

Senate Study Bill 3286

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON BOLKCOM)

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 6589SC 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, unnumbered
1 4 paragraph 1, Code 2007, is amended to read as follows:
1 5 "Employee" means a natural person who is employed in this
1 6 state ~~for wages~~ by an employer, including a natural person who
1 7 is in receipt of or is entitled to any compensation for labor
1 8 performed for any employer. Whether a natural person who
1 9 performs labor is an employee or an independent contractor
1 10 shall be determined according to the standards of the federal
1 11 Fair Labor Standards Act; however, the burden of proof shall
1 12 be on the party for whom the work is performed to show
1 13 independent contractor status by clear and convincing
1 14 evidence. Employee also includes a commission salesperson who
1 15 takes orders or performs services on behalf of a principal and
1 16 who is paid on the basis of commissions but does not include
1 17 persons who purchase for their own account for resale. For
1 18 the purposes of this chapter, the following persons engaged in
1 19 agriculture are not employees:
1 20 Sec. 2. Section 91A.2, subsection 4, Code 2007, is amended
1 21 to read as follows:
1 22 4. "Employer" means a person, ~~as defined in chapter 4, who~~
1 23 ~~in this state employs for wages a natural person. An employer~~
1 24 ~~does not include a client, patient, customer, or other person~~
1 25 ~~who obtains professional services from a licensed person who~~
1 26 ~~provides the services on a fee service basis or as an~~
1 27 ~~independent contractor firm or corporation, agent, manager,~~
1 28 ~~representative, contractor, subcontractor, or principal, or~~
1 29 ~~other person acting directly or indirectly in the interest of~~
1 30 ~~an employer to suffer or permit a natural person to work.~~
1 31 Sec. 3. Section 91A.6, subsections 1 and 2, Code 2007, are
1 32 amended to read as follows:
1 33 1. An employer shall ~~after being notified by the~~
1 34 ~~commissioner pursuant to subsection 2 do the following:~~
1 35 a. Notify its employees in writing at the time of hiring
2 1 what wages and regular paydays are designated by the employer.
2 2 b. Notify, at least one pay period prior to the initiation
2 3 of any changes, its employees of any changes in the
2 4 arrangements specified in this subsection ~~‡~~ that reduce wages
2 5 or alter the regular paydays. The notice shall either be in
2 6 writing or posted at a place where employee notices are
2 7 routinely posted.
2 8 c. Make available to its employees upon written request, a
2 9 written statement enumerating employment agreements and
2 10 policies with regard to vacation pay, sick leave,
2 11 reimbursement for expenses, retirement benefits, severance
2 12 pay, or other comparable matters with respect to wages.
2 13 Notice of such availability shall be given to each employee in
2 14 writing or by a notice posted at a place where employee
2 15 notices are routinely posted.
2 16 d. Establish, maintain, and preserve for three calendar

2 17 years the payroll records showing the hours worked, wages
2 18 earned, and deductions made for each employee and any
2 19 employment agreements entered into between an employer and
2 20 employee. Failure to do so shall raise a rebuttable
2 21 presumption that the employer did not pay the required minimum
2 22 wage under section 91D.1.

~~2 23 2. The commissioner shall notify an employer to comply
2 24 with subsection 1 if the employer has paid a claim for unpaid
2 25 wages or nonreimbursed authorized expenses and liquidated
2 26 damages under section 91A.10 or if the employer has been
2 27 assessed a civil money penalty under section 91A.12. However,
2 28 a court may, when rendering a judgment for wages or
2 29 nonreimbursed authorized expenses and liquidated damages or
2 30 upholding a civil money penalty assessment, order that an
2 31 employer shall not be required to comply with the provisions
2 32 of subsection 1 or that an employer shall be required to
2 33 comply with the provisions of subsection 1 for a particular
2 34 period of time.~~

2 35 Sec. 4. Section 91A.8, Code 2007, is amended to read as
3 1 follows:

3 2 91A.8 VIOLATIONS BY EMPLOYER, DAMAGES RECOVERABLE BY AN
3 3 EMPLOYEE.

3 4 1. A violation of this chapter shall occur any week when
3 5 an individual employee was not paid the legally required wages
3 6 under this chapter, state taxes were not withheld, or in the
3 7 case of improper discharge, discrimination, or retaliation
3 8 against an employee, every week after the improper discharge,
3 9 discrimination, or retaliation has occurred until compensation
3 10 is finally made.

3 11 2. When it has been shown that an employer has
3 12 intentionally failed to pay an employee wages or reimburse
3 13 expenses pursuant to section 91A.3, whether as the result of a
3 14 wage dispute or otherwise, the employer shall be liable to the
3 15 employee for any wages or expenses that are so intentionally
3 16 failed to be paid or reimbursed, plus liquidated damages,
3 17 court costs, and any attorney's attorney fees incurred in
3 18 recovering the unpaid wages and determined to have been usual
3 19 and necessary. In other instances the employer shall be
~~3 20 liable only for unpaid wages or expenses, court costs and~~
~~3 21 usual and necessary attorney's fees incurred in recovering the~~
~~3 22 unpaid wages or expenses.~~

3 23 Sec. 5. Section 91A.9, subsection 2, Code 2007, is amended
3 24 to read as follows:

3 25 2. The commissioner may, consistent with due process of
3 26 law, enter any place of employment to inspect records
3 27 concerning wages and payrolls, to question the employer and
3 28 employees, and to investigate such facts, conditions, or
3 29 matters as are deemed appropriate in determining whether any
3 30 person has violated the provisions of this chapter. ~~However,~~
~~3 31 such entry by the commissioner shall only be in response to a~~
~~3 32 written complaint. The name of any employee identified in a~~
3 33 complaint to the commissioner shall be kept confidential. If
3 34 the commissioner determines that an employee's name must be
3 35 disclosed in order to investigate a complaint further, the
4 1 commissioner may do so only with the employee's consent.

