

House File 2026 - Introduced

HOUSE FILE _____
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MERTZ, and MURPHY

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

A BILL FOR

1 An Act relating to the employer=employee relationship by
2 providing for the employment classification of individuals and
3 proscribing the employment of unauthorized aliens, and
4 providing penalties and an applicability date.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5654YH 82
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1 1 DIVISION I
1 2 Section 1. NEW SECTION. 91F.1 DEFINITIONS.
1 3 As used in this chapter:
1 4 1. "Commissioner" means the labor commissioner appointed
1 5 pursuant to section 91.2 or the labor commissioner's designee.
1 6 2. "Employee" means a natural person who is employed in
1 7 this state for wages paid on an hourly basis by an employer.
1 8 3. "Employer" means a person, as defined in section 4.1,
1 9 who in this state employs for wages, paid on an hourly basis,
1 10 one or more natural persons. An employer does not include a
1 11 client, patient, customer, or other person who obtains
1 12 professional services from a licensed person who provides the
1 13 services on a fee service basis or as an independent
1 14 contractor, or the state, or an agency or governmental
1 15 subdivision of the state.
1 16 4. "Unauthorized alien" means a person who is not lawfully
1 17 present in the United States.
1 18 Sec. 2. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS ==
1 19 EMPLOYER PROHIBITION.
1 20 An employer shall not knowingly employ as an employee an
1 21 unauthorized alien. For purposes of this section, "knowingly
1 22 employ as an employee an unauthorized alien" means an employer
1 23 has actual knowledge that a person is an unauthorized alien
1 24 and employs the person as an employee. An employer who
1 25 obtains a verification of employment eligibility form required
1 26 by the federal Immigration Reform and Control Act of 1986, 8
1 27 U.S.C. } 1324a, shall not be considered in violation of this
1 28 chapter.
1 29 Sec. 3. NEW SECTION. 91F.3 PENALTIES.
1 30 1. An employer who violates section 91F.2 is subject to a
1 31 civil penalty of up to ten thousand dollars.
1 32 2. A corporate officer of an employer who, by knowingly
1 33 directing the repeated violation of section 91F.2,
1 34 demonstrates a pattern of employing unauthorized aliens
1 35 commits a serious misdemeanor.
2 1 3. An employer who, through repeated violation of section
2 2 91F.2, demonstrates a pattern of employing unauthorized aliens
2 3 may be ordered to pay punitive damages.
2 4 Sec. 4. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE
2 5 COMMISSIONER == ENFORCEMENT BY COUNTY ATTORNEY.
2 6 1. The commissioner shall adopt rules to implement and
2 7 enforce this chapter.

2 8 2. In order to carry out the purposes of this chapter, the
2 9 commissioner or the commissioner's representative, upon
2 10 presenting appropriate credentials to an employer's owner,
2 11 operator, or agent in charge, may:
2 12 a. Inspect employment records relating to the employees of
2 13 the employer.
2 14 b. Interview an employer, owner, operator, agent, or
2 15 employee, during working hours or at other reasonable times.
2 16 3. If the commissioner has reason to believe that an
2 17 employer may be in violation of this chapter, the commissioner
2 18 shall notify the appropriate county attorney, and provide the
2 19 county attorney with any supporting information, for
2 20 prosecution of the violation.

2 21 Sec. 5. NEW SECTION. 91F.5 PROHIBITIONS RELATING TO
2 22 CERTAIN ACTIONS BY EMPLOYEES == PENALTY == CIVIL REMEDY.

2 23 1. An employer shall not discharge an employee or take or
2 24 fail to take action regarding an employee's appointment or
2 25 proposed appointment or promotion or proposed promotion, or
2 26 regarding any advantage of an employee as a reprisal for a
2 27 failure by that employee to inform the employer that the
2 28 employee made a disclosure of information to any law
2 29 enforcement agency if the employee reasonably believes the
2 30 information evidences a violation of section 91F.2.

2 31 2. Subsection 1 does not apply if the disclosure of the
2 32 information is prohibited by statute.

2 33 3. An employer who violates subsection 1 commits a serious
2 34 misdemeanor.

2 35 4. Subsection 1 may be enforced through a civil action.

3 1 a. An employer who violates subsection 1 is liable to an
3 2 aggrieved employee for affirmative relief, including
3 3 reinstatement, with or without back pay, or any other
3 4 equitable relief the court deems appropriate, including
3 5 attorney fees and costs.

3 6 b. If an employer commits, is committing, or proposes to
3 7 commit an act in violation of subsection 1, an injunction may
3 8 be granted through an action in district court to prohibit the
3 9 person from continuing such acts. The action for injunctive
3 10 relief may be brought by an aggrieved employee or the county
3 11 attorney.

3 12 DIVISION II

3 13 Sec. 6. NEW SECTION. 91G.1 PURPOSE.

3 14 The purpose of this chapter is to address the practice of
3 15 misclassifying employees as independent contractors.

3 16 Sec. 7. NEW SECTION. 91G.2 DEFINITIONS.

3 17 1. "Commissioner" means the labor commissioner appointed
3 18 pursuant to section 91.2 or the labor commissioner's designee.

