

Senate File 2416 - Introduced

SENATE FILE _____
BY COMMITTEE ON WAYS AND MEANS
(SUCCESSOR TO SSB 3286)

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

A BILL FOR

1 An Act relating to wage payment collection and employment
2 classification issues arising between employers and
3 individuals who provide services to employers and including an
4 appropriation and an effective date.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 6589SV 82
7 ak/rj/8

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1 1 DIVISION I
1 2 WAGE PAYMENT COLLECTION
1 3 Section 1. Section 91A.2, subsection 3, Code 2007, is
1 4 amended to read as follows:
1 5 3. "Employee" means a natural person who is employed in
1 6 this state for wages by an employer. Employee also includes a
1 7 commission salesperson who takes orders or performs services
1 8 on behalf of a principal and who is paid on the basis of
1 9 commissions but does not include persons who purchase for
1 10 their own account for resale.
1 11 a. For the purposes of this chapter, the following persons
1 12 engaged in agriculture are not employees:
1 13 a- 1. The spouse of the employer and relatives of either
1 14 the employer or spouse residing on the premises of the
1 15 employer.
1 16 b- 2. A person engaged in agriculture as an
1 17 owner-operator or tenant-operator and the spouse or relatives
1 18 of either who reside on the premises while exchanging labor
1 19 with the operator or for other mutual benefit of any and all
1 20 such persons.
1 21 c- 3. Neighboring persons engaged in agriculture who are
1 22 exchanging labor or other services.
1 23 b. In order to establish the absence of an employment
1 24 relationship, a putative employer has the burden to establish
1 25 all of the following:
1 26 1. The putative employer and putative employee share the
1 27 intention to create an independent contractor relationship.
1 28 2. The putative employer does not control or direct the
1 29 performance of services by the putative employee.
1 30 3. The putative employer is not responsible for payment of
1 31 wages to the putative employee.
1 32 4. The putative employer does not have the right to
1 33 discharge the putative employee or terminate the working
1 34 relationship with the putative employee.
1 35 5. The putative employer is not the authority in charge of
2 1 the work or for whose benefit the putative employee is
2 2 providing services.
2 3 Sec. 2. Section 91A.2, subsection 6, Code 2007, is amended
2 4 to read as follows:
2 5 6. "Liquidated damages" means the sum of five percent
2 6 multiplied by the amount of any wages that were not paid or of
2 7 any authorized expenses that were not reimbursed on a regular
2 8 payday or on another day pursuant to section 91A.3 multiplied
2 9 by the total number of days, excluding Sundays, legal
2 10 holidays, and the first seven days after the regular payday on
2 11 which wages were not paid or expenses were not reimbursed.
2 12 However, such sum shall not exceed twice the amount of the
2 13 unpaid wages and shall not accumulate ~~when an employer is~~
2 14 ~~subject to a petition filed in bankruptcy.~~
2 15 Sec. 3. Section 91A.6, subsections 1 and 2, Code 2007, are
2 16 amended to read as follows:

2 17 1. An employer shall after being notified by the
2 18 commissioner pursuant to subsection 2 do the following:
2 19 a. Notify its employees in writing at the time of hiring
2 20 what wages and regular paydays are designated by the employer.
2 21 b. Notify, at least one pay period prior to the initiation
2 22 of any changes, its employees of any changes in the
2 23 arrangements specified in this subsection † that reduce wages
2 24 or alter the regular paydays. The notice shall either be in
2 25 writing or posted at a place where employee notices are
2 26 routinely posted.
2 27 c. Make available to its employees upon written request, a
2 28 written statement enumerating employment agreements and
2 29 policies with regard to vacation pay, sick leave,
2 30 reimbursement for expenses, retirement benefits, severance
2 31 pay, or other comparable matters with respect to wages.
2 32 Notice of such availability shall be given to each employee in
2 33 writing or by a notice posted at a place where employee
2 34 notices are routinely posted.
2 35 d. Establish, maintain, and preserve for three calendar
3 1 years the payroll records showing the hours worked, wages
3 2 earned, and deductions made for each employee and any
3 3 employment agreements entered into between an employer and
3 4 employee. Failure to do so shall raise a rebuttable
3 5 presumption that the employer did not pay the required minimum
3 6 wage under section 91D.1.

3 7 2. ~~The commissioner shall notify an employer to comply
3 8 with subsection 1 if the employer has paid a claim for unpaid
3 9 wages or nonreimbursed authorized expenses and liquidated
3 10 damages under section 91A.10 or if the employer has been
3 11 assessed a civil money penalty under section 91A.12. However,
3 12 a court may, when rendering a judgment for wages or
3 13 nonreimbursed authorized expenses and liquidated damages or
3 14 upholding a civil money penalty assessment, order that an
3 15 employer shall not be required to comply with the provisions
3 16 of subsection 1 or that an employer shall be required to
3 17 comply with the provisions of subsection 1 for a particular
3 18 period of time.~~

3 19 Sec. 4. Section 91A.8, Code 2007, is amended to read as
3 20 follows:

3 21 91A.8 VIOLATIONS BY EMPLOYER, DAMAGES RECOVERABLE BY AN
3 22 EMPLOYEE UNDER THIS CHAPTER.

3 23 1. A violation of this chapter shall occur any week when
3 24 an individual employee was not paid the legally required wages
3 25 under this chapter, state taxes were not withheld, or in the
3 26 case of improper discharge, discrimination, or retaliation
3 27 against an employee, every week after the improper discharge,
3 28 discrimination, or retaliation has occurred until compensation
3 29 is finally made.