4 2 Sec. 6. Section 91A.10, subsection 5, Code 2007, is
4 3 amended to read as follows:

4 4 5. ~~An employer shall not discharge or in any other manner~~
~~4 5 discriminate against any employee because the employee has~~
~~4 6 filed a complaint, assigned a claim, or brought an action~~
~~4 7 under this section or has cooperated in bringing any action~~
~~4 8 against an employer. An employer or other person shall not~~
~~4 9 discharge or in any other manner discriminate or retaliate~~
4 10 against an employee or other person for exercising any right
4 11 provided under this chapter or any rules adopted pursuant to
4 12 this chapter, or against another employee or person for
4 13 providing assistance to an employee or providing information
4 14 regarding the employee or person, or for testifying or
4 15 planning to testify in any investigation or proceeding
4 16 regarding the employee or person. Taking adverse action
4 17 against an employee or other person within ninety days of an
4 18 employee's or other person's engaging in the foregoing
4 19 activities raises a presumption that such action was
4 20 retaliation, which may be rebutted by clear and convincing
4 21 evidence that such action was taken for other permissible
4 22 reasons. Any employee may file a complaint with the
4 23 commissioner alleging discharge, or discrimination, or
4 24 retaliation within thirty days after such violation occurs.
4 25 Upon receipt of the complaint, the commissioner shall cause an
4 26 investigation to be made to the extent deemed appropriate. If
4 27 the commissioner determines from the investigation that the

4 28 provisions of this subsection have been violated, the
4 29 commissioner shall bring an action in the appropriate district
4 30 court against such person. The district court shall have
4 31 jurisdiction, for cause shown, to restrain violations of this
4 32 subsection and order all appropriate relief including rehiring
4 33 or reinstatement of the employee to the former position with
4 34 back pay.

4 35 Sec. 7. Section 91A.10, Code 2007, is amended by adding
5 1 the following new subsection:

5 2 NEW SUBSECTION. 6. A civil action to enforce this section
5 3 may also be maintained in any court of competent jurisdiction
5 4 by the commissioner or by any party injured by a violation of
5 5 this section. An employer or other person who retaliates
5 6 against an employee or other person in violation of this
5 7 section shall be required to pay the person an amount set by
5 8 the commissioner or a court sufficient to compensate the
5 9 employee or other person and deter future violations, but not
5 10 less than one hundred fifty dollars for each day that the
5 11 violation continued.

5 12 Sec. 8. Section 91A.12, subsection 1, Code 2007, is
5 13 amended to read as follows:

5 14 1. Any employer who violates the provisions of this
5 15 chapter or the rules promulgated under it adopted pursuant to
5 16 this chapter shall be subject to a civil money penalty of not
5 17 more than one five hundred dollars for each violation. The
5 18 commissioner may recover such civil money penalty according to
5 19 the provisions of subsections 2 to through 5. Any civil money
5 20 penalty recovered shall be deposited in the general fund of
5 21 the state deposited in the fund created in section 91A.12A and
5 22 dedicated to enforcement of this chapter.

5 23 Sec. 9. NEW SECTION. 91A.12A WAGE PAYMENT COLLECTION
5 24 FUND.

5 25 1. A wage payment collection fund is created in the state
5 26 treasury under the control of the division of labor services
5 27 of the department of workforce development for the purpose of
5 28 providing funding to support enforcement of this chapter.
5 29 Moneys in the fund are appropriated to the division for the
5 30 purposes described in this chapter.

5 31 2. Notwithstanding section 12C.7, subsection 2, interest
5 32 or earnings on moneys deposited in the wage payment collection
5 33 fund shall be credited to the wage payment collection fund.
5 34 Notwithstanding section 8.33, moneys appropriated to and
5 35 moneys remaining in the wage payment collection fund at the
6 1 end of a fiscal year shall not revert to the general fund of
6 2 the state.

6 3 Sec. 10. NEW SECTION. 91A.15 TRANSPORTATION PROHIBITION.

6 4 1. It shall be unlawful for any person to transport, offer
6 5 for transportation, ship, deliver, or sell in commerce, or to
6 6 ship, deliver, or sell with knowledge that shipment or
6 7 delivery or sale thereof in commerce is intended, any goods in
6 8 the production of which any employee was employed in violation
6 9 of this chapter, or in violation of any rules adopted or order
6 10 of the commissioner issued under this chapter.

6 11 2. a. This chapter does not impose any liability upon any
6 12 common carrier for the transportation in commerce in the
6 13 regular course of its business of any goods not produced by
6 14 such common carrier.

6 15 b. This section does not excuse any common carrier from
6 16 its obligation to accept any goods for transportation.