3 19 2. "Construction" means any constructing, altering,
3 20 reconstructing, repairing, rehabilitating, refinishing,
3 21 refurbishing, remodeling, remediating, renovating, custom
3 22 fabricating, maintenance, landscaping, improving, wrecking,
3 23 painting, decorating, demolishing, moving construction-related
3 24 materials on the job site or to or from the job site, and
3 25 adding to or subtracting from any building, structure, airport
3 26 facility, highway, roadway, street, alley, bridge, sewer,
3 27 drain, ditch, sewage disposal plant, water works, parking
3 28 facility, railroad, excavation or other project, development,
3 29 real property, or improvement, or to do any part thereof,
3 30 whether or not the performance of the work described in this
3 31 paragraph involves the addition to, or fabrication into, any
3 32 structure, project, development, real property, or improvement
3 33 described in this paragraph of any material or article
3 34 merchandise.

3 35 3. "Contractor" means any person engaged in construction.
4 1 "Contractor" includes general contractors, subcontractors, and
4 2 lower-tiered contractors. "Contractors" does not include the
4 3 state of Iowa or its officers, agencies, or political
4 4 subdivisions or the federal government.

4 5 4. "Division" means the division of labor services.

4 6 5. "Interested party" means a person with an interest in
4 7 compliance with this chapter.

4 8 6. "Performing services" means any constructing, altering,
4 9 reconstructing, repairing, rehabilitating, refinishing,
4 10 refurbishing, remodeling, remediating, renovating, custom
4 11 fabricating, maintenance, landscaping, improving, wrecking,
4 12 painting, decorating, demolishing, moving construction-related
4 13 materials on the job site or to or from the job site, and
4 14 adding to or subtracting from any building, structure, airport
4 15 facility, highway, roadway, street, alley, bridge, sewer,
4 16 drain, ditch, sewage disposal plant, water works, parking
4 17 facility, railroad, excavation or other project, development,
4 18 real property, or improvement, or to do any part thereof,

4 19 whether or not the performance of the work described in this
4 20 paragraph involves the addition to, or fabrication into, any
4 21 structure, project, development, real property, or improvement
4 22 described in this paragraph of any material or article of
4 23 merchandise.

4 24 Sec. 8. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS
4 25 PERFORMING SERVICES.

4 26 An individual performing services for a contractor shall be
4 27 classified an employee of the contractor unless the conditions
4 28 of subsection 1 or 2 are met. Each individual classified as
4 29 an employee under this section shall also be classified as an
4 30 employee pursuant to chapters 85, 88, 91A, and 96.

4 31 1. The individual performing services is not an employee
4 32 if all of the following conditions apply:

4 33 a. The individual performs services free from the control
4 34 or direction of the contractor, both under the individual's
4 35 contract of service and in practice.

5 1 b. The individual performs services outside the usual
5 2 course of services performed by the contractor.

5 3 c. The individual engages in an independently established
5 4 trade, occupation, profession, or business.

5 5 2. The individual performing services is a sole proprietor
5 6 or is a partner in a partnership and all of the following
5 7 conditions apply:

5 8 a. The sole proprietor or partnership performs the
5 9 services free from the direction or control over the means and
5 10 manner of providing the services, subject only to the right of
5 11 the contractor for whom the services are provided to specify
5 12 the desired result.

5 13 b. The sole proprietor or partnership is not subject to
5 14 cancellation or destruction upon severance of the relationship
5 15 with the contractor.

5 16 c. The sole proprietor or partnership has a substantial
5 17 investment of capital in the sole proprietorship or
5 18 partnership beyond ordinary tools and equipment and a personal
5 19 vehicle.

5 20 d. The sole proprietor or partnership owns the capital
5 21 goods, gains the profits, and bears the losses of the sole
5 22 proprietorship or partnership.

5 23 e. The sole proprietor or partnership makes its services
5 24 available to the general public or the business community on a
5 25 continuing basis.

5 26 f. The sole proprietor or partnership includes services
5 27 rendered on a federal income tax schedule as an independent
5 28 business or profession.

5 29 g. The sole proprietor or partnership performs services
5 30 for the contractor under the sole proprietorship's or
5 31 partnership's name.

5 32 h. The sole proprietor or partnership obtains and pays for
5 33 any required licenses or permits to operate in the sole
5 34 proprietorship's or partnership's name.

5 35 i. The sole proprietor or partnership furnishes the tools
6 1 and equipment necessary to provide the services.

6 2 j. The sole proprietor or partnership hires its own
6 3 employees, if necessary, without contractor approval; pays the
6 4 employees without reimbursement from the contractor; and
6 5 reports the employees' income to the Internal Revenue Service.

6 6 k. The sole proprietor or partnership is not presented by
6 7 the contractor as an employee of the contractor to its
6 8 customers.

6 9 l. The sole proprietor or partnership retains the right to
6 10 perform similar services for others on whatever basis and
6 11 whenever the sole proprietor or partnership chooses.

6 12 m. The sole proprietor or partnership is in compliance
6 13 with the requirements of chapter 91C.

