

Senate File 436 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1283)

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

A BILL FOR

1 An Act concerning the employment of unauthorized aliens and human
2 trafficking and providing penalties and other sanctions and an
3 appropriation.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2815SV 82
6 ec/je/5

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1 1 Section 1. NEW SECTION. 13.6A SPECIAL ASSISTANT == HUMAN
1 2 TRAFFICKING AND RELATED OFFENSES == EMPLOYMENT OF UNAUTHORIZED
1 3 ALIENS.
1 4 The attorney general shall appoint a special assistant
1 5 attorney general for claims who shall, under the direction of
1 6 the attorney general, investigate and prosecute all claims
1 7 relating to the crime of human trafficking and related
1 8 offenses pursuant to section 710A.2 and the employment of
1 9 unauthorized aliens pursuant to section 91F.2.
1 10 Sec. 2. NEW SECTION. 73A.22 STATE ASSISTANCE
1 11 RESTRICTIONS == PERSONS EMPLOYING UNAUTHORIZED ALIENS.
1 12 1. a. For purposes of this section, "developmental
1 13 assistance" means any form of public assistance, including tax
1 14 expenditures, made for the purpose of stimulating the economic
1 15 development of a corporation, industry, geographic
1 16 jurisdiction, or any other sector of the state's economy,
1 17 including but not limited to industrial development bonds,
1 18 training grants, loans, loan guarantees, enterprise zones,
1 19 empowerment zones, tax increment financing, fee waivers, land
1 20 price subsidies, infrastructure constructed or improved for
1 21 the benefit of a single business or defined group of
1 22 businesses at the time it is built or improved, matching
1 23 funds, tax abatements, tax credits and tax discounts of every
1 24 kind, including corporate, franchise, personal income, sales
1 25 and use, raw materials, real property, job creation,
1 26 individual investment, excise, utility, inventory, accelerated
1 27 depreciation, and research and development tax credits and
1 28 discounts.
1 29 b. A state department, institution, or agency, or any
1 30 board member, commissioner, director, manager, or other person
1 31 connected with any such department, institution, or agency,
1 32 shall not award a contract or provide developmental assistance
1 33 to an employer as defined in section 91F.1 in which the
1 34 employer or corporate officer of the employer has been found
1 35 in violation of section 91F.2 within the past five years.
2 1 2. Any contract or developmental assistance awarded shall
2 2 provide that if, during the effective period of the contract
2 3 or developmental assistance, the vendor, contractor,
2 4 subcontractor, or developmental assistance recipient violates
2 5 the provisions of section 91F.2, the contract or developmental
2 6 assistance shall be terminated.
2 7 3. A state department, institution, or agency may enforce
2 8 its rights under this section by instituting a civil action in
2 9 district court in this state. In addition, a state
2 10 department, institution, or agency shall not award a contract
2 11 or provide developmental assistance to any person that
2 12 violates this section for a period of five years after the
2 13 date of the violation.
2 14 Sec. 3. NEW SECTION. 91F.1 DEFINITIONS.
2 15 As used in this chapter:
2 16 1. "Commissioner" means the labor commissioner.
2 17 2. "Employee" means a natural person who is employed in

2 18 this state for wages paid on an hourly basis by an employer.
2 19 3. "Employer" means a person, as defined in section 4.1,
2 20 who in this state employs for wages, paid on an hourly basis,
2 21 one or more natural persons. An employer does not include a
2 22 client, patient, customer, or other person who obtains
2 23 professional services from a licensed person who provides the
2 24 services on a fee service basis or as an independent
2 25 contractor, or the state, or an agency or governmental
2 26 subdivision of the state.

2 27 4. "Unauthorized alien" means a person who is not a
2 28 citizen or legal resident and who has not been lawfully
2 29 admitted to the United States for permanent residence or who
2 30 is not authorized to work in the United States.

2 31 Sec. 4. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS ==
2 32 EMPLOYER PROHIBITION.