6 17 3. Any transportation, offer, shipment, delivery, or sale
6 18 of goods by a purchaser who acquired the goods in good faith
6 19 in reliance on written assurance from the producer that the
6 20 goods were produced in compliance with the requirements of
6 21 this chapter, and who acquired such goods for value without
6 22 notice of any such violation, shall not be deemed unlawful.

6 23 4. The division, any aggrieved employee, or any employer
6 24 or organization suffering unfair competition from the sale or
6 25 transport of such illegal goods may seek injunctive relief to
6 26 stop such sale or transport. A prevailing plaintiff is
6 27 entitled to recover the costs of the suit and reasonable
6 28 attorney fees.

6 29 Sec. 11. NEW SECTION. 91A.16 LIABILITY OF SHAREHOLDERS.

6 30 The ten largest shareholders, as determined by the fair
6 31 value of their beneficial interest as of the beginning of the
6 32 period during which the unpaid services referred to in this
6 33 chapter are performed, of a corporation other than an
6 34 investment company registered under the federal Investment
6 35 Company Act of 1940, no shares of which are listed on a
7 1 national securities exchange or regularly quoted in an
7 2 over-the-counter market by one or more member of a national or
7 3 an affiliated securities association, shall jointly and

7 4 severally, be personally liable for all debts, wages, or
7 5 salaries due and owing to any of the employees for services
7 6 performed by the employees for such corporation. Civil action
7 7 may be brought against a shareholder liable for wages due
7 8 under this chapter instead of or and in addition to the
7 9 employer.

DIVISION II

EMPLOYEE CLASSIFICATION

Sec. 12. NEW SECTION. 91G.1 PURPOSE.

7 13 The purpose of this chapter is to address the practice of
7 14 misclassifying employees as independent contractors.

Sec. 13. NEW SECTION. 91G.2 DEFINITIONS.

7 16 1. "Commissioner" means the labor commissioner appointed
7 17 pursuant to section 91.2 or the labor commissioner's designee.

7 18 2. "Construction" means any constructing, altering,
7 19 reconstructing, repairing, rehabilitating, refinishing,
7 20 refurbishing, remodeling, remediating, renovating, custom
7 21 fabricating, maintenance, landscaping, improving, wrecking,
7 22 painting, decorating, demolishing, and adding to or
7 23 subtracting from any building, structure, airport facility,
7 24 highway, roadway, street, alley, bridge, sewer, drain, ditch,
7 25 sewage disposal plant, water works, parking facility,
7 26 railroad, excavation or other project, development, real
7 27 property, or improvement, or to do any part thereof, whether
7 28 or not the performance of the work described in this
7 29 subsection involves an addition to, or fabrication into, any
7 30 structure, project, development, real property, or improvement
7 31 described in this subsection of any material or article of
7 32 merchandise.

7 33 3. "Contractor" means any person, as defined in section
7 34 4.1, engaged in construction. "Contractor" includes general
7 35 contractors, subcontractors, and the state of Iowa and its
8 1 officers, agencies, and political subdivisions.

8 2 4. "Division" means the division of labor services of the
8 3 department of workforce development.

8 4 5. "Interested party" means an individual performing
8 5 services for a contractor who alleges a violation of this
8 6 chapter.

8 7 6. "Performing services" means any constructing, altering,
8 8 reconstructing, repairing, rehabilitating, refinishing,
8 9 refurbishing, remodeling, remediating, renovating, custom
8 10 fabricating, maintenance, landscaping, improving, wrecking,
8 11 painting, decorating, demolishing, and adding to or
8 12 subtracting from any building, structure, airport facility,
8 13 highway, roadway, street, alley, bridge, sewer, drain, ditch,
8 14 sewage disposal plant, water works, parking facility,
8 15 railroad, excavation or other project, development, real
8 16 property, or improvement, or to do any part thereof, whether
8 17 or not the performance of the work described in this
8 18 subsection involves an addition to, or fabrication into, any
8 19 structure, project, development, real property, or improvement
8 20 described in this subsection of any material or article of
8 21 merchandise.

Sec. 14. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS

PERFORMING SERVICES.

8 24 1. An individual performing services shall be classified
8 25 as an employee if all of the following conditions in relation
8 26 to a contractor apply:

8 27 a. The individual performs services under the control or
8 28 direction of the contractor.

8 29 b. The contractor is responsible for the payment of the
8 30 individual's wages.

8 31 c. The right to discharge or terminate the working
8 32 relationship lies between the individual and the contractor.

8 33 d. The contractor is the authority in charge of the work
8 34 or for whose benefit the work is being performed.

8 35 2. An individual classified as an employee under this
9 1 section shall also be classified as an employee pursuant to
9 2 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits
9 3 a violation of this chapter by not treating the individual so
9 4 classified under this chapter as an employee pursuant to
9 5 chapters 85, 85A, 85B, 88, 91A, and 96.

9 6 3. An individual who is an owner-operator as described in
9 7 section 85.61, subsection 11, and not deemed an employee under
9 8 that subsection shall not be classified as an employee under
9 9 this section.

Sec. 15. NEW SECTION. 91G.4 NOTICE OF LAW.