6 14 Sec. 9. NEW SECTION. 91G.4 FAILURE TO PROPERLY CLASSIFY
6 15 INDIVIDUALS PERFORMING SERVICES.

6 16 If an individual who performs services for a contractor
6 17 qualifies as an employee pursuant to section 91G.3, the
6 18 contractor commits a violation of this chapter by not treating
6 19 the individual as an employee pursuant to chapters 85, 88,
6 20 91A, and 96.

6 21 Sec. 10. NEW SECTION. 91G.5 NOTICE OF LAW.

6 22 1. The commissioner shall prepare posters in both English
6 23 and Spanish summarizing the requirements of this chapter. The
6 24 English and Spanish versions of the poster shall be posted on
6 25 the division's internet site and on bulletin boards in the
6 26 division's office.

6 27 2. The commissioner shall provide the posters without
6 28 charge to contractors upon request.

6 29 3. If one or more individuals not classified as employees

6 30 under section 91G.3 performs services for a contractor, the
6 31 contractor shall post the English and Spanish versions of the
6 32 poster created by the commissioner. The posters shall be
6 33 posted in a conspicuous location at the places where notices
6 34 to employees are normally posted at each job site and office.

6 35 Sec. 11. NEW SECTION. 91G.6 ENFORCEMENT.

7 1 1. Any interested party may file a complaint with the
7 2 commissioner alleging a violation of this chapter.

7 3 2. The commissioner shall enforce the provisions of this
7 4 chapter. The commissioner may conduct investigations in
7 5 connection with the administration and enforcement of this
7 6 chapter and may visit and inspect, at all reasonable times,
7 7 any places covered by this chapter and may inspect, at all
7 8 reasonable times, documents related to the determination of
7 9 whether an individual is an employee under section 91G.3.

7 10 3. The commissioner may compel by subpoena the attendance
7 11 and testimony of witnesses and the production of books,
7 12 payrolls, records, papers, and other evidence in an
7 13 investigation and may administer oaths to witnesses.

7 14 4. The commissioner shall adopt rules pursuant to and
7 15 consistent with chapter 17A regarding investigations to
7 16 determine whether an employer has violated any provisions of
7 17 this chapter or any rules adopted pursuant to this chapter. A
7 18 determination by the commissioner whether a violation has
7 19 occurred shall be considered final agency action under chapter
7 20 17A.

7 21 5. Whenever the commissioner believes upon investigation
7 22 that there has been a violation of any of the provisions of
7 23 this chapter or any rules adopted pursuant to this chapter,
7 24 the commissioner may do any of the following:

7 25 a. Issue and cause to be served on any party an order to
7 26 cease and desist from further violation of this chapter.

7 27 b. Take affirmative or other action as deemed reasonable
7 28 to eliminate the effect of the violation.

7 29 c. Collect the amount of any wages, salary, employment
7 30 benefits, or other compensation denied or lost to an
7 31 individual.

7 32 d. Assess any civil penalty allowed by this chapter.

7 33 e. Make a referral to the appropriate county attorney.

7 34 6. A contractor shall not be liable under this chapter for
7 35 any subcontractor's failure to properly classify individuals
8 1 performing services as employees, nor shall a subcontractor be
8 2 liable for any lower-tier subcontractor's failure to properly
8 3 classify individuals performing services as employees.

8 4 7. In any civil action to enforce the provisions of this
8 5 chapter, the commissioner may be represented by an attorney
8 6 employed by the division or, at the commissioner's request, by
8 7 the attorney general.

8 8 8. Criminal violations of this chapter shall be prosecuted
8 9 by the county attorney. The commissioner shall refer matters
8 10 to the county attorney upon determining that a criminal
8 11 violation may have occurred.

8 12 Sec. 12. NEW SECTION. 91G.7 PENALTIES.

8 13 1. A contractor that violates this chapter or any rule
8 14 adopted pursuant to this chapter shall be subject to a civil
8 15 penalty not to exceed one thousand five hundred dollars for
8 16 each violation determined by the commissioner. A contractor
8 17 shall be subject to a civil penalty not to exceed two thousand
8 18 five hundred dollars for each repeat violation occurring
8 19 within a five-year period as determined by the commissioner.

8 20 2. For purposes of this section, each violation of this
8 21 chapter for each person and for each day the violation
8 22 continues shall constitute a separate and distinct violation.
8 23 In determining the amount of a penalty, the commissioner shall
8 24 consider the appropriateness of the penalty to the contractor
8 25 and the gravity of the violation.

8 26 3. When imposition of a penalty has become a final agency
8 27 action, the penalty and other relief requested by the
8 28 commissioner shall be recoverable in an action brought by the
8 29 commissioner in district court.

8 30 4. If more than six months have passed since the
8 31 imposition of the penalty became a final agency action and the
8 32 commissioner has not filed an enforcement action in district
8 33 court, an interested party may file suit to recover the
8 34 penalty. The district court shall award the interested party
8 35 thirty percent of the amount recovered and the remaining
9 1 amount shall be submitted to the commissioner.

9 2 Sec. 13. NEW SECTION. 91G.8 DEBARMENTS.

