taxes based on the wages the member earned.

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