9 11 1. The commissioner shall create posters in both English
9 12 and Spanish summarizing the requirements of this chapter. The
9 13 English and Spanish versions of the poster shall be posted on
9 14 the division's internet site and on bulletin boards in the

9 15 workforce centers.
9 16 2. The commissioner shall provide the posters without
9 17 charge to contractors upon request.
9 18 3. If a contractor violates section 916.3 or 916.8 or
9 19 rules adopted pursuant to any of those sections, the
9 20 contractor shall post the English and Spanish versions of the
9 21 poster created by the commissioner. The posters shall be
9 22 posted in conspicuous locations at the places where notices to
9 23 employees are normally posted at each job site and office of
9 24 the contractor.

9 25 Sec. 16. NEW SECTION. 91G.5 ENFORCEMENT.
9 26 1. An interested party may file a complaint with the
9 27 commissioner alleging a violation of section 91G.3, 91G.4, or
9 28 91G.8 or rules adopted pursuant to any of those sections. An
9 29 interested party who makes a complaint when the interested
9 30 party knows such representation to be false commits a simple
9 31 misdemeanor.

9 32 2. The commissioner shall adopt rules pursuant to and
9 33 consistent with chapter 17A regarding investigations to
9 34 determine whether a contractor has violated any provisions of
9 35 this chapter or any rules adopted pursuant to this chapter.

10 1 3. The commissioner shall enforce the provisions of this
10 2 chapter. The commissioner may conduct investigations in
10 3 connection with the administration and enforcement of this
10 4 chapter and may visit and inspect, at all reasonable times,
10 5 any places where individuals are performing services for a
10 6 contractor and may inspect, at all reasonable times, documents
10 7 related to the determination of whether an individual is an
10 8 employee under section 91G.3.

10 9 4. The commissioner and an employee of the commissioner
10 10 shall be indemnified for any damages and legal expenses
10 11 incurred as a result of the good-faith performance of the
10 12 employee's official duties under this chapter, in regard to
10 13 any claim for civil damages not specifically covered by the
10 14 Iowa tort claims Act, chapter 669.

10 15 5. The commissioner may compel by subpoena the attendance
10 16 and testimony of witnesses and the production of books,
10 17 payrolls, records, papers, and other evidence in an
10 18 investigation and may administer oaths to witnesses.

10 19 6. Upon the failure or refusal of any person to obey a
10 20 subpoena, the commissioner may petition a district court of
10 21 competent jurisdiction, and upon proper showing, the court may
10 22 enter an order compelling the witness to appear and testify or
10 23 produce documentary evidence. Failure to obey the court order
10 24 is punishable as contempt of court.

10 25 7. A determination by the commissioner as to whether a
10 26 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
10 27 pursuant to any of those sections has occurred shall be
10 28 considered final agency action under chapter 17A.

10 29 8. If the commissioner determines upon investigation that
10 30 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
10 31 pursuant to any of those sections has occurred, the
10 32 commissioner may do any of the following:

10 33 a. Issue and cause to be served on any party an order to
10 34 cease and desist from any further violation.

10 35 b. Take affirmative or other action as deemed reasonable
11 1 to eliminate the effect of any violation.

11 2 c. Collect the amount of any wages, salary, employment
11 3 benefits, or other compensation denied or lost to an
11 4 individual.

11 5 d. Assess any civil penalty allowed by this chapter.

11 6 e. Refer matters to the county attorney upon determining
11 7 that a criminal violation may have occurred.

11 8 9. Judicial review of any final agency action of the
11 9 commissioner taken pursuant to this section may be sought in
11 10 accordance with the terms of chapter 17A. If a petition for
11 11 judicial review is not filed within thirty days after service
11 12 of the determination of the commissioner, the commissioner's
11 13 determination shall be conclusive in connection with any
11 14 petition for enforcement filed by the commissioner and in such
11 15 case, the clerk of court, unless otherwise ordered by the
11 16 court, shall forthwith enter a decree enforcing the
11 17 commissioner's determination and shall transmit a copy of the
11 18 decree to the commissioner and the contractor named in the
11 19 petition.

11 20 10. A contractor shall not be liable under this chapter
11 21 for any other contractor's failure to properly classify
11 22 individuals.

11 23 11. In any civil action to enforce the provisions of this
11 24 chapter, the commissioner may be represented by an attorney
11 25 employed by the division or, at the commissioner's request, by

11 26 the attorney general.

11 27 Sec. 17. NEW SECTION. 91G.6 PENALTIES.

11 28 1. A contractor who violates section 91G.3, 91G.4, or
11 29 91G.8 or rules adopted pursuant to one of those sections is
11 30 subject to a civil penalty not to exceed one thousand two
11 31 hundred fifty dollars for a first violation as determined by
11 32 the commissioner. A contractor is subject to a civil penalty
11 33 not to exceed one thousand eight hundred seventy-five dollars
11 34 for a second violation occurring within six years of a first
11 35 violation as determined by the commissioner. A contractor
12 1 shall be subject to a civil penalty not to exceed three
12 2 thousand one hundred twenty-five dollars for a third or
12 3 successive violation occurring within six years of a first
12 4 violation as determined by the commissioner.

12 5 2. A contractor who violates any provision of section
12 6 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of
12 7 those sections commits a simple misdemeanor. A contractor who
12 8 commits such a second violation within six years of a first
12 9 violation commits a serious misdemeanor. A contractor who
12 10 commits such a third or subsequent violation within six years
12 11 of a first violation commits an aggravated misdemeanor.