9 3 For any second or subsequent violation determined by the
9 4 commissioner to have occurred within five years of an earlier
9 5 violation, the commissioner shall add the contractor's name to

9 6 a list to be posted on the division's internet site. Upon
9 7 such notice, the commissioner shall notify the violating
9 8 contractor. A state contract shall not be awarded to a
9 9 contractor appearing on the list until four years have elapsed
9 10 from the date of the determination of the last violation.

9 11 Sec. 14. NEW SECTION. 91G.9 WILLFUL VIOLATIONS ==
9 12 PENALTIES.

9 13 1. Whoever willfully violates any of the provisions of
9 14 this chapter or any rule adopted pursuant to this chapter, or
9 15 whoever obstructs the commissioner or any other person
9 16 authorized to inspect places of employment under this chapter
9 17 shall be liable for penalties up to double the amount set out
9 18 in section 91G.7.

9 19 2. Whoever willfully violates any of the provisions of
9 20 this chapter or any rule adopted pursuant to this chapter
9 21 shall be liable to the employee for punitive damages in an
9 22 amount equal to the penalties assessed in subsection 1.

9 23 3. A civil penalty, as described in section 91G.7, shall
9 24 be imposed if a contractor's conduct is proven by a
9 25 preponderance of the evidence to be willful. The penalty may
9 26 be recovered in a civil action brought by the commissioner in
9 27 any district court. The civil penalty is in addition to and
9 28 not in lieu of any criminal penalty.

9 29 4. Whoever willfully violates any provision of this
9 30 chapter or any rule adopted pursuant to this chapter commits a
9 31 serious misdemeanor. Whoever commits a second or subsequent
9 32 willful violation within a five-year period commits a class
9 33 "D" felony.

9 34 Sec. 15. NEW SECTION. 91G.10 DISPOSITION OF PENALTIES.

9 35 Any penalties assessed and collected by the commissioner
10 1 pursuant to this chapter shall be paid into the construction
10 2 revolving fund pursuant to section 91C.4.

10 3 Sec. 16. NEW SECTION. 91G.11 RETALIATION.

10 4 1. It is a violation of this chapter for a contractor or
10 5 contractor's agent to retaliate through discharge or in any
10 6 other manner against any individual for exercising any rights
10 7 granted under this chapter. Such retaliation shall subject a
10 8 contractor or contractor's agent to civil penalties pursuant
10 9 to this chapter and to a private cause of action.

10 10 2. It is a violation of this chapter for a contractor to
10 11 retaliate against an individual who is doing any of the
10 12 following:

10 13 a. Making a complaint to an employer or entity, coworker,
10 14 or community organization, before a public hearing, or to a
10 15 state or federal agency that rights guaranteed under this
10 16 chapter have been violated.

10 17 b. Causing to be instituted any proceeding under or
10 18 related to this chapter.

10 19 c. Testifying or otherwise cooperating in an investigation
10 20 or proceeding under this chapter.

10 21 Sec. 17. NEW SECTION. 91G.12 PRIVATE RIGHT OF ACTION.

10 22 1. An individual aggrieved by a contractor's violation of
10 23 this chapter or a rule adopted pursuant to this chapter may
10 24 file suit in district court against the contractor, in the
10 25 county where the alleged offense occurred, or where any person
10 26 who is party to the action resides, without regard to
10 27 exhaustion of any alternative administrative remedies provided
10 28 in this chapter. Actions may be brought by one or more
10 29 aggrieved individuals for and on behalf of themselves and
10 30 other individuals similarly situated. An individual whose
10 31 rights have been violated under this chapter by a contractor
10 32 is entitled to collect the following:

10 33 a. The amount of any wages, salary, employment benefits,
10 34 or other compensation denied or lost to the individual by
10 35 reason of the violation, plus an equal amount in liquidated
11 1 damages.

11 2 b. Compensatory damages and an amount up to five hundred
11 3 dollars for each violation of this chapter or any rule adopted
11 4 pursuant to this chapter.

11 5 c. In a case of unlawful retaliation, all legal or
11 6 equitable relief as may be appropriate.

11 7 d. Interest, attorney fees, and costs.

11 8 2. The right of an aggrieved individual to bring an action
11 9 under this section terminates upon the passing of three years
11 10 from the final date of performing services for the contractor.
11 11 The limitation-of-action period is tolled if a contractor
11 12 deters or attempts to deter an individual's exercise of rights
11 13 under this chapter and runs for another three years after such
11 14 an act by the contractor.

11 15 Sec. 18. NEW SECTION. 91G.13 CONTEMPT.

11 16 If it appears that a person violated a valid order of the

11 17 commissioner issued under this chapter, the commissioner may
11 18 commence an action to obtain from the court an order
11 19 commanding the person to obey the order of the commissioner or
11 20 be adjudged guilty of contempt of court and punished
11 21 accordingly.

11 22 Sec. 19. NEW SECTION. 91G.14 RULEMAKING.
11 23 The commissioner may adopt rules pursuant to chapter 17A to
11 24 administer this chapter.

