

FILED JAN 31 2006

JUDICIARY

SENATE FILE 2109  
BY HATCH and BOLKCOM

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

**A BILL FOR**

1 An Act concerning the employment of unauthorized aliens and human  
2 trafficking and providing penalties and other sanctions and an  
3 appropriation.

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

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

JUDICIARY  
SF 2109

1 Section 1. NEW SECTION. 13.6A SPECIAL ASSISTANT -- HUMAN  
2 TRAFFICKING AND RELATED OFFENSES -- EMPLOYMENT OF UNAUTHORIZED  
3 ALIENS.

4 The attorney general shall appoint a special assistant  
5 attorney general for claims who shall, under the direction of  
6 the attorney general, investigate and prosecute all claims  
7 relating to the crime of human trafficking and related  
8 offenses pursuant to sections 710A.2, 710A.3, and 710A.4 and  
9 the employment of unauthorized aliens pursuant to section  
10 91F.2.

11 Sec. 2. NEW SECTION. 73A.22 STATE ASSISTANCE  
12 RESTRICTIONS -- PERSONS EMPLOYING UNAUTHORIZED ALIENS.

13 1. a. A state department, institution, or agency, or any  
14 board member, commissioner, director, manager, or other person  
15 connected with any such department, institution, or agency,  
16 shall not award a contract or provide developmental assistance  
17 to an employer as defined in section 91F.1 in which the  
18 employer or corporate officer of the employer has been found  
19 in violation of section 91F.2 within the past five years.

20 b. For purposes of this section, "developmental  
21 assistance" means any form of public assistance, including tax  
22 expenditures, made for the purpose of stimulating the economic  
23 development of a corporation, industry, geographic  
24 jurisdiction, or any other sector of the state's economy,  
25 including but not limited to industrial development bonds,  
26 training grants, loans, loan guarantees, enterprise zones,  
27 empowerment zones, tax increment financing, fee waivers, land  
28 price subsidies, infrastructure constructed or improved for  
29 the benefit of a single business or defined group of  
30 businesses at the time it is built or improved, matching  
31 funds, tax abatements, tax credits and tax discounts of every  
32 kind, including corporate, franchise, personal income, sales  
33 and use, raw materials, real property, job creation,  
34 individual investment, excise, utility, inventory, accelerated  
35 depreciation, and research and development tax credits and

1 discounts.

2 2. Any contract or developmental assistance awarded shall  
3 provide that if, during the effective period of the contract  
4 or developmental assistance, the vendor, contractor,  
5 subcontractor, or developmental assistance recipient violates  
6 the provisions of section 91F.2, the contract or developmental  
7 assistance shall be terminated.

8 3. A state department, institution, or agency may enforce  
9 its rights under this section by instituting a civil action in  
10 district court in this state. In addition, a state  
11 department, institution, or agency shall not award a contract  
12 or provide developmental assistance to any person that  
13 violates this section for a period of five years after the  
14 date of the violation.

15 Sec. 3. NEW SECTION. 91F.1 DEFINITIONS.

16 As used in this chapter:

17 1. "Commissioner" means the labor commissioner.

18 2. "Employee" means a natural person who is employed in  
19 this state for wages paid on an hourly basis by an employer.

20 3. "Employer" means a person, as defined in section 4.1,  
21 who in this state employs for wages, paid on an hourly basis,  
22 one or more natural persons. An employer does not include a  
23 client, patient, customer, or other person who obtains  
24 professional services from a licensed person who provides the  
25 services on a fee service basis or as an independent  
26 contractor, or the state, or an agency or governmental  
27 subdivision of the state.

28 4. "Unauthorized alien" means a person who is not a  
29 citizen or legal resident and who has not been lawfully  
30 admitted to the United States for permanent residence or who  
31 is not authorized to work in the United States.

