

Reprinted 3/87

MAR 2 1987

Place On Calendar

HOUSE FILE 394  
BY COMMITTEE ON SMALL BUSINESS  
AND COMMERCE

(Formerly House Study Bill 167)

Passed House, Date 3-9-87 (p.566) Passed Senate, Date 4-14-87 (P.1274)

Vote: Ayes 96 Nays 0 Vote: Ayes 47 Nays 0

Approved April 24, 1987

A BILL FOR

1 An Act relating to nonlocal business entities, particularly  
2 transient merchants and out-of-state contractors and providing  
3 penalties.

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

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1 Section 1. Section 81A.4, Code 1987, is amended by adding  
2 the following new unnumbered paragraphs:

3 NEW UNNUMBERED PARAGRAPH. The requirements of this section  
4 also apply to transient merchants who are licensed in  
5 accordance with an ordinance of a city in the state of Iowa.

6 NEW UNNUMBERED PARAGRAPH. Notwithstanding the above  
7 provisions, the bond provided for in this section shall be  
8 forfeited to the state of Iowa upon the applicant's failure to  
9 file a return or pay the total of all taxes payable by or due  
10 from the applicant to the state which taxes are administered  
11 by the department of revenue and finance. The department  
12 shall adopt administrative rules for the assessment and  
13 collection of the forfeiture. Notice shall be provided to the  
14 surety and to the applicant. Notice to the applicant shall be  
15 mailed to the applicant's last known address. The applicant  
16 or the surety shall have the opportunity to apply to the  
17 director of revenue and finance for a hearing within thirty  
18 days after the giving of such notice. Upon the failure to  
19 timely request a hearing, the bond shall be forfeited. If,  
20 after the hearing upon timely request, the director finds that  
21 a tax is due, the director shall order the bond forfeited.  
22 The amount of the forfeiture shall be the amount of tax  
23 payable and due, including penalties and interest.

24 Sec. 2. NEW SECTION. 81A.10 ENFORCEMENT.

25 The office of the attorney general is responsible for  
26 enforcement of this chapter. The attorney general, or  
27 designees of the attorney general, may seek an injunction from  
28 a court of competent jurisdiction in order to prohibit sales  
29 by a transient merchant who is in violation of this chapter.

30 Sec. 3. Section 103A.3, Code 1987, is amended by adding  
31 the following new subsection:

32 NEW SUBSECTION. 25. "Out-of-state contractor" means a  
33 corporation whose articles of incorporation are filed in  
34 another state and whose principal place of business is in  
35 another state, and which contracts to perform construction,

1 installation, or any other work covered by this chapter, in  
2 this state.

3 Sec. 4. NEW SECTION. 103A.50 BOND FOR OUT-OF-STATE  
4 CONTRACTORS.

5 An out-of-state contractor, before commencing any business  
6 in Iowa, shall file a bond with the office of the secretary of  
7 state, with sureties to be approved by the secretary of  
8 state's office, in an amount deemed sufficient by the  
9 department of revenue and finance to cover taxes and related  
10 costs routinely incurred in the course of the business the  
11 out-of-state contractor proposes to conduct in this state.

12 EXPLANATION

13 This bill extends chapter 81A relating to transient  
14 merchants to transient merchants licensed in accordance with  
15 an ordinance of a city in this state. Additionally the  
16 attorney general is charged with enforcement responsibility,  
17 including the power to seek an injunction in order to prohibit  
18 sales by a transient merchant who is in violation of the  
19 chapter.

20 This bill also requires an out-of-state building contractor  
21 to post a surety bond with the secretary of state's office  
22 before commencing business in this state. The amount of the  
23 bond is to be determined by the department of revenue and  
24 finance and will be proportional to the amount of taxes and  
25 related costs, such as unemployment compensation insurance  
26 taxes, routinely incurred in the course of the business the  
27 out-of-state contractor proposes to conduct in this state.