3 30 2. When it has been shown that an employer has
3 31 ~~intentionally~~ failed to pay an employee wages or reimburse
3 32 expenses pursuant to section 91A.3, whether as the result of a
3 33 wage dispute or otherwise, the employer shall be liable to the
3 34 employee for ~~any the unpaid wages or expenses that are so~~
3 35 ~~intentionally failed to be paid or reimbursed~~, plus liquidated
4 1 damages, court costs, and any ~~attorney's attorney~~ fees
4 2 incurred in recovering the unpaid wages and determined to have
4 3 been usual and necessary. ~~In other instances the employer~~
4 4 ~~shall be liable only for unpaid wages or expenses, court costs~~
4 5 ~~and usual and necessary attorney's fees incurred in recovering~~
4 6 ~~the unpaid wages or expenses.~~

4 7 Sec. 5. Section 91A.9, subsection 2, Code 2007, is amended
4 8 to read as follows:

4 9 2. a. The commissioner may, consistent with due process
4 10 of law, enter any place of employment to inspect records
4 11 concerning wages and payrolls, to question the employer and
4 12 employees, and to investigate such facts, conditions, or
4 13 matters as are deemed appropriate in determining whether any
4 14 person has violated the provisions of this chapter. ~~However,~~
4 15 ~~such entry by the commissioner shall only be in response to a~~
4 16 ~~written complaint.~~

4 17 b. A complaining employee may submit a written request for
4 18 confidentiality of identifying information. Upon such
4 19 request, the commissioner shall determine if the commissioner
4 20 can effectively pursue the matter while keeping the identity
4 21 of the complaining employee confidential. If the commissioner
4 22 determines that an employee's identity must be disclosed in
4 23 order to effectively pursue the matter, the commissioner may
4 24 do so only with the employee's consent. Otherwise, the
4 25 commissioner shall keep the complaining employee's identity
4 26 confidential notwithstanding chapter 22.

4 27 Sec. 6. Section 91A.10, subsection 1, Code 2007, is

4 28 amended to read as follows:

4 29 1. a. Upon the written complaint of the employee
4 30 involved, the commissioner may determine whether wages have
4 31 not been paid and may constitute an enforceable claim. If for
4 32 any reason the commissioner decides not to make such
4 33 determination, the commissioner shall so notify the
4 34 complaining employee within fourteen days of receipt of the
4 35 complaint. The commissioner shall otherwise notify the
5 1 employee of such determination within a reasonable time ~~and if~~
5 2 ~~it is determined.~~

5 3 b. ~~Without regard to whether the commissioner received a~~
5 4 ~~written complaint from an employee or initiated an~~
5 5 ~~investigation, if the commissioner determines that there is an~~
5 6 ~~enforceable claim, the commissioner shall, with the consent of~~
5 7 ~~the complaining employee, take an assignment in trust for the~~
5 8 ~~wages and for any claim for liquidated damages without being~~
5 9 ~~bound by any of the. The technical rules respecting the~~
5 10 ~~validity of the assignment shall not apply. However, the~~
5 11 ~~commissioner shall not accept any complaint for unpaid wages~~
5 12 ~~and liquidated damages after one year from the date the wages~~
5 13 ~~became due and payable.~~

5 14 Sec. 7. Section 91A.10, subsection 5, Code 2007, is
5 15 amended to read as follows:

5 16 5. ~~An employer shall not discharge or in any other manner~~
5 17 ~~discriminate against any employee because the employee has~~
5 18 ~~filed a complaint, assigned a claim, or brought an action~~
5 19 ~~under this section or has cooperated in bringing any action~~
5 20 ~~against an employer. An employer or other person shall not~~
5 21 ~~discharge or in any other manner discriminate or retaliate~~
5 22 ~~against an employee or other person for exercising any right~~
5 23 ~~provided under this chapter or any rules adopted pursuant to~~
5 24 ~~this chapter, or against another employee or person for~~
5 25 ~~providing assistance to an employee or providing information~~
5 26 ~~regarding the employee or person, or for testifying or~~
5 27 ~~planning to testify in any investigation or proceeding~~
5 28 ~~regarding the employee or person. Taking adverse action~~
5 29 ~~against an employee or other person within ninety days of an~~
5 30 ~~employee's or other person's engaging in the foregoing~~
5 31 ~~activities raises a presumption that such action was~~
5 32 ~~retaliation, which may be rebutted by clear and convincing~~
5 33 ~~evidence that such action was taken for other permissible~~
5 34 ~~reasons. Any employee may file a complaint with the~~
5 35 ~~commissioner alleging discharge, or discrimination, or~~
6 1 ~~retaliation within thirty days after such violation occurs.~~

6 2 Upon receipt of the complaint, the commissioner shall cause an
6 3 investigation to be made to the extent deemed appropriate. If
6 4 the commissioner determines from the investigation that the
6 5 provisions of this subsection have been violated, the
6 6 commissioner shall bring an action in the appropriate district
6 7 court against such person. The district court shall have
6 8 jurisdiction, for cause shown, to restrain violations of this
6 9 subsection and order all appropriate relief including rehiring
6 10 or reinstatement of the employee to the former position with
6 11 back pay.