32 Sec. 4. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS --  
33 EMPLOYER PROHIBITION.

34 An employer shall not knowingly employ as an employee an  
35 unauthorized alien. For purposes of this section, "knowingly

1 employ as an employee an unauthorized alien" includes cases in  
2 which an employer actually knows a person is an unauthorized  
3 alien and cases in which any person exercising reasonable care  
4 should know from facts and circumstances that a person is an  
5 unauthorized alien.

6 Sec. 5. NEW SECTION. 91F.3 PENALTIES.

7 1. An employer who violates section 91F.2 is subject to a  
8 civil penalty of up to one thousand dollars.

9 2. A corporate officer of an employer who, through  
10 repeated violation of section 91F.2, demonstrates a pattern of  
11 employing unauthorized aliens commits a serious misdemeanor.

12 3. An employer who, through repeated violation of section  
13 91F.2, demonstrates a pattern of employing unauthorized aliens  
14 may be ordered to pay punitive damages.

15 Sec. 6. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE  
16 COMMISSIONER -- ENFORCEMENT BY ATTORNEY GENERAL.

17 1. The commissioner shall adopt rules to implement and  
18 enforce this chapter.

19 2. In order to carry out the purposes of this chapter, the  
20 commissioner or the commissioner's representative, upon  
21 presenting appropriate credentials to an employer's owner,  
22 operator, or agent in charge, may:

23 a. Inspect employment records relating to the employees of  
24 the employer.

25 b. Interview an employer, owner, operator, agent, or  
26 employee, during working hours or at other reasonable times.

27 3. If the commissioner has reason to believe than an  
28 employer may be in violation of this chapter, the commissioner  
29 shall notify the attorney general, and provide the attorney  
30 general with any supporting information, for prosecution of  
31 the violation by the attorney general.

32 Sec. 7. NEW SECTION. 91F.5 PROHIBITIONS RELATING TO  
33 CERTAIN ACTIONS BY EMPLOYEES -- PENALTY -- CIVIL REMEDY.

34 1. An employer shall not discharge an employee or take or  
35 fail to take action regarding an employee's appointment or

1 proposed appointment or promotion or proposed promotion, or  
2 regarding any advantage of an employee as a reprisal for a  
3 failure by that employee to inform the employer that the  
4 employee made a disclosure of information to any law  
5 enforcement agency if the employee reasonably believes the  
6 information evidences a violation of section 91F.2, 710A.2,  
7 710A.3, or 710A.4.

8 2. Subsection 1 does not apply if the disclosure of the  
9 information is prohibited by statute.

10 3. An employer who violates subsection 1 commits a simple  
11 misdemeanor.

12 4. Subsection 1 may be enforced through a civil action.

13 a. An employer who violates subsection 1 is liable to an  
14 aggrieved employee for affirmative relief, including  
15 reinstatement, with or without back pay, or any other  
16 equitable relief the court deems appropriate, including  
17 attorney fees and costs.

18 b. If an employer commits, is committing, or proposes to  
19 commit an act in violation of subsection 1, an injunction may  
20 be granted through an action in district court to prohibit the  
21 person from continuing such acts. The action for injunctive  
22 relief may be brought by an aggrieved employee or the attorney  
23 general.

24 Sec. 8. NEW SECTION. 710A.1 DEFINITIONS.

25 As used in this chapter:

26 1. "Commercial sexual activity" means any sex act on  
27 behalf of which anything of value is given, promised to, or  
28 received by any person and includes, but is not limited to,  
29 prostitution, participation in the production of pornography,  
30 and performance in strip clubs.

31 2. "Forced labor or services" means labor or services that  
32 are performed or provided by another person and that are  
33 obtained or maintained through any of the following:

34 a. Causing or threatening to cause serious physical injury  
35 to any person.