12 12 3. A contractor who obstructs the commissioner, the
12 13 employee of the commission, or another person authorized to
12 14 inspect places where individuals are performing services for a
12 15 contractor is subject to a civil penalty not to exceed one
12 16 thousand eight hundred seventy-five dollars.

12 17 4. Each violation described in this section for each
12 18 individual and for each day the violation continues
12 19 constitutes a separate and distinct violation. In determining
12 20 the amount of a civil penalty, the commissioner shall consider
12 21 the appropriateness of the civil penalty to the contractor and
12 22 the gravity of the violation.

12 23 Sec. 18. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.

12 24 For a second or subsequent violation of section 916.3 or
12 25 916.4 determined by the commissioner to have occurred within
12 26 six years of an earlier violation or for a first or subsequent
12 27 violation of section 91G.8, the commissioner shall add the
12 28 contractor's name to a list to be posted on the division's
12 29 internet site and notify the violating contractor of the
12 30 posting. A state contract shall not be awarded to a
12 31 contractor whose name appears on the list until three years
12 32 have elapsed from the date of the determination of the last
12 33 violation.

12 34 Sec. 19. NEW SECTION. 91G.8 RETALIATION.

12 35 1. A contractor or contractor's agent shall not retaliate
13 1 through discharge or in any other manner against an individual
13 2 for any of the following:

13 3 a. Making a good-faith complaint to the commissioner or to
13 4 a state or federal agency regarding a violation of section
13 5 91G.3 or 91G.4.

13 6 b. Testifying or otherwise cooperating in an investigation
13 7 or proceeding under this chapter.

13 8 2. Such retaliation shall subject a contractor or
13 9 contractor's agent to civil penalties and a prohibition on
13 10 being awarded state contracts pursuant to this chapter and may
13 11 give rise to a private right of action.

13 12 Sec. 20. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.

13 13 Any penalties assessed and collected by the commissioner
13 14 pursuant to this chapter shall be deposited in the general
13 15 fund of the state.

13 16 Sec. 21. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

13 17 1. An individual, who has not received compensatory
13 18 damages under section 91G.5, alleging a contractor's violation
13 19 of this chapter or a rule adopted pursuant to this chapter and
13 20 damages may file suit in district court against the
13 21 contractor, in the county where the alleged violation
13 22 occurred, or where any person who is party to the action
13 23 resides, without regard to exhaustion of any alternative
13 24 administrative remedies provided in this chapter. Actions may
13 25 be brought by one or more aggrieved individuals for and on
13 26 behalf of themselves and other individuals similarly situated.

13 27 2. If it is established that an individual has been
13 28 damaged through a proceeding under subsection 1 by a
13 29 contractor who has violated a provision of this chapter or a
13 30 rule adopted pursuant to this chapter, the individual shall be
13 31 entitled to collect the following:

13 32 a. The amount of any wages, salary, employment benefits,
13 33 or other compensation denied or lost to the individual due to
13 34 the violation or a retaliatory action, and court costs and
13 35 interest at the statutory rate from the date of filing.

14 1 b. Punitive damages, not to exceed five times the amount

14 2 awarded in paragraph "a".
14 3 3. The right of a damaged individual to bring an action
14 4 under this section terminates five years from the date of the
14 5 alleged violation by the contractor.
14 6 Sec. 22. NEW SECTION. 91G.11 COOPERATION.
14 7 1. The commissioner, the division of the department of
14 8 workforce development that administers unemployment insurance
14 9 services, the division of workers' compensation, and the
14 10 department of revenue shall cooperate under this chapter by
14 11 sharing information concerning possible misclassification by a
14 12 contractor of one or more of the contractor's employees as
14 13 independent contractors.
14 14 2. Upon determining that a contractor misclassified one or
14 15 more employees as independent contractors in violation of this
14 16 chapter, the commissioner shall notify the division
14 17 administering unemployment insurance services, the division of
14 18 workers' compensation, and the department of revenue, each of
14 19 which shall investigate the contractor's compliance with
14 20 applicable laws.
14 21 3. Cooperation under this chapter shall be considered a
14 22 duty of office for the commissioner or the commissioner's
14 23 designee and the heads of the state agencies named in
14 24 subsection 1 or their designees. Failure to so cooperate
14 25 constitutes a violation of section 721.2, subsection 6.
14 26 Sec. 23. Section 84A.5, subsection 4, Code Supplement
14 27 2007, is amended to read as follows:
14 28 4. The division of labor services is responsible for the
14 29 administration of the laws of this state under chapters 88,
14 30 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91G, 92,
14 31 and 94A, and section 85.68. The executive head of the
14 32 division is the labor commissioner, appointed pursuant to
14 33 section 91.2.
14 34 Sec. 24. Section 85.61, subsection 11, paragraph b, Code
14 35 Supplement 2007, is amended to read as follows:
15 1 b. (1) "Worker" or "employee" includes an inmate as
15 2 defined in section 85.59 and a person described in section
15 3 85.60.
15 4 (2) "Worker" or "employee" includes an individual who is
15 5 classified as an employee pursuant to section 91G.3.
15 6 Sec. 25. Section 86.45, subsection 2, Code 2007, is
15 7 amended by adding the following new paragraph:
15 8 NEW PARAGRAPH. j. To cooperate with the division of labor
15 9 services, the division of the department of workforce
15 10 development that administers unemployment insurance services,
15 11 and the department of revenue pursuant to chapter 91G by
15 12 sharing information concerning possible misclassification of
15 13 one or more employees as independent contractors.
15 14 Sec. 26. Section 88.3, subsection 4, Code 2007, is amended
15 15 to read as follows:
15 16 4. "Employee" means an employee of an employer who is
15 17 employed in a business of the employer. "Employee" also means
15 18 an inmate as defined in section 85.59, when the inmate works
15 19 in connection with the maintenance of the institution, in an
15 20 industry maintained in the institution, or while otherwise on
15 21 detail to perform services for pay. "Employee" also means a
15 22 volunteer involved in responses to hazardous waste incidences.
15 23 The employer of a volunteer is that entity which provides or
15 24 which is required to provide workers' compensation coverage
15 25 for the volunteer. "Employee" includes an individual who is
15 26 classified as an employee pursuant to section 91G.3.
15 27 Sec. 27. Section 91.4, subsection 5, Code Supplement 2007,
15 28 is amended to read as follows:
15 29 5. The director of the department of workforce
15 30 development, in consultation with the labor commissioner,
15 31 shall, at the time provided by law, make an annual report to
15 32 the governor setting forth in appropriate form the business
15 33 and expense of the division of labor services for the
15 34 preceding year, the number of disputes or violations processed
15 35 by the division and the disposition of the disputes or
16 1 violations, and other matters pertaining to the division which
16 2 are of public interest, together with recommendations for
16 3 change or amendment of the laws in this chapter and chapters
16 4 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,
16 5 and 94A, and section 85.68, and the recommendations, if any,
16 6 shall be transmitted by the governor to the first general
16 7 assembly in session after the report is filed.
16 8 Sec. 28. Section 91A.2, subsection 3, unnumbered paragraph
16 9 1, Code 2007, is amended to read as follows:
16 10 "Employee" means a natural person who is employed in this
16 11 state for wages by an employer. Employee also includes a
16 12 commission salesperson who takes orders or performs services