11 25 Sec. 20. NEW SECTION. 91G.15 WAIVERS == PENALTY.
11 26 1. Notwithstanding chapter 17A, waivers shall not be
11 27 issued with respect to any rules adopted pursuant to this
11 28 chapter.
11 29 2. It is a class "C" felony for a contractor to induce or
11 30 attempt to induce any individual to waive any provision of
11 31 this chapter.

11 32 Sec. 21. NEW SECTION. 91G.16 COOPERATION.
11 33 1. The commissioner, the division that administers
11 34 unemployment insurance services, the division of workers'
11 35 compensation, and the department of revenue shall cooperate
12 1 under this chapter by sharing information concerning possible
12 2 misclassification by a contractor of one or more of its
12 3 employees as independent contractors.
12 4 2. Upon determining that a contractor misclassified one or
12 5 more employees as independent contractors in violation of this
12 6 chapter, the commissioner shall notify the division of
12 7 unemployment insurance services, the division of workers'
12 8 compensation, and the department of revenue which shall all
12 9 investigate the contractor's compliance with applicable laws.

12 10 Sec. 22. NEW SECTION. 91G.17 INDEMNIFICATION.
12 11 An employee of the commissioner shall be indemnified for
12 12 any damages and legal expenses incurred as a result of the
12 13 good faith performance of the employee's official duties under
12 14 this chapter, for any claim for civil damages not specifically
12 15 covered by chapter 669.

12 16 Sec. 23. Section 85.61, subsection 11, paragraph b, Code
12 17 Supplement 2007, is amended to read as follows:
12 18 b. "Worker" or "employee" includes an inmate as defined in
12 19 section 85.59 and a person described in section 85.60.
12 20 Notwithstanding paragraph "g", "worker" or "employee" includes
12 21 an individual who is classified as an employee pursuant to
12 22 section 91G.3.

12 23 Sec. 24. Section 86.45, subsection 2, Code 2007, is
12 24 amended by adding the following new paragraph:
12 25 NEW PARAGRAPH. j. To cooperate with the division of labor
12 26 services, the division that administers unemployment insurance
12 27 services, and the department of revenue pursuant to chapter
12 28 91G by sharing information concerning possible
12 29 misclassification of one or more employees as independent
12 30 contractors.

12 31 Sec. 25. Section 88.3, subsection 4, Code 2007, is amended
12 32 to read as follows:
12 33 4. "Employee" means an employee of an employer who is
12 34 employed in a business of the employer. "Employee" also means
12 35 an inmate as defined in section 85.59, when the inmate works
13 1 in connection with the maintenance of the institution, in an
13 2 industry maintained in the institution, or while otherwise on
13 3 detail to perform services for pay. "Employee" also means a
13 4 volunteer involved in responses to hazardous waste incidences.
13 5 The employer of a volunteer is that entity which provides or
13 6 which is required to provide workers' compensation coverage
13 7 for the volunteer. "Employee" includes an individual who is
13 8 classified as an employee pursuant to section 91G.3.

13 9 Sec. 26. Section 91.4, subsection 5, Code Supplement 2007,
13 10 is amended to read as follows:
13 11 5. The director of the department of workforce
13 12 development, in consultation with the labor commissioner,
13 13 shall, at the time provided by law, make an annual report to
13 14 the governor setting forth in appropriate form the business
13 15 and expense of the division of labor services for the
13 16 preceding year, the number of disputes or violations processed
13 17 by the division and the disposition of the disputes or
13 18 violations, and other matters pertaining to the division which
13 19 are of public interest, together with recommendations for
13 20 change or amendment of the laws in this chapter and chapters
13 21 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,
13 22 and 94A, and section 85.68, and the recommendations, if any,
13 23 shall be transmitted by the governor to the first general
13 24 assembly in session after the report is filed.

13 25 Sec. 27. Section 91A.2, subsection 3, unnumbered paragraph
13 26 1, Code 2007, is amended to read as follows:
13 27 "Employee" means a natural person who is employed in this

13 28 state for wages by an employer. Employee also includes a
13 29 commission salesperson who takes orders or performs services
13 30 on behalf of a principal and who is paid on the basis of
13 31 commissions but does not include persons who purchase for
13 32 their own account for resale. "Employee" includes an
13 33 individual who is classified as an employee pursuant to

13 34 section 91G.3. For the purposes of this chapter, the
13 35 following persons engaged in agriculture are not employees:

14 1 Sec. 28. Section 91C.4, Code 2007, is amended to read as
14 2 follows:

14 3 91C.4 FEES.

14 4 1. The labor commissioner shall prescribe the fee for
14 5 registration, which fee shall not exceed ~~twenty-five one~~
14 6 ~~hundred~~ dollars every two years. ~~All fees collected shall be~~
14 7 ~~deposited in the general fund of the state.~~

14 8 2. A construction revolving fund is created within the
14 9 state treasury under the control of the labor commissioner.
14 10 The fund shall consist of moneys collected by the commissioner
14 11 as fees and civil penalties pursuant to this chapter and
14 12 chapter 91G. Moneys in the fund are appropriated and shall be
14 13 used by the labor commissioner to pay the actual costs and
14 14 expenses necessary to administer the provisions of this
14 15 chapter and chapter 91G including but not limited to
14 16 administration, investigation, and other expenses incurred.
14 17 All salaries and expenses properly chargeable to the fund
14 18 shall be paid from the fund. The labor commissioner shall
14 19 hire as many investigators and other personnel as may be
14 20 necessary to carry out the purposes of this chapter and
14 21 chapter 91G. Section 8.33 does not apply to any moneys in the
14 22 fund. Notwithstanding section 12C.7, subsection 2, interest
14 23 or earnings on moneys deposited in the fund shall be credited
14 24 to the fund.