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## HOUSE FILE 394

H-3157

1 Amend the amendment, H-3155, to House File 394 as  
2 follows:  
3 1. Page 1, after line 29, by inserting the  
4 following:  
5 "\_\_\_\_\_. Page 2, by striking lines 8 through 11, and  
6 inserting the following: "state's office. The bond  
7 shall be in the sum of the greater of the following:  
8 1. One thousand dollars.  
9 2. Five percent of the contract price.  
10 Release of the bond shall be conditioned upon the  
11 payment of all taxes, including contributions due  
12 under the unemployment compensation insurance system,  
13 penalties, interest, and related fees, which may  
14 accrue to the state of Iowa or its subdivisions on  
15 account of the execution and performance of the  
16 contract. If at any time during the term of the bond  
17 the department of revenue and finance determines that  
18 the amount of the bond is not sufficient to cover the  
19 tax liabilities accruing to the state of Iowa or its  
20 subdivisions, the department shall require the bond to  
21 be increased by an amount the department deems  
22 sufficient to cover the tax liabilities accrued and to  
23 accrue under the contract. The department shall adopt  
24 rules for the collection of the forfeiture. Notice  
25 shall be provided to the surety and to the contractor.  
26 Notice to the contractor shall be mailed to the  
27 contractor's last known address and to the  
28 contractor's registered agent for service of process,  
29 if any, within the state. The contractor or surety  
30 shall have the opportunity to apply to the director of  
31 revenue and finance for a hearing within thirty days  
32 after the giving of such notice. Upon the failure to  
33 timely request a hearing, the bond shall be forfeited.  
34 If, after the hearing upon timely request, the  
35 department of revenue and finance finds that the  
36 contractor has failed to pay the total of all taxes  
37 payable, the department shall order the bond  
38 forfeited. The amount of the forfeiture shall be the  
39 amount of taxes payable or the amount of the bond.  
40 The surety shall not have standing to contest the  
41 amount of any taxes payable. For purposes of this  
42 section "taxes payable" means all tax, penalties,  
43 interest, and fees that the department has previously  
44 determined to be due to the state or a subdivision of  
45 the state by assessment or in an appeal of an  
46 assessment, including contributions to the  
47 unemployment compensation insurance system."

BY METCALF of Polk  
CHAPMAN of Linn

H-3157 FILED MARCH 9, 1987  
ADOPTED (p. 559)

HOUSE FILE 394

H-3155

1 Amend House File 394 as follows:

2 1. Page 1, line 9, by striking the words "file a  
3 return or".

4 2. Page 1, line 12, by striking the words  
5 "assessment and".

6 3. Page 1, line 21, by striking the words "a tax  
7 is due" and inserting the following: "the applicant  
8 has failed to pay the total of all taxes payable and  
9 the bond is forfeited".

10 4. Page 1, line 22, by striking the word "tax"  
11 and inserting the word "taxes".

12 5. Page 1, line 23, by striking the words "and  
13 due, including penalties and interest." and inserting  
14 the following: "or the amount of the bond. The  
15 surety shall not have standing to contest the amount  
16 of any taxes payable. For purposes of this section  
17 "taxes payable" means all tax, penalties, interest,  
18 and fees that the department has previously determined  
19 to be due by assessment or in an appeal of an  
20 assessment."

21 6. Page 1, lines 25 and 26, by striking the words  
22 "The office of the attorney general is responsible for  
23 enforcement of this chapter."

24 7. Page 1, lines 33 and 34, by striking the words  
25 "corporation whose articles of incorporation are filed  
26 in another state and" and inserting the following:  
27 "person".

28 8. Page 2, line 3, by striking the figure  
29 "103A.50" and inserting the following: "103A.24".

3157

BY METCALF of Polk  
CHAPMAN of Linn

H-3155 FILED MARCH 6, 1987

*Adopted as amended by 3157 3/9 (p. 559)*

HOUSE FILE 394

H-3156

1 Amend House File 394 as follows:

2 1. Page 2, line 5, by striking the words "any  
3 business" and inserting the following: "a contract in  
4 excess of five thousand dollars in value".

H-3156 FILED MARCH 6, 1987

*Adopted 3/9 (p. 554)*

BY HUMMEL of Benton

COMMERCE; Sturgeon, Chair; Gronstal and Lind

HOUSE FILE 394  
BY COMMITTEE ON SMALL BUSINESS  
AND COMMERCE

(As Amended and Passed by the House March 9, 1987)

Passed House, Date 3/9/87 (p. 560) Passed Senate, Date 4-14-87 (p. 1274)  
Vote: Ayes 96 Nays 0 Vote: Ayes 47 Nays 0  
Approved April 27 1987 (p. 1686)

A BILL FOR

1 An Act relating to nonlocal business entities, particularly  
2 transient merchants and out-of-state contractors and providing  
3 penalties.

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

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House Amendments \_\_\_\_\_  
Deleted Language \*

1 Section 1. Section 81A.4, Code 1987, is amended by adding  
2 the following new unnumbered paragraphs:

3 NEW UNNUMBERED PARAGRAPH. The requirements of this section  
4 also apply to transient merchants who are licensed in  
5 accordance with an ordinance of a city in the state of Iowa.