6 12 Sec. 8. Section 91A.10, Code 2007, is amended by adding
6 13 the following new subsection:

6 14 NEW SUBSECTION. 6. A civil action to enforce this section
6 15 may also be maintained in any court of competent jurisdiction
6 16 by the commissioner or by any party injured by a violation of
6 17 this section. An employer or other person who retaliates
6 18 against an employee or other person in violation of this
6 19 section shall be required to pay the person an amount set by
6 20 the commissioner or a court sufficient to compensate the
6 21 employee or other person and deter future violations, but not
6 22 less than one hundred fifty dollars for each day that the
6 23 violation continued.

6 24 Sec. 9. Section 91A.12, subsection 1, Code 2007, is
6 25 amended to read as follows:

6 26 1. Any employer who violates the provisions of this
6 27 chapter or the rules ~~promulgated under it~~ adopted pursuant to
6 28 this chapter shall be subject to a civil money penalty of not
6 29 more than ~~one~~ five hundred dollars for each violation. The
6 30 commissioner may recover such civil money penalty according to
6 31 the provisions of subsections 2 ~~to~~ through 5. Any civil money
6 32 penalty recovered shall be deposited in the general fund of
6 33 the state.

6 34
6 35 DIVISION II
EMPLOYEE CLASSIFICATION

7 1 Sec. 10. NEW SECTION. 91G.1 PURPOSE.

7 2 The purpose of this chapter is to address the practice of
7 3 misclassifying employees as independent contractors.

7 4 Sec. 11. NEW SECTION. 91G.2 DEFINITIONS.

7 5 1. "Commissioner" means the labor commissioner appointed
7 6 pursuant to section 91.2 or the labor commissioner's designee.

7 7 2. "Construction" means any constructing, altering,
7 8 reconstructing, repairing, rehabilitating, refinishing,
7 9 refurbishing, remodeling, remediating, renovating, custom
7 10 fabricating, maintenance, landscaping, improving, wrecking,
7 11 painting, decorating, demolishing, and adding to or
7 12 subtracting from any building, structure, airport facility,
7 13 highway, roadway, street, alley, bridge, sewer, drain, ditch,
7 14 sewage disposal plant, water works, parking facility,
7 15 railroad, excavation or other project, development, real
7 16 property, or improvement, or to do any part thereof, whether
7 17 or not the performance of the work described in this
7 18 subsection involves an addition to, or fabrication into, any
7 19 structure, project, development, real property, or improvement
7 20 described in this subsection of any material or article of
7 21 merchandise.

7 22 3. "Contractor" means any person, as defined in section
7 23 4.1, engaged in construction. "Contractor" includes general
7 24 contractors, subcontractors, and the state of Iowa and its
7 25 officers, agencies, and political subdivisions.

7 26 4. "Division" means the division of labor services of the
7 27 department of workforce development.

7 28 5. "Interested party" means an individual performing
7 29 services for a contractor who alleges a violation of this
7 30 chapter or a person with an interest in compliance with this
7 31 chapter.

7 32 6. "Performing services" means any constructing, altering,
7 33 reconstructing, repairing, rehabilitating, refinishing,
7 34 refurbishing, remodeling, remediating, renovating, custom
7 35 fabricating, maintenance, landscaping, improving, wrecking,
8 1 painting, decorating, demolishing, and adding to or
8 2 subtracting from any building, structure, airport facility,
8 3 highway, roadway, street, alley, bridge, sewer, drain, ditch,
8 4 sewage disposal plant, water works, parking facility,
8 5 railroad, excavation or other project, development, real
8 6 property, or improvement, or to do any part thereof, whether
8 7 or not the performance of the work described in this
8 8 subsection involves an addition to, or fabrication into, any
8 9 structure, project, development, real property, or improvement
8 10 described in this subsection of any material or article of
8 11 merchandise.

8 12 Sec. 12. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS
8 13 PERFORMING SERVICES.

8 14 1. An individual performing services shall be classified
8 15 as an employee unless all of the following conditions are
8 16 present and the contractor and the individual both intend to
8 17 create an independent contractor relationship between the
8 18 contractor and the individual:

8 19 a. The contractor does not control or direct the
8 20 performance of services by the individual.

8 21 b. The contractor is not responsible for the payment of
8 22 the individual's wages.

8 23 c. The contractor does not have the right to discharge the
8 24 individual or terminate the working relationship with the
8 25 individual.

8 26 d. The contractor is not the authority in charge of the
8 27 work or for whose benefit the individual is providing
8 28 services.

8 29 2. An individual classified as an employee under this
8 30 section shall also be classified as an employee pursuant to
8 31 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits
8 32 a violation of this chapter by not treating the individual so
8 33 classified under this chapter as an employee pursuant to
8 34 chapters 85, 85A, 85B, 88, 91A, and 96.

8 35 3. An individual who is an owner-operator as described in
9 1 section 85.61, subsection 11, and not deemed an employee under
9 2 that subsection shall not be classified as an employee under
9 3 this section.

9 4 Sec. 13. NEW SECTION. 91G.4 NOTICE OF LAW.

9 5 1. The commissioner shall create posters in both English
9 6 and Spanish summarizing the requirements of this chapter. The
9 7 English and Spanish versions of the poster shall be posted on
9 8 the division's internet site and on bulletin boards in the
9 9 workforce centers.

9 10 2. The commissioner shall provide the posters without
9 11 charge to contractors upon request.