14 25 Sec. 29. Section 91C.8, subsection 5, Code 2007, is
14 26 amended to read as follows:

14 27 5. The administrative penalties which may be imposed under
14 28 this section shall be not more than five hundred dollars in
14 29 the case of a first violation and not more than five thousand
14 30 dollars for each violation in the case of a second or
14 31 subsequent violation. All administrative penalties collected
14 32 pursuant to this chapter shall be deposited in the ~~general~~
14 33 ~~fund of the state construction revolving fund pursuant to~~
14 34 ~~section 91C.4.~~

14 35 Sec. 30. Section 96.11, Code Supplement 2007, is amended
15 1 by adding the following new subsection:
15 2 NEW SUBSECTION. 17. INTERAGENCY COOPERATION. The
15 3 director and the department shall cooperate with the division
15 4 of labor services, the division of workers' compensation, and
15 5 the department of revenue pursuant to chapter 91G by sharing
15 6 information concerning possible misclassification of employees
15 7 as independent contractors.

15 8 Sec. 31. Section 96.19, subsection 18, paragraph a,
15 9 subparagraph (2), Code 2007, is amended to read as follows:

15 10 (2) Any individual who, under the usual common law rules
15 11 applicable in determining the employer=employee relationship,
15 12 has the status of an employee, and any individual who is
15 13 classified as an employee pursuant to section 91G.3, or

15 14 Sec. 32. APPLICABILITY DATE. This division of this Act
15 15 applies to services performed for contractors on or after
15 16 January 1, 2009.

15 17 DIVISION III

15 18 Sec. 33. Section 84A.5, subsection 4, Code Supplement
15 19 2007, is amended to read as follows:

15 20 4. The division of labor services is responsible for the
15 21 administration of the laws of this state under chapters 88,
15 22 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 91G,
15 23 92, and 94A, and section 85.68. The executive head of the
15 24 division is the labor commissioner, appointed pursuant to
15 25 section 91.2.

15 26 Sec. 34. SEVERABILITY. The provisions of this Act are
15 27 severable in the manner provided by section 4.12.

15 28 EXPLANATION

15 29 DIVISION I. This bill creates new Code chapter 91F
15 30 prohibiting employers from employing unauthorized aliens. The
15 31 bill defines "unauthorized aliens" as any person who is not
15 32 lawfully present in the United States. An "employer" is any
15 33 person who employs for wages, paid on an hourly basis, one or
15 34 more natural persons. The bill prohibits employers from
15 35 knowingly employing an unauthorized alien. An employer who
16 1 obtains employment eligibility verification from the federal
16 2 E-Verify system through the United States department of
16 3 homeland security shall not be considered in violation of the

16 4 bill. The bill provides that a violation can occur in cases
16 5 in which an employer actually knows a person is an
16 6 unauthorized alien. The bill provides that a violation of
16 7 this chapter is subject to a civil penalty of \$10,000 and a
16 8 corporate officer of an employer who, through knowingly
16 9 directing the repeated violations of the chapter, demonstrates
16 10 a pattern of employing unauthorized aliens, commits a serious
16 11 misdemeanor, which is punishable by confinement for no more
16 12 than one year and a fine of at least \$315 but not more than
16 13 \$1,875. An employer who demonstrates a pattern of employing
16 14 unauthorized aliens may be ordered to pay punitive damages.
16 15 The bill further authorizes the labor commissioner within the
16 16 department of workforce development to adopt rules to
16 17 implement and enforce this new Code chapter and grants the
16 18 commissioner the authority to investigate employer records and
16 19 to interview employees. The bill provides that the
16 20 commissioner shall forward any suspected violations of this
16 21 chapter to the appropriate county attorney for prosecution.

16 22 The bill further provides that an employer shall not
16 23 discharge an employee from or take or fail to take action
16 24 regarding an employee's appointment or proposed appointment,
16 25 promotion or proposed promotion, or regarding any advantage of
16 26 an employee as a reprisal for a failure by that employee to
16 27 inform the employer that the employee made a disclosure of
16 28 information to any law enforcement agency if the employee
16 29 reasonably believes the information evidences a violation of
16 30 Code section 91F.2. An employer who violates these provisions
16 31 of this chapter commits a serious misdemeanor and is liable to
16 32 an aggrieved employee for affirmative relief including
16 33 reinstatement, with or without back pay, or any other
16 34 equitable relief the court deems appropriate, including
16 35 attorney fees and costs. In addition, an action for
17 1 injunctive relief may be brought by an aggrieved employee or
17 2 the county attorney. A serious misdemeanor is punishable by
17 3 confinement for no more than one year or a fine of at least
17 4 \$315 but not more than \$1,875.