6 NEW UNNUMBERED PARAGRAPH. Notwithstanding the above  
7 provisions, the bond provided for in this section shall be  
8 forfeited to the state of Iowa upon the applicant's failure to  
\* 9 pay the total of all taxes payable by or due from the  
10 applicant to the state which taxes are administered by the  
11 department of revenue and finance. The department shall adopt  
\* 12 administrative rules for the collection of the forfeiture.  
13 Notice shall be provided to the surety and to the applicant.  
14 Notice to the applicant shall be mailed to the applicant's  
15 last known address. The applicant or the surety shall have  
16 the opportunity to apply to the director of revenue and  
17 finance for a hearing within thirty days after the giving of  
18 such notice. Upon the failure to timely request a hearing,  
19 the bond shall be forfeited. If, after the hearing upon  
20 timely request, the director finds that the applicant has  
21 failed to pay the total of all taxes payable and the bond is  
22 forfeited, the director shall order the bond forfeited. The  
23 amount of the forfeiture shall be the amount of taxes payable  
24 or the amount of the bond. The surety shall not have standing  
25 to contest the amount of any taxes payable. For purposes of  
26 this section "taxes payable" means all tax, penalties,  
27 interest, and fees that the department has previously  
28 determined to be due by assessment or in an appeal of an  
29 assessment.

30 Sec. 2. NEW SECTION. 81A.10 ENFORCEMENT.

\* 31 The attorney general, or designees of the attorney general,  
32 may seek an injunction from a court of competent jurisdiction  
33 in order to prohibit sales by a transient merchant who is in  
34 violation of this chapter.

35 Sec. 3. Section 103A.3, Code 1987, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 25. "Out-of-state contractor" means a  
3 person whose principal place of business is in another state,  
4 and which contracts to perform construction, installation, or  
5 any other work covered by this chapter, in this state.

6 Sec. 4. NEW SECTION. 103A.24 BOND FOR OUT-OF-STATE  
7 CONTRACTORS.

8 An out-of-state contractor, before commencing a contract in  
9 excess of five thousand dollars in value in Iowa, shall file a  
10 bond with the office of the secretary of state, with sureties  
11 to be approved by the secretary of state's office. The bond  
12 shall be in the sum of the greater of the following:

- 13 1. One thousand dollars.
- 14 2. Five percent of the contract price.

15 Release of the bond shall be conditioned upon the payment of  
16 all taxes, including contributions due under the unemployment  
17 compensation insurance system, penalties, interest, and  
18 related fees, which may accrue to the state of Iowa or its  
19 subdivisions on account of the execution and performance of  
20 the contract. If at any time during the term of the bond the  
21 department of revenue and finance determines that the amount  
22 of the bond is not sufficient to cover the tax liabilities  
23 accruing to the state of Iowa or its subdivisions, the  
24 department shall require the bond to be increased by an amount  
25 the department deems sufficient to cover the tax liabilities  
26 accrued and to accrue under the contract. The department  
27 shall adopt rules for the collection of the forfeiture.  
28 Notice shall be provided to the surety and to the contractor.  
29 Notice to the contractor shall be mailed to the contractor's  
30 last known address and to the contractor's registered agent  
31 for service of process, if any, within the state. The  
32 contractor or surety shall have the opportunity to apply to  
33 the director of revenue and finance for a hearing within  
34 thirty days after the giving of such notice. Upon the failure  
35 to timely request a hearing, the bond shall be forfeited. If,



1 after the hearing upon timely request, the department of  
2 revenue and finance finds that the contractor has failed to  
3 pay the total of all taxes payable, the department shall order  
4 the bond forfeited. The amount of the forfeiture shall be the  
5 amount of taxes payable or the amount of the bond. The surety  
6 shall not have standing to contest the amount of any taxes  
7 payable. For purposes of this section "taxes payable" means  
8 all tax, penalties, interest, and fees that the department has  
9 previously determined to be due to the state or a subdivision  
10 of the state by assessment or in an appeal of an assessment,  
11 including contributions to the unemployment compensation  
12 insurance system.

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HSB 167

SMALL BUSINESS AND COMMERCE

*Handwritten:* HSB 167

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
SMALL BUSINESS AND  
COMMERCE BILL)

Passed House, Date \_\_\_\_\_

Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to out-of-state contractors and providing  
2 penalties.

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

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SUB COMMITTEE ASSIGNMENTS  
CHAIR: *Halvor - Corrected chairman*  
COMMITTEE: *Small Business 2/23/87*  
*2/20/87*

1 Section 1. Section 81A.4, Code 1987, is amended by adding  
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. The requirements of this section  
4 also apply to transient merchants who are licensed in  
5 accordance with an ordinance of a city in the state of Iowa.

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7 The office of the attorney general is responsible for  
8 enforcement of this chapter. The attorney general, or  
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17 another state, and which contracts to perform construction,  
18 installation, or any other work covered by this chapter, in  
19 this state.