- 1     b. Physically restraining or threatening to physically  
2 restrain another person.
- 3     c. Abusing or threatening to abuse the law or legal  
4 process.
- 5     d. Knowingly destroying, concealing, removing,  
6 confiscating, or possessing any actual or purported passport  
7 or other immigration document, or any other actual or  
8 purported government identification document, of another  
9 person.
- 10    3. "Labor" means work of economic or financial value.
- 11    4. "Maintain" means, in relation to labor and services, to  
12 secure continued performance thereof, regardless of any  
13 initial agreement on the part of the victim to perform such  
14 type of services.
- 15    5. "Minor" means a person under the age of eighteen years.
- 16    6. "Obtain" means, in relation to labor or services, to  
17 secure performance thereof.
- 18    7. "Services" means an ongoing relationship between a  
19 person and the actor in which the person performs activities  
20 under the supervision of or for the benefit of the actor,  
21 including commercial sexual activity and sexually explicit  
22 performances.
- 23    8. "Sexually explicit performance" means a live or public  
24 act or show intended to arouse or satisfy the sexual desires  
25 or appeal to the prurient interest of patrons.
- 26    9. "Venture" means any group of two or more persons  
27 associated in fact, whether or not a legal entity.
- 28    10. "Victim" means a person subjected to the practices set  
29 forth in section 710A.2, 710A.3, or 710A.4.
- 30    Sec. 9. NEW SECTION. 710A.2 FORCED LABOR AND SERVICES.
- 31    1. A person who knowingly subjects, attempts to subject,  
32 or engages in a conspiracy to subject another person to forced  
33 labor or services by causing or threatening to cause serious  
34 physical injury to that other person is guilty of a class "B"  
35 felony, except that if that other person is a minor, a person

1 who violates this subsection is guilty of a class "A" felony.

2 2. A person who knowingly subjects, attempts to subject,  
3 or engages in a conspiracy to subject another person to forced  
4 labor or services by physically restraining or threatening to  
5 physically restrain that other person is guilty of a class "C"  
6 felony, except that if that other person is a minor, a person  
7 who violates this subsection is guilty of a class "B" felony.

8 3. A person who knowingly subjects, attempts to subject,  
9 or engages in a conspiracy to subject another person to forced  
10 labor or services by abusing or threatening to abuse the law  
11 or legal process is guilty of a class "D" felony, except that  
12 if that other person is a minor, a person who violates this  
13 subsection is guilty of a class "C" felony.

14 4. A person who knowingly subjects, attempts to subject,  
15 or engages in a conspiracy to subject another person to forced  
16 labor or services by knowingly destroying, concealing,  
17 removing, confiscating, or possessing any actual or purported  
18 passport or other immigration document, or any other actual or  
19 purported government identification document, of that other  
20 person is guilty of a class "D" felony, except that if that  
21 other person is a minor, a person who violates this subsection  
22 is guilty of a class "C" felony.

23 Sec. 10. NEW SECTION. 710A.3 HUMAN TRAFFICKING -- FORCED  
24 LABOR AND SERVICES.

25 1. A person shall not knowingly recruit, entice, harbor,  
26 transport, provide, or obtain by any means, or attempt to  
27 recruit, entice, harbor, transport, provide, or obtain by any  
28 means, another person, with the intent that the other person  
29 be subjected to forced labor or services.

30 2. A person shall not knowingly benefit, financially or by  
31 receiving anything of value, from participation in a venture  
32 that involves a violation of this section.

33 3. A person who violates this section is guilty of a class  
34 "B" felony, except that if the other person is a minor, a  
35 person who violates this section is guilty of a class "A"

1 felony.

2 Sec. 11. NEW SECTION. 710A.4 HUMAN TRAFFICKING -- SEXUAL  
3 EXPLOITATION OF A MINOR.

4 1. A person shall not knowingly recruit, entice, harbor,  
5 transport, provide, or obtain by any means, or attempt to  
6 recruit, entice, harbor, transport, provide, or obtain by any  
7 means, a minor, with the intent that the minor be subjected to  
8 sexual exploitation in violation of section 728.12.

9 2. A person shall not knowingly benefit, financially or by  
10 receiving anything of value, from participation in a venture  
11 that involves a violation of section 728.12.

12 3. A person who violates this section is guilty of a class  
13 "A" felony.