9 12 3. If a contractor violates section 91G.3 or 91G.8 or
9 13 rules adopted pursuant to any of those sections, the
9 14 contractor shall post the English and Spanish versions of the

9 15 poster created by the commissioner. The posters shall be
9 16 posted in conspicuous locations at the places where notices to
9 17 employees are normally posted at each job site and office of
9 18 the contractor.

9 19 Sec. 14. NEW SECTION. 91G.5 ENFORCEMENT.

9 20 1. An interested party may file a complaint with the
9 21 commissioner alleging a violation of section 91G.3, 91G.4, or
9 22 91G.8 or rules adopted pursuant to any of those sections. An
9 23 interested party who makes a complaint when the interested
9 24 party knows such representation to be false commits a simple
9 25 misdemeanor.

9 26 2. The commissioner shall adopt rules pursuant to and
9 27 consistent with chapter 17A regarding investigations to
9 28 determine whether a contractor has violated any provisions of
9 29 this chapter or any rules adopted pursuant to this chapter.

9 30 3. The commissioner shall enforce the provisions of this
9 31 chapter. The commissioner may conduct investigations in
9 32 connection with the administration and enforcement of this
9 33 chapter and may visit and inspect, at all reasonable times,
9 34 any places where individuals are performing services for a
9 35 contractor and may inspect, at all reasonable times, documents
10 1 related to the determination of whether an individual is an
10 2 employee under section 91G.3.

10 3 4. The commissioner and an employee of the commissioner
10 4 shall be indemnified for any damages and legal expenses
10 5 incurred as a result of the good-faith performance of the
10 6 employee's official duties under this chapter, in regard to
10 7 any claim for civil damages not specifically covered by the
10 8 Iowa tort claims Act, chapter 669.

10 9 5. The commissioner may compel by subpoena the attendance
10 10 and testimony of witnesses and the production of books,
10 11 payrolls, records, papers, and other evidence in an
10 12 investigation and may administer oaths to witnesses.

10 13 6. Upon the failure or refusal of any person to obey a
10 14 subpoena, the commissioner may petition a district court of
10 15 competent jurisdiction, and upon proper showing, the court may
10 16 enter an order compelling the witness to appear and testify or
10 17 produce documentary evidence. Failure to obey the court order
10 18 is punishable as contempt of court.

10 19 7. A determination by the commissioner as to whether a
10 20 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
10 21 pursuant to any of those sections has occurred shall be
10 22 considered final agency action under chapter 17A.

10 23 8. If the commissioner determines upon investigation that
10 24 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
10 25 pursuant to any of those sections has occurred, the
10 26 commissioner may do any of the following:

10 27 a. Issue and cause to be served on any party an order to
10 28 cease and desist from any further violation.

10 29 b. Take affirmative or other action as deemed reasonable
10 30 to eliminate the effect of any violation.

10 31 c. Collect the amount of any wages, salary, employment
10 32 benefits, or other compensation denied or lost to an
10 33 individual.

10 34 d. Assess any civil penalty allowed by this chapter.

10 35 e. Refer matters to the county attorney upon determining
11 1 that a criminal violation may have occurred.

11 2 9. Judicial review of any final agency action of the
11 3 commissioner taken pursuant to this section may be sought in
11 4 accordance with the terms of chapter 17A. If a petition for
11 5 judicial review is not filed within thirty days after service
11 6 of the determination of the commissioner, the commissioner's
11 7 determination shall be conclusive in connection with any
11 8 petition for enforcement filed by the commissioner and in such
11 9 case, the clerk of court, unless otherwise ordered by the
11 10 court, shall forthwith enter a decree enforcing the
11 11 commissioner's determination and shall transmit a copy of the
11 12 decree to the commissioner and the contractor named in the
11 13 petition.

11 14 10. A contractor shall not be liable under this chapter
11 15 for any other contractor's failure to properly classify
11 16 individuals.

11 17 11. In any civil action to enforce the provisions of this
11 18 chapter, the commissioner may be represented by an attorney
11 19 employed by the division or, at the commissioner's request, by
11 20 the attorney general.

11 21 Sec. 15. NEW SECTION. 91G.6 PENALTIES.

11 22 1. A contractor who violates section 91G.3, 91G.4, or
11 23 91G.8 or rules adopted pursuant to one of those sections is
11 24 subject to a civil penalty not to exceed one thousand two
11 25 hundred fifty dollars for a first violation as determined by

11 26 the commissioner. A contractor is subject to a civil penalty
11 27 not to exceed one thousand eight hundred seventy-five dollars
11 28 for a second violation occurring within six years of a first
11 29 violation as determined by the commissioner. A contractor
11 30 shall be subject to a civil penalty not to exceed three
11 31 thousand one hundred twenty-five dollars for a third or
11 32 successive violation occurring within six years of a first
11 33 violation as determined by the commissioner.

11 34 2. A contractor who violates any provision of section
11 35 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of
12 1 those sections commits a simple misdemeanor. A contractor who
12 2 commits such a second violation within six years of a first
12 3 violation commits a serious misdemeanor. A contractor who
12 4 commits such a third or subsequent violation within six years
12 5 of a first violation commits an aggravated misdemeanor.

12 6 3. A contractor who obstructs the commissioner, the
12 7 employee of the commissioner, or another person authorized to
12 8 inspect places where individuals are performing services for a
12 9 contractor is subject to a civil penalty not to exceed one
12 10 thousand eight hundred seventy-five dollars.