17 5 DIVISION II. The bill also relates to the classification
17 6 of individuals as employees or independent contractors. The
17 7 bill gives the division of labor services the authority to
17 8 administer new Code chapter 91G and requires that the division
17 9 of labor services, the division of unemployment insurance
17 10 services, and the department of revenue share information and
17 11 work jointly with regards to possible violations of the bill.

17 12 The bill creates new Code chapter 91G, which is intended to
17 13 address the misclassification of employees as independent
17 14 contractors. The bill presumes that an individual performing
17 15 services for a contractor is an employee of the contractor
17 16 unless specific conditions exist or are applicable. The first
17 17 set of conditions that can result in an individual not being
17 18 considered an employee of a contractor are that the individual
17 19 performs the services free from control and direction of the
17 20 contractor; the individual performs the services outside the
17 21 usual range of the contractor's services; and the individual
17 22 who performs the services is in an independent trade, business
17 23 or occupation.

17 24 The second way that an individual is not considered an
17 25 employee of the contractor is if the individual is a sole
17 26 proprietor or a partner in a partnership. In order to
17 27 determine if a legitimate sole proprietorship or partnership
17 28 exists, 13 conditions must apply. The conditions are that the
17 29 sole proprietor or partnership performs services free from the
17 30 direction or control of the contractor, both in the terms of
17 31 the contract and in practice; is not subject to severance or
17 32 destruction when the relationship with the contractor ends;
17 33 has invested a significant amount of money or other capital in
17 34 the business beyond ordinary tools and a personal vehicle;
17 35 owns the capital goods, receives the profits, and risks the
18 1 losses of the business; makes the business' services to the
18 2 public or other contractors; lists the business on a federal
18 3 income tax schedule; performs services under the business'
18 4 name; obtains and pays for licenses or permits needed to
18 5 operate the business; furnishes the tools and equipment
18 6 necessary to run the business; hires employees, if necessary,
18 7 without reimbursement from the contractor and reports
18 8 employees' income to the Internal Revenue Service; is not
18 9 presented by the contractor as an employee; retains the right
18 10 to perform similar services to others; and is in compliance
18 11 with the requirements of Code chapter 91C relating to
18 12 contractor registration.

18 13 The bill provides that if an individual who performs
18 14 services for a contractor qualifies as an employee under Code

18 15 section 91G.3, it is a violation of Code chapter 91G if the
18 16 individual is not also treated as an employee under Code
18 17 chapters 85 (workers' compensation), 88 (occupational safety
18 18 and health), 91A (wage payment collection), and 96
18 19 (unemployment compensation).

18 20 The commissioner is required to create posters in both
18 21 English and Spanish that summarize the requirements of Code
18 22 chapter 91G. The poster must be posted on the division's
18 23 internet site and on bulletin boards in the division's office.
18 24 Contractors shall be provided both language versions of the
18 25 poster without charge upon request. However, if a contractor
18 26 is found to have violated Code section 91G.3, the contractor
18 27 must post the posters in both languages in conspicuous places
18 28 at all job sites and the office.

18 29 The bill provides for enforcement of the provision of Code
18 30 chapter 91G. Any interested party may file a complaint with
18 31 the commissioner alleging a violation of the chapter. The
18 32 commissioner shall investigate complaints and conduct
18 33 investigations, including visiting and inspecting job sites
18 34 and offices and documents that are related to the provisions
18 35 of Code chapter 91G. The commissioner is charged with
19 1 establishing rules consistent with Code chapter 17A regarding
19 2 such investigations. A determination by the commission about
19 3 whether a violation has occurred is a final agency action. The
19 4 commissioner may administer oaths and issue subpoenas to
19 5 access witnesses and documents, payroll records, and other
19 6 evidence in order to advance an investigation. When the
19 7 commissioner believes there has been a violation, the
19 8 commissioner may issue and serve an order to cease and desist
19 9 any further violation of the Code chapter; take affirmative or
19 10 other action as deemed reasonable to eliminate the effect of
19 11 the violation; collect the moneys for any wages, salary,
19 12 employment, benefits, or other compensation denied or lost to
19 13 an individual; assess any civil penalty allowed by Code
19 14 chapter 91G; or make an appropriate referral to a county
19 15 attorney.

19 16 A contractor is not responsible for a subcontractor's
19 17 failure to properly classify individuals who perform services
19 18 for the subcontractor. A subcontractor is also not liable for
19 19 any lower-tier subcontractor hired who misclassifies an
19 20 individual. In a civil action, the commissioner may choose to
19 21 be represented by a departmental attorney or the attorney
19 22 general. The appropriate county attorney is responsible for
19 23 prosecuting criminal violations of Code chapter 91G.

19 24 An initial violation of Code chapter 91G may result in a
19 25 civil penalty of up to \$1,500, and up to \$2,500 for each
19 26 subsequent violation within a five-year period. A separate
19 27 violation occurs for each person and for each day the
19 28 violation continues. After the penalty becomes a final agency
19 29 action and six months have passed without the commissioner
19 30 collecting the penalty amount, an interested party may file
19 31 suit to collect the amount. The district court may award the
19 32 interested party 30 percent of the award. The commissioner
19 33 receives the remaining amount.