16 13 on behalf of a principal and who is paid on the basis of
16 14 commissions but does not include persons who purchase for
16 15 their own account for resale. "Employee" includes an
16 16 individual who is classified as an employee pursuant to
16 17 section 91G.3. For the purposes of this chapter, the
16 18 following persons engaged in agriculture are not employees:
16 19 Sec. 29. Section 96.11, Code Supplement 2007, is amended
16 20 by adding the following new subsection:
16 21 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.
16 22 a. The director and the department shall cooperate with
16 23 the division of labor services, the division of workers'
16 24 compensation, and the department of revenue pursuant to
16 25 chapter 91G by sharing information concerning possible
16 26 misclassification of employees as independent contractors.
16 27 b. Cooperation under this chapter shall be considered a
16 28 duty of office for the heads of the state agencies named in
16 29 subsection 1 or their designees. Failure to so cooperate
16 30 constitutes a violation of section 721.2, subsection 6.
16 31 Sec. 30. Section 96.19, subsection 18, paragraph a,
16 32 subparagraph (2), Code 2007, is amended to read as follows:
16 33 (2) Any individual who, under the usual common law rules
16 34 applicable in determining the employer=employee relationship,
16 35 has the status of an employee, or any individual who is
17 1 classified as an employee pursuant to section 91G.3, or

17 2 DIVISION III

17 3 SEVERABILITY AND EFFECTIVE DATE

17 4 Sec. 31. SEVERABILITY. The provisions of this Act are
17 5 severable in the manner provided by section 4.12.
17 6 Sec. 32. EFFECTIVE DATE. This Act takes effect January 1,
17 7 2009.

17 8 EXPLANATION

17 9 This bill relates to employers and individuals who perform
17 10 labor in wage payment collection and employment classification
17 11 areas.

17 12 DIVISION I. In Code section 91A.2, two definitions are
17 13 changed. "Employee" is amended to include a natural person
17 14 who is in receipt of or entitled to compensation for labor.
17 15 The definition includes a statement that the determination of
17 16 whether an individual is an employee or independent contractor
17 17 will be decided according to the federal Fair Labor Standards
17 18 Act. "Employer" is amended to specifically include some
17 19 entities.

17 20 Code section 91A.6(1) and (2) are amended to remove the
17 21 requirement that an employer has violated certain provisions
17 22 of Code chapter 91A and has been notified by the division of
17 23 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, in each week that an employee is
17 33 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 to entry into a
18 4 place of employment only in response to a written complaint.
18 5 The second change is to add a requirement to keep any
18 6 employee's name in a complaint confidential. If it is
18 7 necessary to reveal an employee's name, the commissioner must
18 8 have the employee's consent.

18 9 Code section 91A.10(5), which is the subsection covering
18 10 retaliatory actions by employers or others, is expanded to
18 11 cover persons other than employees who act under this Code
18 12 chapter against an employee. A 90-day period is established
18 13 during which any action against an employee or other person is
18 14 rebuttably presumed to be retaliatory. New Code section
18 15 91A.10(6) is created to allow the commissioner to maintain a
18 16 civil action in any court of proper jurisdiction. An employer
18 17 who retaliates against an employee or other person shall
18 18 compensate the injured party an amount set by the commissioner
18 19 or the court, but not less than \$150 for each day of the
18 20 violation.