12 11 4. Each violation described in this section for each
12 12 individual and for each day the violation continues
12 13 constitutes a separate and distinct violation. In determining
12 14 the amount of a civil penalty, the commissioner shall consider
12 15 the appropriateness of the civil penalty to the contractor and
12 16 the gravity of the violation.

12 17 Sec. 16. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.

12 18 For a second or subsequent violation of section 91G.3 or
12 19 91G.4 determined by the commissioner to have occurred within
12 20 six years of an earlier violation or for a first or subsequent
12 21 violation of section 91G.8, the commissioner shall add the
12 22 contractor's name to a list to be posted on the division's
12 23 internet site and notify the violating contractor of the
12 24 posting. A state contract shall not be awarded to a
12 25 contractor whose name appears on the list until three years
12 26 have elapsed from the date of the determination of the last
12 27 violation.

12 28 Sec. 17. NEW SECTION. 91G.8 RETALIATION.

12 29 1. A contractor or contractor's agent shall not retaliate
12 30 through discharge or in any other manner against an individual
12 31 for any of the following:

12 32 a. Making a good-faith complaint to the commissioner or to
12 33 a state or federal agency regarding a violation of section
12 34 91G.3 or 91G.4.

12 35 b. Testifying or otherwise cooperating in an investigation
13 1 or proceeding under this chapter.

13 2 2. Such retaliation shall subject a contractor or
13 3 contractor's agent to civil penalties and a prohibition on
13 4 being awarded state contracts pursuant to this chapter and may
13 5 give rise to a private right of action.

13 6 Sec. 18. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.

13 7 Any penalties assessed and collected by the commissioner
13 8 pursuant to this chapter shall be deposited in the general
13 9 fund of the state.

13 10 Sec. 19. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

13 11 1. An individual, who has not received compensatory
13 12 damages under section 91G.5, alleging a contractor's violation
13 13 of this chapter or a rule adopted pursuant to this chapter and
13 14 damages may file suit in district court against the
13 15 contractor, in the county where the alleged violation
13 16 occurred, or where any person who is party to the action
13 17 resides, without regard to exhaustion of any alternative
13 18 administrative remedies provided in this chapter. Actions may
13 19 be brought by one or more aggrieved individuals for and on
13 20 behalf of themselves and other individuals similarly situated.

13 21 2. If it is established that an individual has been
13 22 damaged through a proceeding under subsection 1 by a
13 23 contractor who has willfully violated a provision of this
13 24 chapter or a rule adopted pursuant to this chapter, the
13 25 individual shall be entitled to collect the following:

13 26 a. The amount of any wages, salary, employment benefits,
13 27 or other compensation denied or lost to the individual due to
13 28 the violation or a retaliatory action, and court costs and
13 29 interest at the statutory rate from the date of filing.

13 30 b. Punitive damages, not to exceed five times the amount
13 31 awarded in paragraph "a".

13 32 c. Reasonable attorney fees, if the contractor who has
13 33 damaged the individual has committed a second or subsequent
13 34 violation of section 91G.3, 91G.4, or 91G.8, or rules adopted
13 35 pursuant to this chapter, occurring within six years of a
14 1 first violation.

14 2 3. The right of a damaged individual to bring an action
14 3 under this section terminates five years from the date of the
14 4 alleged violation by the contractor.

14 5 Sec. 20. NEW SECTION. 91G.11 COOPERATION.

14 6 1. All state agencies shall cooperate under this chapter
14 7 by sharing information concerning possible misclassification
14 8 by a contractor of one or more of the contractor's employees
14 9 as independent contractors.

14 10 2. Upon determining that a contractor misclassified one or
14 11 more employees as independent contractors in violation of this
14 12 chapter, the commissioner shall notify the division
14 13 administering unemployment insurance services, the division of
14 14 workers' compensation, and the department of revenue, each of
14 15 which shall investigate the contractor's compliance with
14 16 applicable laws.

14 17 3. Cooperation under this chapter shall be considered a
14 18 duty of office for the heads of state agencies or their
14 19 designees. Failure to so cooperate constitutes a violation of
14 20 section 721.2, subsection 6.

14 21 Sec. 21. Section 84A.5, subsection 4, Code Supplement
14 22 2007, is amended to read as follows:

14 23 4. The division of labor services is responsible for the
14 24 administration of the laws of this state under chapters 88,
14 25 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91G, 92,
14 26 and 94A, and section 85.68. The executive head of the
14 27 division is the labor commissioner, appointed pursuant to
14 28 section 91.2.

14 29 Sec. 22. Section 85.61, subsection 11, paragraph b, Code
14 30 Supplement 2007, is amended to read as follows:

14 31 b. (1) "Worker" or "employee" includes an inmate as
14 32 defined in section 85.59 and a person described in section
14 33 85.60.

14 34 (2) "Worker" or "employee" includes an individual who is
14 35 classified as an employee pursuant to section 91G.3.

15 1 Sec. 23. Section 86.45, subsection 2, Code 2007, is
15 2 amended by adding the following new paragraph:

15 3 NEW PARAGRAPH. j. To cooperate with the division of labor
15 4 services, the division of the department of workforce
15 5 development that administers unemployment insurance services,
15 6 and the department of revenue pursuant to chapter 91G by
15 7 sharing information concerning possible misclassification of
15 8 one or more employees as independent contractors.