14 Sec. 12. NEW SECTION. 710A.5 SENTENCING ENHANCEMENTS.

15 1. If a violation of section 710A.2 or 710A.3 results in  
16 the death of the person or if the person is kidnapped in  
17 violation of section 710.2 or 710.3, the defendant is guilty  
18 of a class "A" felony.

19 2. In sentencing a person for a violation of section  
20 710A.2, 710A.3, or 710A.4, the court shall sentence the  
21 defendant to an additional term of confinement of ten years in  
22 cases in which the victim was maintained or held for a period  
23 greater than one hundred eighty days or if the offense  
24 involved more than ten victims.

25 Sec. 13. NEW SECTION. 710A.6 CORPORATE LIABILITY.

26 If a corporation is convicted of an offense pursuant to  
27 section 710A.2, 710A.3, or 710A.4, in addition to any other  
28 penalties provided in this chapter, the court shall, where  
29 appropriate, do any of the following:

30 1. Order the corporation's dissolution or reorganization.

31 2. Order the suspension or revocation of any license,  
32 permit, or prior approval granted by a state agency.

33 3. Order the surrender of the corporation's organizational  
34 authority if organized under state law or revocation of the  
35 corporation's authority to conduct business in this state.



1 Sec. 14. NEW SECTION. 710A.7 RESTITUTION AND ADDITIONAL  
2 FINE.

3 In addition to any fine or penalty imposed under this  
4 chapter, the court shall order a defendant convicted of a  
5 violation of this chapter to make restitution for damages  
6 resulting directly from the violation, to the victim, pursuant  
7 to chapter 910, and shall include an additional fine of the  
8 greater of either the gross income or value of the victim's  
9 labor or services or the value of the victim's wages of not  
10 less than the applicable federal minimum wage under the  
11 federal Fair Labor Standards Act.

12 Sec. 15. NEW SECTION. 915.51 GENERAL RIGHTS OF HUMAN  
13 TRAFFICKING VICTIMS.

14 1. In addition to other victim rights provided in this  
15 chapter, including the right to receive victim compensation  
16 pursuant to section 915.84 and the right to exert victim  
17 counseling privileges pursuant to section 915.20A, victims of  
18 a crime described in section 710A.2, 710A.3, or 710A.4 shall  
19 have the following rights without regard to their immigration  
20 status:

21 a. The right to receive prompt medical care including  
22 mental health care, food, shelter, and other assistance, if  
23 necessary.

24 b. The right to have access to legal assistance and  
25 translation services, if necessary.

26 c. The right to receive reasonable police protection if a  
27 victim's safety is at risk or if there is any danger of  
28 additional harm, including measures to protect victims and  
29 their family members from intimidation and threats of  
30 reprisals from traffickers and their associates and ensuring  
31 that the names and identifying information of victims and  
32 their family members are not disclosed to the public.

33 2. The departments of human services, human rights,  
34 health, public safety, justice, and other public state  
35 agencies shall provide the requisite services to assist in the

1 administration of this section.

2 Sec. 16. DEPARTMENT OF JUSTICE -- HUMAN TRAFFICKING CRIMES  
3 AND RELATED OFFENSES -- INVESTIGATION AND PROSECUTION. There  
4 is appropriated from the general fund to the department of  
5 justice for the fiscal year beginning July 1, 2006, and ending  
6 June 30, 2007, the following amount, or so much as is  
7 necessary, to be used for the purposes designated:

8 For the investigation and prosecution of human trafficking  
9 crimes and related offenses pursuant to sections 710A.2,  
10 710A.3, and 710A.4 and the employment of unauthorized aliens  
11 pursuant to section 91F.2:

12 ..... \$ 100,000

13 Notwithstanding section 8.33, moneys appropriated in this  
14 section that remain unencumbered or unobligated at the close  
15 of the fiscal year shall not revert but shall remain available  
16 for expenditure for the purposes designated until the close of  
17 the succeeding fiscal year.