2 33 An employer shall not knowingly employ as an employee an
2 34 unauthorized alien. For purposes of this section, "knowingly
2 35 employ as an employee an unauthorized alien" includes cases in
3 1 which an employer actually knows a person is an unauthorized
3 2 alien and cases in which any person exercising reasonable care
3 3 should know from facts and circumstances that a person is an
3 4 unauthorized alien.

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

3 6 1. An employer who violates section 91F.2 is subject to a
3 7 civil penalty of up to one thousand dollars.

3 8 2. A corporate officer of an employer who, through
3 9 repeated violation of section 91F.2, demonstrates a pattern of
3 10 employing unauthorized aliens commits a serious misdemeanor.

3 11 3. An employer who, through repeated violation of section
3 12 91F.2, demonstrates a pattern of employing unauthorized aliens
3 13 may be ordered to pay punitive damages.

3 14 Sec. 6. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE
3 15 COMMISSIONER == ENFORCEMENT BY ATTORNEY GENERAL.

3 16 1. The commissioner shall adopt rules to administer and
3 17 enforce this chapter.

3 18 2. In order to carry out the purposes of this chapter, the
3 19 commissioner or the commissioner's representative, upon
3 20 presenting appropriate credentials to an employer's owner,
3 21 operator, or agent in charge, may:

3 22 a. Inspect employment records relating to the employees of
3 23 the employer.

3 24 b. Interview an employer, owner, operator, agent, or
3 25 employee, during working hours or at other reasonable times.

3 26 3. If the commissioner has reason to believe than an
3 27 employer may be in violation of this chapter, the commissioner
3 28 shall notify the attorney general, and provide the attorney
3 29 general with any supporting information, for prosecution of
3 30 the violation by the attorney general.

3 31 Sec. 7. NEW SECTION. 91F.5 PROHIBITIONS RELATING TO
3 32 CERTAIN ACTIONS BY EMPLOYEES == PENALTY == CIVIL REMEDY.

3 33 1. An employer shall not discharge an employee or take or
3 34 fail to take action regarding an employee's appointment or
3 35 proposed appointment or promotion or proposed promotion, or
4 1 regarding any advantage of an employee as a reprisal for a
4 2 failure by that employee to inform the employer that the
4 3 employee made a disclosure of information to any law
4 4 enforcement agency if the employee reasonably believes the
4 5 information evidences a violation of section 91F.2 or 710A.2.

4 6 2. Subsection 1 does not apply if the disclosure of the
4 7 information is prohibited by statute.

4 8 3. An employer who violates subsection 1 commits a simple
4 9 misdemeanor.

4 10 4. Subsection 1 may be enforced through a civil action.

4 11 a. An employer who violates subsection 1 is liable to an
4 12 aggrieved employee for affirmative relief, including
4 13 reinstatement, with or without back pay, or any other
4 14 equitable relief the court deems appropriate, including
4 15 attorney fees and costs.

4 16 b. If an employer commits, is committing, or proposes to
4 17 commit an act in violation of subsection 1, an injunction may
4 18 be granted through an action in district court to prohibit the
4 19 person from continuing such acts. The action for injunctive
4 20 relief may be brought by an aggrieved employee or the attorney
4 21 general.

4 22 Sec. 8. DEPARTMENT OF JUSTICE == HUMAN TRAFFICKING CRIMES
4 23 AND RELATED OFFENSES == INVESTIGATION AND PROSECUTION. There
4 24 is appropriated from the general fund to the department of
4 25 justice for the fiscal year beginning July 1, 2007, and ending
4 26 June 30, 2008, the following amount, or so much as is
4 27 necessary, to be used for the purposes designated:

4 28 For the investigation and prosecution of human trafficking

4 29 crimes and related offenses pursuant to section 710A.2, and
4 30 the employment of unauthorized aliens pursuant to section
4 31 91F.2:
4 32 \$ 100,000
4 33 Notwithstanding section 8.33, moneys appropriated in this
4 34 section that remain unencumbered or unobligated at the close
4 35 of the fiscal year shall not revert but shall remain available
5 1 for expenditure for the purposes designated until the close of
5 2 the succeeding fiscal year.