18 21 In new Code section 91A.12 and new Code section 91A.12A,
18 22 the civil penalty that the commissioner may assess is raised
18 23 to \$500 per violation and is deposited into the wage payment

18 24 collection fund, which is established in the state treasury.
18 25 The funds are appropriated to be used to assist in the
18 26 enforcement of Code chapter 91A.

18 27 New Code section 91A.15 prohibits knowingly transporting,
18 28 delivering, or selling, or offering to do the same of any
18 29 goods produced in violation of Code chapter 91A. This Code
18 30 section does not impose liability on a common carrier. Nor
18 31 does it prohibit a purchaser from accepting goods in good
18 32 faith with written assurance that the goods were produced
18 33 without violation. A party suffering unfair competition from
18 34 the sale or transport of illegal goods may seek injunctive
18 35 relief.

19 1 New Code section 91A.16 establishes liability of
19 2 shareholders for wages owed to employees. The Code section
19 3 states that the 10 largest shareholders of every corporation
19 4 are jointly and severally personally liable for all debts,
19 5 wages, or salaries due to any corporation employees. A civil
19 6 action may be brought against a shareholder instead of or in
19 7 addition to the employer.

19 8 DIVISION II. This division of the bill creates new Code
19 9 chapter 91G and relates to the classification of individuals
19 10 as employees or independent contractors.

19 11 New Code section 91G.1 addresses the purpose of the Code
19 12 chapter.

19 13 New Code section 91G.2 includes definitions pertinent to
19 14 the Code chapter.

19 15 New Code section 91G.3 classifies the status of individuals
19 16 performing services. New Code section 91G.3(1) provides the
19 17 criteria for determining the status of an individual as an
19 18 employee. New Code section 91G.3(2) provides that an
19 19 individual classified as an employee under this Code section
19 20 also qualifies as an employee for the purposes of Code
19 21 chapters 85, 85A, and 85B (workers' compensation),
19 22 (occupational safety and health), 91A (wage payment
19 23 collection), and 96 (unemployment compensation). It is a
19 24 violation of new Code chapter 91G to fail to properly classify
19 25 an individual as an employee under these Code chapters. New
19 26 Code section 91G.3(3) provides that an individual who is an
19 27 owner-operator as described in Code section 85.61(11) shall
19 28 not be classified as an employee under new Code section 91G.3.

19 29 New Code section 91G.4 requires the commissioner to create
19 30 posters in both English and Spanish that summarize the Code
19 31 chapter requirements. If a contractor is found to have
19 32 violated new Code sections 91G.3 or 91G.8, the contractor must
19 33 post the posters in both languages in conspicuous places at
19 34 all job sites and offices.

19 35 New Code section 91G.5 provides enforcement provisions. In
20 1 new Code section 91G.5(1), an interested party may file a
20 2 complaint alleging a violation of this Code chapter. However,
20 3 a party who knowingly makes a false complaint commits a simple
20 4 misdemeanor, which is punishable by confinement for no more
20 5 than 30 days or a fine of at least \$65 but not more than \$625
20 6 or by both. Under new Code section 91G.5(2), the commissioner
20 7 is charged with establishing rules consistent with Code
20 8 chapter 17A. In new Code section 91G.5(3), the commissioner
20 9 is charged with investigating complaints and conducting
20 10 investigations.

20 11 Under new Code section 91G.5(4), the commissioner and
20 12 employees are indemnified for damages and legal expenses
20 13 incurred as a result of the good-faith performance of their
20 14 job duties against any claims not covered by Code chapter 669,
20 15 the Iowa tort claims Act. Under new Code section 91G.5(5),
20 16 the commissioner may administer oaths and issue subpoenas to
20 17 access witnesses and documents, payroll records, and other
20 18 evidence in order to advance an investigation. New Code
20 19 section 91G.5(6) allows the commissioner or the commissioner's
20 20 investigators to commence a contempt action in court
20 21 commanding a person to obey the order of the commissioner
20 22 issued under new Code chapter 91G or be adjudged guilty of
20 23 contempt of court.

20 24 Under new Code section 91G.5(7), a determination by the
20 25 commissioner about whether a violation has occurred is final
20 26 agency action. Under new Code section 91G.5(8), when the
20 27 commissioner determines there has been a violation, the
20 28 commissioner may take specific actions, including cease and
20 29 desist, individual compensatory, and civil penalty remedies.

20 30 Under new Code section 91G.5(9), judicial review of a final
20 31 agency action by the commissioner may be instituted within 30
20 32 days according to the terms of Code chapter 17A. If no
20 33 petition of review is filed within 30 days, the commissioner's
20 34 findings are considered conclusive for any petition for

20 35 enforcement that the commissioner may file. Upon petition by
21 1 the commissioner, the clerk of the court, unless otherwise
21 2 ordered by the court, shall enter a decree enforcing the
21 3 order.

21 4 In new Code section 91G.5(10), a contractor is not
21 5 responsible for any other contractor's failure to properly
21 6 classify individuals who perform services for the contractor.
21 7 In new Code section 91G.5(11), in a civil action, the
21 8 commissioner may choose to be represented by a departmental
21 9 attorney or the attorney general.