18 EXPLANATION

19 This bill relates to employment of unauthorized aliens and  
20 human trafficking and related offenses and provides penalties.

21 New Code section 73A.22 is created to prohibit state  
22 entities from awarding a contract or providing developmental  
23 assistance to a person who violates the provisions of the bill  
24 concerning the employment of unauthorized aliens as  
25 established in new Code section 91F.2. The bill defines  
26 "developmental assistance" as any form of public assistance,  
27 including tax incentives, grants, or other subsidies. The  
28 bill provides that a person violating this new provision shall  
29 have their contract or developmental assistance terminated.  
30 The bill grants state entities the right to enforce their  
31 rights in district court and provides that a person violating  
32 this provision shall be prohibited from receiving a state  
33 contract or developmental assistance for five years.

34 The bill creates new Code chapter 91F prohibiting employers  
35 from employing unauthorized aliens. The bill defines

1 "unauthorized aliens" as any person who is not a citizen or  
2 legal resident and who has not been lawfully admitted to the  
3 United States for permanent residence or who is not authorized  
4 to work in the United States. An "employer" is any person who  
5 employs for wages, paid on an hourly basis, one or more  
6 natural persons. The bill prohibits employers from knowingly  
7 employing an unauthorized alien. The bill provides that a  
8 violation can occur in cases in which an employer actually  
9 knows a person is an unauthorized alien as well as a situation  
10 in which any person exercising reasonable care should know  
11 from facts and circumstances that a person is an unauthorized  
12 alien. The bill provides that a violation of this chapter is  
13 subject to a civil penalty of \$1,000 and a corporate officer  
14 of an employer who, through repeated violations of the  
15 chapter, demonstrates a pattern of employing unauthorized  
16 aliens, commits a serious misdemeanor. An employer who  
17 demonstrates a pattern of employing unauthorized aliens may be  
18 ordered to pay punitive damages. The bill further authorizes  
19 the labor commissioner within the department of workforce  
20 development to adopt rules to administer and enforce this new  
21 chapter and grants the commissioner the authority to  
22 investigate employer records and to interview employees. The  
23 bill provides that the commissioner shall forward any  
24 suspected violations of this chapter to the attorney general  
25 for prosecution. The bill further provides that an employer  
26 shall not discharge an employee from or take or fail to take  
27 action regarding an employee's appointment or proposed  
28 appointment, promotion or proposed promotion, or regarding any  
29 advantage of an employee as a reprisal for a failure by that  
30 employee to inform the employer that the employee made a  
31 disclosure of information to any law enforcement agency if the  
32 employee reasonably believes the information evidences a  
33 violation of Code section 91F.2, 710A.2, 710A.3, or 710A.4.  
34 An employer who violates the provisions of this chapter is  
35 liable to an aggrieved employee for affirmative relief

1 including reinstatement, with or without back pay, or any  
2 other equitable relief the court deems appropriate, including  
3 attorney fees and costs. In addition, an action for  
4 injunctive relief may be brought by an aggrieved employee or  
5 the attorney general.

6 The bill provides that a person who knowingly subjects,  
7 attempts to subject, or engages in a conspiracy to subject  
8 another person to forced labor or services by causing or  
9 threatening to cause serious physical injury to that person,  
10 by physically restraining or threatening to physically  
11 restrain another person, by abusing or threatening to abuse  
12 the law or legal process, or by destroying, concealing,  
13 removing, confiscating, or possessing any actual or purported  
14 passport or other immigration document, or any other actual or  
15 purported government identification document, of another  
16 person is guilty of the crime of forced labor and services and  
17 is subject to a class "B" felony, a class "C" felony, or a  
18 class "D" felony, depending upon the circumstances of the  
19 offense. A class "B" felony is punishable by confinement for  
20 no more than 25 years, a class "C" felony is punishable by  
21 confinement for no more than 10 years and a fine of at least  
22 \$1,000 but not more than \$10,000, and a class "D" felony is  
23 punishable by confinement for no more than five years and a  
24 fine of at least \$750 but not more than \$7,500. The bill  
25 provides sentencing enhancements for a crime involving a minor  
26 victim, depending on the circumstances of the offense, ranging  
27 from a class "A" felony, punishable by confinement for life  
28 without the possibility of parole, to a class "C" felony.