5 3 EXPLANATION

5 4 This bill relates to employment of unauthorized aliens and
5 5 enforcement of human trafficking offenses and related offenses
5 6 and provides penalties.

5 7 New Code section 73A.22 is created to prohibit state
5 8 entities from awarding a contract or providing developmental
5 9 assistance to a person who violates the provisions of the bill
5 10 concerning the employment of unauthorized aliens as
5 11 established in new Code section 91F.2. The bill defines
5 12 "developmental assistance" as any form of public assistance,
5 13 including tax incentives, grants, or other subsidies. The
5 14 bill provides that a person violating this new provision shall
5 15 have their contract or developmental assistance terminated.
5 16 The bill grants state entities the right to enforce their
5 17 rights in district court and provides that a person violating
5 18 this provision shall be prohibited from receiving a state
5 19 contract or developmental assistance for five years.

5 20 The bill creates new Code chapter 91F prohibiting employers
5 21 from employing unauthorized aliens. The bill defines
5 22 "unauthorized alien" as any person who is not a citizen or
5 23 legal resident and who has not been lawfully admitted to the
5 24 United States for permanent residence or who is not authorized
5 25 to work in the United States. An "employer" is any person who
5 26 employs for wages, paid on an hourly basis, one or more
5 27 natural persons, other than the state or governmental
5 28 subdivisions of the state. The bill prohibits employers from
5 29 knowingly employing an unauthorized alien. The bill provides
5 30 that a violation can occur in cases in which an employer
5 31 actually knows a person is an unauthorized alien as well as a
5 32 situation in which any person exercising reasonable care
5 33 should know from facts and circumstances that a person is an
5 34 unauthorized alien. The bill provides that a violation of
5 35 this chapter is subject to a civil penalty of \$1,000 and a
6 1 corporate officer of an employer who, through repeated
6 2 violations of the chapter, demonstrates a pattern of employing
6 3 unauthorized aliens, commits a serious misdemeanor. An
6 4 employer who demonstrates a pattern of employing unauthorized
6 5 aliens may be ordered to pay punitive damages. The bill
6 6 further authorizes the labor commissioner within the
6 7 department of workforce development to adopt rules to
6 8 administer and enforce this new chapter and grants the
6 9 commissioner the authority to investigate employer records and
6 10 to interview employees. The bill provides that the
6 11 commissioner shall forward any suspected violations of this
6 12 chapter to the attorney general for prosecution. The bill
6 13 further provides that an employer shall not discharge an
6 14 employee from or take or fail to take action regarding an
6 15 employee's appointment or proposed appointment, promotion or
6 16 proposed promotion, or regarding any advantage of an employee
6 17 as a reprisal for a failure by that employee to inform the
6 18 employer that the employee made a disclosure of information to
6 19 any law enforcement agency if the employee reasonably believes
6 20 the information evidences a violation of Code section 91F.2 or
6 21 710A.2. An employer who violates the provisions of this
6 22 chapter is liable to an aggrieved employee for affirmative
6 23 relief including reinstatement, with or without back pay, or
6 24 any other equitable relief the court deems appropriate,
6 25 including attorney fees and costs. In addition, an action for
6 26 injunctive relief may be brought by an aggrieved employee or
6 27 the attorney general.

6 28 The bill authorizes the attorney general to appoint a
6 29 special assistant attorney general who shall, under the
6 30 direction of the attorney general, investigate and prosecute
6 31 all claims relating to the crime of human trafficking and
6 32 related offenses and the employment of unauthorized aliens and
6 33 appropriates up to \$100,000 from the state general fund to the
6 34 department of justice for the fiscal year beginning July 1,
6 35 2007, and ending June 30, 2008, to be used by the department
7 1 of justice for such purposes. Notwithstanding Code section
7 2 8.33, appropriated moneys that remain unencumbered or
7 3 unobligated at the close of the fiscal year do not revert but
7 4 remain available for expenditure for the purposes designated

7 5 until the close of the succeeding fiscal year.
7 6 LSB 2815SV 82
7 7 ec:rj/je/5