20 Sec. 4. NEW SECTION. 103A.50 BOND FOR OUT-OF-STATE  
21 CONTRACTORS.

22 An out-of-state contractor, before commencing any business  
23 in Iowa, shall file with the office of the attorney general a  
24 bond, with sureties to be approved by the attorney general's  
25 office, in an amount deemed sufficient by the attorney  
26 general's office to cover taxes and related costs routinely  
27 incurred in the course of the business the out-of-state  
28 contractor proposes to conduct in this state.

29 EXPLANATION

30 This bill extends chapter 81A relating to transient  
31 merchants to transient merchants licensed in accordance with  
32 an ordinance of a city in this state. Additionally the  
33 attorney general is charged with enforcement responsibility,  
34 including the power to seek an injunction in order to prohibit  
35 sales by a transient merchant who is in violation of the

1 chapter.

2 This bill also requires an out-of-state building contractor  
3 to post a surety bond with the attorney general's office  
4 before commencing business in this state. The amount of the  
5 bond is to be determined by the attorney general's office and  
6 will be proportional to the amount of taxes and related costs,  
7 such as unemployment compensation insurance taxes, routinely  
8 incurred in the course of the business the out-of-state  
9 contractor proposes to conduct in this state.

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HOUSE FILE 394

AN ACT

RELATING TO NONLOCAL BUSINESS ENTITIES, PARTICULARLY TRANSIENT  
MERCHANTS AND OUT-OF-STATE CONTRACTORS AND PROVIDING  
PENALTIES.

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

Section 1. Section 81A.4, Code 1987, is amended by adding  
the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. The requirements of this section  
also apply to transient merchants who are licensed in  
accordance with an ordinance of a city in the state of Iowa.

NEW UNNUMBERED PARAGRAPH. Notwithstanding the above  
provisions, the bond provided for in this section shall be  
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pay the total of all taxes payable by or due from the  
applicant to the state which taxes are administered by the

department of revenue and finance. The department shall adopt  
administrative rules for the collection of the forfeiture.  
Notice shall be provided to the surety and to the applicant.  
Notice to the applicant shall be mailed to the applicant's  
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finance for a hearing within thirty days after the giving of  
such notice. Upon the failure to timely request a hearing,  
the bond shall be forfeited. If, after the hearing upon  
timely request, the director finds that the applicant has  
failed to pay the total of all taxes payable and the bond is  
forfeited, the director shall order the bond forfeited. The  
amount of the forfeiture shall be the amount of taxes payable  
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interest, and fees that the department has previously  
determined to be due by assessment or in an appeal of an  
assessment.

Sec. 2. NEW SECTION. 81A.10 ENFORCEMENT.

The attorney general, or designees of the attorney general,  
may seek an injunction from a court of competent jurisdiction  
in order to prohibit sales by a transient merchant who is in  
violation of this chapter.

Sec. 3. Section 103A.3, Code 1987, is amended by adding  
the following new subsection:

NEW SUBSECTION. 25. "Out-of-state contractor" means a  
person whose principal place of business is in another state,  
and which contracts to perform construction, installation, or  
any other work covered by this chapter, in this state.

Sec. 4. NEW SECTION. 103A.24 BOND FOR OUT-OF-STATE  
CONTRACTORS.

An out-of-state contractor, before commencing a contract in  
excess of five thousand dollars in value in Iowa, shall file a  
bond with the office of the secretary of state, with sureties

to be approved by the secretary of state's office. The bond shall be in the sum of the greater of the following:

1. One thousand dollars.
2. Five percent of the contract price.

Release of the bond shall be conditioned upon the payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and related fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract. If at any time during the term of the bond the department of revenue and finance determines that the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Iowa or its subdivisions, the department shall require the bond to be increased by an amount the department deems sufficient to cover the tax liabilities accrued and to accrue under the contract. The department shall adopt rules for the collection of the forfeiture. Notice shall be provided to the surety and to the contractor. Notice to the contractor shall be mailed to the contractor's last known address and to the contractor's registered agent for service of process, if any, within the state. The contractor or surety shall have the opportunity to apply to the director of revenue and finance for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the department of revenue and finance finds that the contractor has failed to pay the total of all taxes payable, the department shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond. The surety shall not have standing to contest the amount of any taxes payable. For purposes of this section "taxes payable" means all tax, penalties, interest, and fees that the department has previously determined to be due to the state or a subdivision of the state by assessment or in an appeal of an assessment,

including contributions to the unemployment compensation insurance system.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 394, Seventy-second General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved April 24, 1987

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TERRY E. BRANSTAD  
Governor