29 The bill provides that a person who knowingly recruits,  
30 entices, harbors, transports, provides, or obtains by any  
31 means, or attempts to recruit, entice, harbor, transport,  
32 provide, or obtain by any means, another person, with the  
33 intent that the person be subjected to forced labor or  
34 services, or a person who knowingly benefits, financially or  
35 by receiving anything of value, from participation in a

1 venture that involves forced labor or services, is guilty of a  
2 class "B" felony, except if the person being trafficked is a  
3 minor, a person who commits either act is guilty of a class  
4 "A" felony.

5 The bill further provides that a person who knowingly  
6 recruits, entices, harbors, transports, provides, or obtains  
7 by any means, or attempts to recruit, entice, harbor,  
8 transport, provide, or obtain by any means, a minor, with the  
9 intent that the minor be subjected to sexual exploitation in  
10 violation of Code section 728.12, Iowa's sexual exploitation  
11 of a minor statute, or a person who knowingly benefits,  
12 financially or by receiving anything of value, from  
13 participation in a venture that involves a violation of Code  
14 section 728.12, is guilty of a class "A" felony.

15 The bill provides sentencing enhancements for the crimes of  
16 forced labor and services and human trafficking in forced  
17 labor and services. The bill provides that if the commission  
18 of any such offense results in the death of the person or if  
19 the person is kidnapped, the defendant is guilty of a class  
20 "A" felony.

21 The bill provides that if a corporation is convicted of the  
22 crimes of forced labor and services, human trafficking in  
23 forced labor and services, or human trafficking in the sexual  
24 exploitation of a minor, the court shall order the  
25 corporation's dissolution or reorganization; order the  
26 suspension or revocation of any license, permit, or prior  
27 approval granted by a state agency in Iowa; or order the  
28 surrender of the corporation's charter if organized under  
29 state law or revocation of the corporation's certificate to  
30 conduct business in the state.

31 The bill provides that a victim under the bill shall  
32 receive restitution for damages resulting directly from the  
33 violation pursuant to Code chapter 910, which shall include a  
34 fine of the greater of either the gross income or value of the  
35 victim's labor or services or the value of the victim's labor

1 as guaranteed under the provisions of the federal Fair Labor  
2 Standards Act.

3 The bill provides that in addition to other victim rights  
4 provided in Code chapter 915, including the right to receive  
5 victim compensation pursuant to Code section 915.84 and the  
6 right to exert victim counseling privileges pursuant to  
7 section 915.20A, victims shall have the right to receive  
8 prompt medical care including mental health care, food,  
9 shelter, and other assistance; the right to have access to  
10 legal assistance and translation services; and the right to  
11 receive reasonable police protection; and including ensuring  
12 that the names and identifying information of victims and  
13 their family members are not disclosed to the public if a  
14 victim's safety is at risk or if there is any danger of  
15 additional harm, without regard to their immigration status.

16 The bill authorizes the attorney general to appoint a  
17 special assistant attorney general who shall, under the  
18 direction of the attorney general, investigate and prosecute  
19 all claims relating to the crime of human trafficking and  
20 related offenses and the employment of unauthorized aliens and  
21 appropriates up to \$100,000 from the state general fund to the  
22 department of justice for the fiscal year beginning July 1,  
23 2006, and ending June 30, 2007, to be used by the department  
24 of justice for such purposes. Notwithstanding Code section  
25 8.33, appropriated moneys that remain unencumbered or  
26 unobligated at the close of the fiscal year do not revert but  
27 remain available for expenditure for the purposes designated  
28 until the close of the succeeding fiscal year.

29  
30  
31  
32  
33  
34  
35