

Senate Study Bill 3144 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CHAIRPERSON KAPUCIAN)

A BILL FOR

1 An Act regarding persons who are deemed independent contractors
2 when performing services while operating certain vehicles.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.61, subsection 11, paragraph c,
2 subparagraph (3), Code 2020, is amended to read as follows:

3 (3) (a) For purposes of this subparagraph, "owns" includes
4 but is not limited to holding legal title to a vehicle or being
5 a party to an agreement for the conditional sale or lease of
6 the vehicle that includes the party's right to purchase upon
7 performance of conditions stated in the agreement with an
8 immediate right of possession. In the event a mortgagor of
9 a vehicle is entitled to possession of the vehicle, then the
10 conditional vendee or lessee and the mortgagor shall both be
11 deemed to own the vehicle.

12 (b) An owner-operator who, as an individual or partner,
13 or shareholder of a corporate owner-operator, owns a
14 vehicle licensed and registered as a truck, road tractor, or
15 truck tractor by a governmental agency, is an independent
16 contractor while performing services in the operation of the
17 owner-operator's vehicle if all of the following conditions are
18 substantially present:

19 (a) (i) The owner-operator is responsible for the
20 maintenance of the vehicle.

21 (b) (ii) The owner-operator bears the principal burden
22 of the vehicle's operating costs, including fuel, repairs,
23 supplies, collision insurance, and personal expenses for the
24 operator while on the road.

25 (c) (iii) The owner-operator is responsible for supplying
26 the necessary personnel to operate the vehicle, and the
27 personnel are considered the owner-operator's employees.

28 (d) (iv) The owner-operator's compensation is based on
29 factors related to the work performed, including a percentage
30 of any schedule of rates or lawfully published tariff, and not
31 on the basis of the hours or time expended.

32 (e) (v) The owner-operator determines the details and means
33 of performing the services, in conformance with regulatory
34 requirements, operating procedures of the carrier, and
35 specifications of the shipper.

1 ~~(f)~~ (vi) The owner-operator enters into a contract which
2 specifies the relationship to be that of an independent
3 contractor and not that of an employee.

4 Sec. 2. Section 91A.2, subsection 3, Code 2020, is amended
5 to read as follows:

6 3. a. "Employee" means a natural person who is employed in
7 this state for wages by an employer. Employee also includes a
8 commission salesperson who takes orders or performs services
9 on behalf of a principal and who is paid on the basis of
10 commissions but does not include persons who purchase for their
11 own account for resale.

12 b. For the purposes of **this chapter**, the following persons
13 engaged in agriculture are not employees:

14 ~~a.~~ (1) The spouse of the employer and relatives of
15 either the employer or spouse residing on the premises of the
16 employer.

17 ~~b.~~ (2) A person engaged in agriculture as an owner-operator
18 or tenant-operator and the spouse or relatives of either who
19 reside on the premises while exchanging labor with the operator
20 or for other mutual benefit of any and all such persons.

21 ~~c.~~ (3) Neighboring persons engaged in agriculture who are
22 exchanging labor or other services.

23 c. For purposes of this chapter, "employee" does not include
24 an independent contractor as described in section 85.61,
25 subsection 11, paragraph "c", subparagraph (3).

26 Sec. 3. Section 91D.1, Code 2020, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 3A. For purposes of this chapter,
29 "employee" does not include an independent contractor as
30 described in section 85.61, subsection 11, paragraph "c",
31 subparagraph (3).

32 Sec. 4. Section 96.19, subsection 17, Code 2020, is amended
33 to read as follows:

34 17. "Employing unit" means any individual or type
35 of organization, including this state and its political