15 9 Sec. 24. Section 88.3, subsection 4, Code 2007, is amended
15 10 to read as follows:

15 11 4. "Employee" means an employee of an employer who is
15 12 employed in a business of the employer. "Employee" also means
15 13 an inmate as defined in section 85.59, when the inmate works
15 14 in connection with the maintenance of the institution, in an
15 15 industry maintained in the institution, or while otherwise on
15 16 detail to perform services for pay. "Employee" also means a
15 17 volunteer involved in responses to hazardous waste incidences.
15 18 The employer of a volunteer is that entity which provides or
15 19 which is required to provide workers' compensation coverage
15 20 for the volunteer. "Employee" includes an individual who is
15 21 classified as an employee pursuant to section 91G.3.

15 22 Sec. 25. Section 91.4, subsection 5, Code Supplement 2007,
15 23 is amended to read as follows:

15 24 5. The director of the department of workforce
15 25 development, in consultation with the labor commissioner,
15 26 shall, at the time provided by law, make an annual report to
15 27 the governor setting forth in appropriate form the business
15 28 and expense of the division of labor services for the
15 29 preceding year, the number of disputes or violations processed
15 30 by the division and the disposition of the disputes or
15 31 violations, and other matters pertaining to the division which
15 32 are of public interest, together with recommendations for
15 33 change or amendment of the laws in this chapter and chapters
15 34 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,
15 35 and 94A, and section 85.68, and the recommendations, if any,
16 1 shall be transmitted by the governor to the first general
16 2 assembly in session after the report is filed.

16 3 Sec. 26. Section 91A.2, subsection 3, unnumbered paragraph
16 4 1, Code 2007, is amended to read as follows:

16 5 "Employee" means a natural person who is employed in this
16 6 state for wages by an employer. Employee also includes a
16 7 commission salesperson who takes orders or performs services
16 8 on behalf of a principal and who is paid on the basis of
16 9 commissions but does not include persons who purchase for
16 10 their own account for resale. "Employee" includes an
16 11 individual who is classified as an employee pursuant to
16 12 section 91G.3. For the purposes of this chapter, the

16 13 following persons engaged in agriculture are not employees:
16 14 Sec. 27. Section 96.11, Code Supplement 2007, is amended
16 15 by adding the following new subsection:
16 16 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.
16 17 a. All state agencies shall cooperate with the director
16 18 and the department pursuant to chapter 91G by sharing
16 19 information concerning possible misclassification of employees
16 20 as independent contractors.
16 21 b. Cooperation under this chapter shall be considered a
16 22 duty of office for the heads of the state agencies or their
16 23 designees. Failure to so cooperate constitutes a violation of
16 24 section 721.2, subsection 6.
16 25 Sec. 28. Section 96.19, subsection 18, paragraph a,
16 26 subparagraph (2), Code 2007, is amended to read as follows:
16 27 (2) Any individual who, under the usual common law rules
16 28 applicable in determining the employer=employee relationship,
16 29 has the status of an employee, or any individual who is
16 30 classified as an employee pursuant to section 91G.3, or

16 31 DIVISION III

16 32 SEVERABILITY AND EFFECTIVE DATE

16 33 Sec. 29. SEVERABILITY. The provisions of this Act are
16 34 severable in the manner provided by section 4.12.

16 35 Sec. 30. EFFECTIVE DATE. This Act takes effect January 1,
17 1 2009.

17 2 EXPLANATION

17 3 This bill relates to employers and individuals who perform
17 4 labor in wage payment collection and employment classification
17 5 areas.

17 6 DIVISION I. In Code section 91A.2, the definition of
17 7 "employee" is amended to include five requirements to
17 8 determine whether an individual is an employee or independent
17 9 contractor. To establish the absence of an employment
17 10 relationship, a putative employer must prove that the employer
17 11 and the individual share an intention to create an independent
17 12 contractor relationship; the employer does not control the
17 13 performance of the individual's services; the employer is not
17 14 responsible for paying the individual's wages; the employer
17 15 does not have the authority to terminate the relationship; and
17 16 the employer is not the entity for whose benefit the
17 17 individual is providing services. Also in Code section 91A.2,
17 18 the definition of "liquidated damages" is amended so that the
17 19 amount cannot exceed twice the amount of unpaid wages and
17 20 cannot accumulate.

17 21 Code section 91A.6(1) and (2) are amended to remove the
17 22 requirement that an employer has been notified by the division
17 23 of labor services of the department of workforce development
17 24 before the employer is required to fulfill the requirements in
17 25 subsection 1 relating to employee wage and benefit
17 26 information. Additionally, Code section 91A.6(1)(d) is
17 27 amended to establish a rebuttable presumption that an employer
17 28 did not pay the minimum wage if the employer does not maintain
17 29 proper payroll records.

17 30 In Code section 91A.8(1), a violation of this Code chapter
17 31 occurs any week when an individual employee is not paid wages,
17 32 state taxes are not withheld, or in each week that an employee
17 33 is improperly discharged, discriminated against, or retaliated
17 34 against until compensation is made. In Code section 91A.8(2),
17 35 language that relates to the damages that an employer shall be
18 1 liable for in other instances, is deleted.

18 2 Code section 91A.9(2) has two changes. The first is to
18 3 eliminate language limiting the commissioner's entry into a
18 4 place of employment only in response to a written complaint.
18 5 The second change provides that a complaining employee must
18 6 request confidentiality. The commissioner shall then
18 7 determine whether the commissioner can effectively investigate
18 8 the matter and maintain the employee's confidentiality. If
18 9 maintaining the employee's confidentiality is not possible,
18 10 the commissioner shall proceed only with the employee's
18 11 consent.