19 34 After a second violation within five years of a first
19 35 violation, a contractor's name shall be posted on an internet
20 1 list by the commissioner and no state contracts shall be
20 2 awarded to the contractor until four years have passed from
20 3 the date of the last violation.

20 4 Anyone who willfully violates Code chapter 91G or who
20 5 obstructs the commissioner in the course of investigation
20 6 shall be liable for penalties up to twice the statutory
20 7 amounts and shall be liable to the employee for punitive
20 8 damages in an amount equal to the penalties assessed.
20 9 Willfulness shall be determined by a preponderance of the
20 10 evidence standard. Whoever willfully violates a provision of
20 11 Code chapter 91G commits a serious misdemeanor, which is
20 12 punishable by confinement for no more than one year and a fine
20 13 of at least \$315 but not more than \$1,875. Whoever commits a
20 14 second or subsequent willful violation of Code chapter 91G
20 15 within a four-year period commits a class "D" felony, which is
20 16 punishable by confinement for no more than five years and a
20 17 fine of at least \$750 but not more than \$7,500.

20 18 Any penalties assessed and collected by the commissioner
20 19 under Code chapter 91G shall be paid into the construction
20 20 revolving fund under Code section 91C.4.

20 21 The bill makes it a violation of Code chapter 91G for a
20 22 contractor or a contractor's agent to retaliate in any way
20 23 against an individual for exercising rights guaranteed under
20 24 Code chapter 91G. Retaliation subjects the contractor to
20 25 civil penalties and a private cause of action. Specifically,

20 26 a contractor cannot retaliate against an individual who makes
20 27 a complaint; causes a proceeding under Code chapter 91G to be
20 28 held; or testifies or cooperates in an investigation or
20 29 proceeding under Code chapter 91G.

20 30 An individual who is aggrieved by a Code chapter 91G
20 31 violation may file suit in district court in the county where
20 32 the alleged violation occurred or where any person who is
20 33 party to the violation resides and may do so without
20 34 exhausting any alternative administrative remedies in Code
20 35 chapter 91G. Remedies may include the amount of wages,
21 1 salary, employment benefits, or other compensation denied or
21 2 lost, plus an equal amount in liquidated damages; compensatory
21 3 damages and an amount up to \$500 for each violation of Code
21 4 chapter 91G; all legal or equitable relief as deemed
21 5 appropriate; and interest, attorney fees, and costs. The
21 6 right to bring private action terminates after three years
21 7 from the final date an individual performs services for a
21 8 contractor. However, the limitation of action is suspended if
21 9 a contractor attempts to prevent an individual from exercising
21 10 rights guaranteed under Code chapter 91G.

21 11 The commissioner may commence a contempt action to receive
21 12 an order from a court commanding a person to obey the order or
21 13 be adjudged guilty of contempt of court if the commissioner
21 14 believes the person has violated a valid order of the
21 15 commissioner issued under Code chapter 91G. The commissioner
21 16 may also adopt rules to administer Code chapter 91G. The
21 17 general assembly finds that the adoption of rules for Code
21 18 chapter 91G is deemed an emergency and is necessary for the
21 19 public interest and welfare. No waiver of any of the rights
21 20 provided under Code chapter 91G is allowed, and to attempt to
21 21 induce anyone to waive any of the rights provided under Code
21 22 chapter 91G is a class "C" felony, which is punishable by
21 23 confinement for no more than 10 years and a fine of at least
21 24 \$1,000 but not more than \$10,000.

21 25 The commissioner, the division of unemployment insurance,
21 26 the division of workers' compensation, and the department of
21 27 revenue shall all cooperate under Code chapter 91G by sharing
21 28 information and the commissioner shall notify the other
21 29 agencies when a suspected violation is reported.

21 30 All employees of the commissioner are indemnified for
21 31 damages and legal expenses incurred as a result of the good
21 32 faith performance of their job duties against any claims not
21 33 covered by Code chapter 669, the Iowa tort claims Act.

21 34 The bill alters several Code sections in order to include
21 35 the definition of "employee" under new Code section 91G.3 as
22 1 part of the definitions of "employee" in other parts of the
22 2 Code. The department of workforce development is required to
22 3 submit an annual report about new Code chapter 91G, the
22 4 classification of employees chapter, along with annual reports
22 5 already required under other Code chapters.

22 6 The contractor registration fee is increased to \$100 every
22 7 two years from \$25 every two years. Rather than deposited in
22 8 the general fund, the registration fees are deposited in a
22 9 construction revolving fund within the state treasury under
22 10 the control of the labor commissioner. The revolving fund
22 11 consists of all moneys collected as fees and civil penalties
22 12 pursuant to Code chapters 91C and 91G. The fund shall be used
22 13 by the commissioner to pay for the costs to administer the
22 14 provisions of Code chapters 91C and 91G, including salaries
22 15 and other expenses.

22 16 The provisions of new Code chapter 91G apply to contractors
22 17 on January 1, 2009.

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