1 subdivisions, state agencies, boards, commissions, and
2 instrumentalities thereof, any partnership, association, trust,
3 estate, joint stock company, insurance company or corporation,
4 whether domestic or foreign, or the receiver, trustee in
5 bankruptcy, trustee or successor thereof, or the legal
6 representative of a deceased person, which has or subsequent
7 to January 1, 1936, had in its employ one or more individuals
8 performing services for it within this state. All individuals
9 performing services within this state for any employing unit
10 which maintains two or more separate establishments within this
11 state shall be deemed to be employed by a single employing
12 unit for all the purposes of [this chapter](#). Whenever any
13 employing unit contracts with or has under it any contractor or
14 subcontractor for any work which is part of its usual trade,
15 occupation, profession, or business, unless the employing unit
16 as well as each such contractor or subcontractor is an employer
17 by reason of [subsection 16](#) or [section 96.8, subsection 3](#), the
18 employing unit shall for all the purposes of [this chapter](#) be
19 deemed to employ each individual in the employ of each such
20 contractor or subcontractor for each day during which such
21 individual is engaged in performing such work; except that each
22 such contractor or subcontractor who is an employer by reason
23 of [subsection 16](#) or [section 96.8, subsection 3](#), shall alone
24 be liable for the contributions measured by wages payable to
25 individuals in the contractor's or subcontractor's employ, and
26 except that any employing unit who shall become liable for and
27 pay contributions with respect to individuals in the employ of
28 any such contractor or subcontractor who is not an employer
29 by reason of [subsection 16](#) or [section 96.8, subsection 3](#), may
30 recover the same from such contractor or subcontractor, except
31 as any contractor or subcontractor who would in the absence
32 of [subsection 16](#) or [section 96.8, subsection 3](#), be liable
33 to pay said contributions, accepts exclusive liability for
34 said contributions under an agreement with such employer made
35 pursuant to general rules of the department. Each individual

1 employed to perform or to assist in performing the work of any
2 agent or employee of an employing unit shall be deemed to be
3 employed by such employing unit for all the purposes of this
4 chapter, whether such individual was hired or paid directly by
5 such employing unit or by such agent or employee, provided the
6 employing unit had actual or constructive knowledge of such
7 work, and provided, further, that such employment was for a
8 total of not less than eight hours in any one calendar week.
9 An employing unit shall not be deemed to employ an independent
10 contractor as described in section 85.61, subsection 11,
11 paragraph "c", subparagraph (3).

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill regards persons who are deemed independent
16 contractors when performing services while operating certain
17 vehicles, for purposes of certain workers' compensation, wage,
18 and unemployment requirements.

19 Under Code chapter 85 (workers' compensation), a worker
20 or employee is entitled to certain workers' compensation
21 benefits. However, the terms "worker" and "employee" do not
22 include an independent contractor. An owner-operator who owns
23 a vehicle licensed and registered as a truck, road tractor, or
24 truck tractor is considered an independent contractor while
25 performing services in the operation of the owner-operator's
26 vehicle if certain conditions apply. The bill defines the term
27 "owns" as it relates to an owner-operator who owns a vehicle
28 and qualifies as an independent contractor for purposes of Code
29 chapter 85. By operation of law and pursuant to Code chapter
30 87 (workers' compensation or employers' liability insurance),
31 a motor carrier who contracts with an owner-operator who is
32 acting as an independent contractor under the bill is not
33 required to insure the motor carrier's liability for the
34 owner-operator nor is the motor carrier required to purchase
35 compensation liability insurance for the owner-operator or its

1 employees (Code sections 87.1 and 87.23).

2 The bill excludes from the term "employee" in Code chapters
3 91A (wage payment collection) and 91D (minimum wage) an
4 owner-operator performing services while operating their
5 vehicle who qualifies as an independent contractor under
6 the bill. By operation of law, an employer is exempt from
7 certain wage payment collection requirements and minimum wage
8 requirements as it relates to non-employees. Furthermore,
9 under Code chapter 91B, such non-employees are not entitled to
10 certain rights regarding access to information and bringing
11 certain claims against employers who release information.

12 The bill also provides that an employing unit, as defined
13 in Code chapter 96 (employment security and unemployment
14 compensation), shall not be deemed to employ an owner-operator
15 performing services while operating their vehicle who qualifies
16 as an independent contractor under the bill. By operation of
17 law, an employing unit is exempt from certain unemployment
18 compensation requirements as it relates to persons it does not
19 employ.