18 12 Code section 91A.10(1) is amended by splitting the section
18 13 into two paragraphs. The second paragraph's first sentence
18 14 begins with a new clause that states that the commissioner can
18 15 determine whether there is an enforceable claim, regardless of
18 16 whether the investigation began due to a complaining employee
18 17 or at the behest of the commissioner. The paragraph also
18 18 includes rewritten language that states that the technical
18 19 rules respecting the validity of an assignment in trust for
18 20 the claim of wages shall not apply.

18 21 Code section 91A.10(5), which is the subsection covering
18 22 retaliatory actions by employers or others, is expanded to
18 23 cover persons other than employees who act under this Code

18 24 chapter against an employee. A 90-day period is established
18 25 during which any action against an employee or other person is
18 26 rebuttably presumed to be retaliatory. New subsection 6 is
18 27 created in Code section 91A.10 to allow the commissioner to
18 28 maintain a civil action in any court of proper jurisdiction.
18 29 An employer who retaliates against an employee or other person
18 30 shall compensate the injured party an amount set by the
18 31 commissioner or the court, but not less than \$150 for each day
18 32 of the violation.

18 33 In Code section 91A.12, the civil penalty that the
18 34 commissioner may assess is raised to \$500 per violation which
18 35 is deposited into the general fund of the state.

19 1 DIVISION II. This division of the bill creates new Code
19 2 chapter 91G and relates to the classification of individuals
19 3 as employees or independent contractors.

19 4 New Code section 91G.1 addresses the purpose of the Code
19 5 chapter.

19 6 New Code section 91G.2 includes definitions pertinent to
19 7 the Code chapter.

19 8 New Code section 91G.3 classifies the status of individuals
19 9 performing services. New Code section 91G.3(1) provides the
19 10 criteria for determining the status of an individual as an
19 11 employee. New Code section 91G.3(2) provides that an
19 12 individual classified as an employee under this Code section
19 13 also qualifies as an employee for the purposes of Code
19 14 chapters 85, 85A, and 85B (workers' compensation), 88

19 15 (occupational safety and health), 91A (wage payment
19 16 collection), and 96 (unemployment compensation). It is a
19 17 violation of new Code chapter 91G to fail to properly classify
19 18 an individual as an employee under these Code chapters. New
19 19 Code section 91G.3(3) provides that an individual who is an
19 20 owner-operator as described in Code section 85.61(11) shall
19 21 not be classified as an employee under new Code section 91G.3.

19 22 New Code section 91G.4 requires the commissioner to create
19 23 posters in both English and Spanish that summarize the Code
19 24 chapter requirements. If a contractor is found to have
19 25 violated new Code sections 91G.3 or 91G.8, the contractor must
19 26 post the posters in both languages in conspicuous places at
19 27 all job sites and offices.

19 28 New Code section 91G.5 provides enforcement provisions. In
19 29 new Code section 91G.5(1), an interested party may file a
19 30 complaint alleging a violation of this Code chapter. However,
19 31 a party who knowingly makes a false complaint commits a simple
19 32 misdemeanor, which is punishable by confinement for no more
19 33 than 30 days or a fine of at least \$65 but not more than \$625
19 34 or by both. Under new Code section 91G.5(2), the commissioner
19 35 is charged with establishing rules consistent with Code
20 1 chapter 17A. In new Code section 91G.5(3), the commissioner
20 2 is charged with investigating complaints and conducting
20 3 investigations.

20 4 Under new Code section 91G.5(4), the commissioner and
20 5 employees are indemnified for damages and legal expenses
20 6 incurred as a result of the good-faith performance of their
20 7 job duties against any claims not covered by Code chapter 669,
20 8 the Iowa tort claims Act. Under new Code section 91G.5(5),
20 9 the commissioner may administer oaths and issue subpoenas to
20 10 access witnesses and documents, payroll records, and other
20 11 evidence in order to advance an investigation. New Code
20 12 section 91G.5(6) allows the commissioner or the commissioner's
20 13 investigators to commence a contempt action in court
20 14 commanding a person to obey the order of the commissioner
20 15 issued under new Code chapter 91G or be adjudged guilty of
20 16 contempt of court.

20 17 Under new Code section 91G.5(7), a determination by the
20 18 commissioner about whether a violation has occurred is final
20 19 agency action. Under new Code section 91G.5(8), when the
20 20 commissioner determines there has been a violation, the
20 21 commissioner may take specific actions, including cease and
20 22 desist, individual compensatory, and civil penalty remedies.

20 23 Under new Code section 91G.5(9), judicial review of a final
20 24 agency action by the commissioner may be instituted within 30
20 25 days according to the terms of Code chapter 17A. If no
20 26 petition of review is filed within 30 days, the commissioner's
20 27 findings are considered conclusive for any petition for
20 28 enforcement that the commissioner may file. Upon petition by
20 29 the commissioner, the clerk of the court, unless otherwise
20 30 ordered by the court, shall enter a decree enforcing the
20 31 order.

20 32 In new Code section 91G.5(10), a contractor is not
20 33 responsible for any other contractor's failure to properly
20 34 classify individuals who perform services for the contractor.

20 35 In new Code section 91G.5(11), in a civil action, the
21 1 commissioner may choose to be represented by a departmental
21 2 attorney or the attorney general.