21 10 New Code section 91G.6 deals with the penalties. In new
21 11 Code section 91G.6(1), a contractor who violates this Code
21 12 chapter or any rule adopted pursuant to this Code chapter
21 13 shall be subject to a civil penalty not to exceed \$1,250 for
21 14 the first violation, up to \$1,875 for a second violation
21 15 within six years of the first, and up to \$3,125 for a third or
21 16 successive violation within six years of the first violation.

21 17 Under new Code section 91G.6(2), a contractor who violates
21 18 any provision of this Code chapter or any rule adopted
21 19 pursuant to this Code chapter commits a simple misdemeanor,
21 20 which is punishable by confinement for no more than 30 days or
21 21 a fine of at least \$65 but not more than \$625 or by both. A
21 22 contractor who commits a second violation within a six-year
21 23 period commits a serious misdemeanor, which is punishable by
21 24 confinement for no more than one year and a fine of at least
21 25 \$315 but not more than \$1,875. A contractor who commits a
21 26 third or subsequent violation within a six-year period commits
21 27 an aggravated misdemeanor, which is punishable by confinement
21 28 for no more than two years and a fine of at least \$625 but not
21 29 more than \$6,250. Under new Code section 91G.6(3), any
21 30 contractor who obstructs the commissioner's inspection of
21 31 places of employment shall be liable for a civil penalty of up
21 32 to \$1,875. Under new Code section 91G.6(4), each violation
21 33 for each individual and for each day the violation continues
21 34 constitutes a separate and distinct violation. In determining
21 35 the amount of a penalty, the commissioner shall consider the

22 1 appropriateness of the penalty to the contractor and the
22 2 gravity of the violation.
22 3 New Code section 91G.7 provides that if a contractor is
22 4 found to have violated a provision of new Code section 91G.3
22 5 or 91G.4 a second or subsequent time within six years of an
22 6 earlier violation or is found to have violated, for a first or
22 7 subsequent time, new Code section 91G.8, the contractor's name
22 8 shall be posted on the division's internet site. A state
22 9 contract shall not be awarded to a contractor whose name
22 10 appears on the posting until three years have passed from the
22 11 date of the last violation determination.

22 12 New Code section 91G.8 makes it a violation of the Code
22 13 chapter for a contractor or a contractor's agent to retaliate
22 14 in any way against an individual for making a good-faith
22 15 complaint or cooperating in an investigation. Retaliation
22 16 subjects the contractor to civil penalties, to being banned
22 17 from state contracts, and a possible private right of action.

22 18 Under new Code section 91G.9, any civil penalties collected
22 19 by the commissioner shall be deposited in the general fund of
22 20 the state.

22 21 In new Code section 91G.10, if an individual has not
22 22 received compensatory damages under new Code section 91G.5,
22 23 then the individual who is damaged by an alleged new Code
22 24 chapter 91G violation may file suit in district court in the
22 25 county where the alleged violation occurred or where any
22 26 person who is party to the violation resides and may do so
22 27 without exhausting any alternative administrative remedies in
22 28 new Code chapter 91G. If it is established that an individual
22 29 has been damaged through a proceeding under new Code section
22 30 91G.10, remedies include compensatory damages, court costs and
22 31 interest, and punitive damages up to five times the amount of
22 32 the compensatory damages and court costs. The right to bring
22 33 a private action terminates five years after the date of the
22 34 alleged violation.

22 35 New Code section 91G.11(1) requires the commissioner, the
23 1 division of unemployment insurance, the division of workers'
23 2 compensation, and the department of revenue to all cooperate
23 3 by sharing information about possible misclassifications by
23 4 contractors. Under Code section 91G.11(2), the commissioner
23 5 shall notify the other agencies when a misclassification
23 6 violation is determined, and the other agencies shall
23 7 investigate. New Code section 91G.11(3) makes cooperation and
23 8 investigation among the commissioner and the heads of the
23 9 state agencies a duty of office; failing to cooperate,
23 10 pursuant to new Code section 721.2(6), results in a simple

23 11 misdemeanor, which is punishable by confinement for no more
23 12 than 30 days or a fine of at least \$65 but not more than \$625
23 13 or by both.

23 14 The definition of "employee" in new Code section 91G.3 is
23 15 essentially incorporated as part of the definitions of
23 16 "employee" in the following amended Code sections: 85.61,
23 17 86.45, 88.3, 91A.2, and 96.19.

23 18 In Code sections 84A.5 and 91.4 the division of labor of
23 19 the department of workforce development is given
23 20 responsibility for administration for new Code chapter 91G and
23 21 filing of annual reports about matters pertaining to these
23 22 Code chapters, respectively.

23 23 Code section 96.11 is amended by adding a new subsection
23 24 for interagency cooperation. The subsection requires the
23 25 director of the department of workforce development and the
23 26 department of workforce development, the divisions of labor
23 27 and workers' compensation, and the department of revenue to
23 28 all cooperate by sharing information about possible
23 29 misclassifications of employees by contractors. Cooperation
23 30 and investigation among the heads of the state agencies is
23 31 considered a duty of office; failing to cooperate, pursuant to
23 32 Code section 721.2(6), results in a simple misdemeanor, which
23 33 is punishable by confinement for no more than 30 days or a
23 34 fine of at least \$65 but not more than \$625 or by both.

23 35 DIVISION III. The provisions of the bill are severable as
24 1 provided by Code section 4.12.

24 2 The bill takes effect January 1, 2009.

24 3 LSB 6589SC 82

24 4 ak/rj/8