21 3 New Code section 91G.6 deals with the penalties. In new
21 4 Code section 91G.6(1), a contractor who violates this Code
21 5 chapter or any rule adopted pursuant to this Code chapter
21 6 shall be subject to a civil penalty not to exceed \$1,250 for
21 7 the first violation, up to \$1,875 for a second violation
21 8 within six years of the first, and up to \$3,125 for a third or
21 9 successive violation within six years of the first violation.

21 10 Under new Code section 91G.6(2), a contractor who violates
21 11 any provision of this Code chapter or any rule adopted
21 12 pursuant to this Code chapter commits a simple misdemeanor,
21 13 which is punishable by confinement for no more than 30 days or
21 14 a fine of at least \$65 but not more than \$625 or by both. A
21 15 contractor who commits a second violation within a six-year
21 16 period commits a serious misdemeanor, which is punishable by
21 17 confinement for no more than one year and a fine of at least
21 18 \$315 but not more than \$1,875. A contractor who commits a
21 19 third or subsequent violation within a six-year period commits
21 20 an aggravated misdemeanor, which is punishable by confinement
21 21 for no more than two years and a fine of at least \$625 but not
21 22 more than \$6,250. Under new Code section 91G.6(3), any
21 23 contractor who obstructs the commissioner's inspection of
21 24 places of employment shall be liable for a civil penalty of up
21 25 to \$1,875. Under new Code section 91G.6(4), each violation
21 26 for each individual and for each day the violation continues
21 27 constitutes a separate and distinct violation. In determining
21 28 the amount of a penalty, the commissioner shall consider the
21 29 appropriateness of the penalty to the contractor and the
21 30 gravity of the violation.

21 31 New Code section 91G.7 provides that if a contractor is
21 32 found to have violated a provision of new Code section 91G.3
21 33 or 91G.4 a second or subsequent time within six years of an
21 34 earlier violation or is found to have violated, for a first or
21 35 subsequent time, new Code section 91G.8, the contractor's name
22 1 shall be posted on the division's internet site. A state
22 2 contract shall not be awarded to a contractor whose name
22 3 appears on the posting until three years have passed from the
22 4 date of the last violation determination.

22 5 New Code section 91G.8 makes it a violation of the Code
22 6 chapter for a contractor or a contractor's agent to retaliate
22 7 in any way against an individual for making a good-faith
22 8 complaint or cooperating in an investigation. Retaliation
22 9 subjects the contractor to civil penalties, to being banned
22 10 from state contracts, and a possible private right of action.

22 11 Under new Code section 91G.9, any civil penalties collected
22 12 by the commissioner shall be deposited in the general fund of
22 13 the state.

22 14 In new Code section 91G.10, if an individual has not
22 15 received compensatory damages under new Code section 91G.5,
22 16 then the individual who is damaged by an alleged new Code
22 17 chapter 91G violation may file suit in district court in the
22 18 county where the alleged violation occurred or where any
22 19 person who is party to the violation resides and may do so
22 20 without exhausting any alternative administrative remedies in
22 21 new Code chapter 91G. If it is established that an individual
22 22 has been damaged through a proceeding under new Code section
22 23 91G.10, remedies include compensatory damages, court costs and
22 24 interest, and punitive damages up to five times the amount of
22 25 the compensatory damages. If this is the contractor's second
22 26 or subsequent violation in six years of a first violation,
22 27 reasonable attorney fees may be awarded. The right to bring a
22 28 private action terminates five years after the date of the
22 29 alleged violation.

22 30 New Code section 91G.11(1) requires all state agencies to
22 31 cooperate by sharing information about possible
22 32 misclassifications by contractors. Under Code section
22 33 91G.11(2), the commissioner shall notify the other agencies
22 34 when a misclassification violation is determined, and the
22 35 other agencies shall investigate. New Code section 91G.11(3)
23 1 makes cooperation and investigation among the heads of the
23 2 state agencies a duty of office; failing to cooperate,
23 3 pursuant to new Code section 721.2(6), results in a simple
23 4 misdemeanor, which is punishable by confinement for no more
23 5 than 30 days or a fine of at least \$65 but not more than \$625
23 6 or by both.

23 7 The definition of "employee" in new Code section 91G.3 is
23 8 essentially incorporated as part of the definitions of
23 9 "employee" in the following amended Code sections: 85.61,
23 10 86.45, 88.3, 91A.2, and 96.19.

23 11 In Code sections 84A.5 and 91.4 the division of labor of
23 12 the department of workforce development is given
23 13 responsibility for administration for new Code chapter 91G and
23 14 filing of annual reports about matters pertaining to these
23 15 Code chapters, respectively.
23 16 Code section 96.11 is amended by adding a new subsection
23 17 for interagency cooperation. The subsection requires all
23 18 state agencies to cooperate by sharing information about
23 19 possible misclassifications of employees by contractors.
23 20 Cooperation and investigation among the heads of the state
23 21 agencies is considered a duty of office; failing to cooperate,
23 22 pursuant to Code section 721.2(6), results in a simple
23 23 misdemeanor, which is punishable by confinement for no more
23 24 than 30 days or a fine of at least \$65 but not more than \$625
23 25 or by both.
23 26 DIVISION III. The provisions of the bill are severable as
23 27 provided by Code section 4.12.
23 28 The bill takes effect January 1, 2009.
23 29 LSB 6589SV 82
23 30 ak/rj/8