

**Senate File 2201 - Introduced**

SENATE FILE 2201  
BY COMMITTEE ON WORKFORCE

(SUCCESSOR TO SSB 3104)

**A BILL FOR**

1 An Act providing for limitations on workplace inspections under  
2 the federal and state occupational safety and health laws  
3 and providing remedies and penalties.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 88C.1 Definitions.

2 For purposes of this chapter, unless the context otherwise  
3 requires:

4 1. "Employee" means the same as defined in chapter 88.

5 2. "Employer" means the same as defined in chapter 88.

6 3. "Government" means any of the following:

7 a. The state of Iowa or a political subdivision of the  
8 state.

9 b. Any agency of the state or of a political subdivision of  
10 the state, including but not limited to a department, bureau,  
11 board, authority, instrumentality, or court.

12 c. Any government official.

13 d. Any private party or third party suing under or enforcing  
14 a law, ordinance, rule, or regulation of the state or a  
15 political subdivision of the state.

16 4. "Government official" means any individual employed by  
17 the government, acting as an agent, contractor, or officer of  
18 the government, or otherwise acting pursuant to state law.

19 "Government official" includes a private individual acting  
20 pursuant to state law.

21 Sec. 2. NEW SECTION. 88C.2 Workplace inspections —  
22 limitation on nonemployee representatives.

23 1. Notwithstanding 29 C.F.R. §1903.8(c), or any  
24 other rule, regulation, or interpretation of the federal  
25 Occupational Safety and Health Act of 1970, no government  
26 official authorized under the occupational safety and health  
27 administration of the United States department of labor,  
28 including as authorized under the state's workplace safety  
29 and health program authorized by chapter 88, 29 C.F.R. §1952,  
30 or any other applicable federal and state law, to conduct  
31 workplace inspections, or otherwise act as a compliance safety  
32 and health officer, shall be permitted to select an individual  
33 as a representative authorized by an employee if the individual  
34 is not an employee of the employer. However, a government  
35 official may select an individual who is not an employee of the

1 employer as a representative if good cause is shown that all  
2 of the following apply:

3     *a.* The nonemployee representative possesses  
4 industry-specific and applicable expertise and experience in  
5 reducing worker illness, injury, or death, and either of the  
6 following apply:

7         (1) The nonemployee representative possesses  
8 industry-specific and applicable technical education,  
9 expertise, and experience essential to an effective and  
10 thorough physical inspection of the workplace.

11         (2) The nonemployee representative possesses specific  
12 and applicable language skills essential to an effective and  
13 thorough physical inspection of the workplace.

14     *b.* The nonemployee representative is unlikely to interfere  
15 with a fair and orderly physical inspection of the workplace.

16     *c.* The nonemployee representative is not reasonably known  
17 to be employed by, affiliated with, or under contract with  
18 a competitor of the employer and is not likely to encounter  
19 proprietary information or trade secrets of the employer during  
20 the inspection.

21     2. The credentials of a nonemployee representative shall be  
22 documented in writing and provided to the employer prior to the  
23 opening conference of the physical inspection.

24     3. An employer shall not be required to pay for the services  
25 of a nonemployee representative.

26     4. An employer may require a warrant as provided under state  
27 or federal law before permitting the entry of a nonemployee  
28 representative or continued participation of a nonemployee  
29 representative in an inspection.

30     Sec. 3. NEW SECTION. **88C.3 Remedies — penalty.**

31     1. An aggrieved employer shall first seek injunctive relief  
32 to prevent or remedy a violation of this chapter or the effects  
33 of a violation of this chapter. If injunctive relief is  
34 granted by the district court and the injunction is thereafter  
35 violated, the aggrieved employer may seek any of the following:



1           the explanation's substance by the members of the general assembly.

2       This bill relates to workplace inspections under the federal  
3 and state occupational safety and health laws.

4       The bill provides that no government official authorized  
5 under the federal occupational safety and health administration  
6 to conduct workplace inspections shall be permitted to select  
7 an individual as a representative authorized by an employee  
8 if the individual is not an employee of the employer. This  
9 prohibition applies notwithstanding the federal Occupational  
10 Safety and Health Act of 1970. However, a government  
11 official may select an individual who is not an employee  
12 of the employer as a representative if good cause is shown  
13 that certain criteria specified in the bill apply. The bill  
14 defines a government official as any individual employed by  
15 the government, acting as an agent, contractor, or officer of  
16 the government, or otherwise acting pursuant to state law,  
17 including a private individual acting pursuant to state law.

18       If an individual who is not an employee of the employer  
19 is selected as a representative, the credentials of the  
20 nonemployee representative shall be documented in writing and  
21 provided to the employer prior to the opening conference of  
22 the physical inspection. Additionally, the employer shall  
23 not be required to pay for the services of a nonemployee  
24 representative, and the employer may require a warrant as  
25 provided under state or federal law before permitting the entry  
26 of a nonemployee representative or continued participation of a  
27 nonemployee representative in an inspection.

28       The bill permits an aggrieved employer to seek injunctive  
29 relief to prevent or remedy a violation of the bill or the  
30 effects of a violation of the bill. If injunctive relief is  
31 granted by the district court and the injunction is thereafter  
32 violated, the aggrieved employer may then seek compensatory  
33 damages, reasonable attorney fees and other litigation costs,  
34 and any other appropriate relief. However, only declaratory  
35 relief and injunctive relief shall be available against an

1 individual who is not a government official.

2 An action under the bill may be commenced, and relief  
3 may be granted, in district court without regard to whether  
4 the aggrieved employer has sought or exhausted available  
5 administrative remedies.

6 A government official who knowingly violates the bill, as  
7 determined by a preponderance of the evidence, is subject to  
8 a civil penalty of not more than \$10,000 per violation. The  
9 attorney general may bring an action in district court to  
10 collect the civil penalty.

11 An employer may assert a violation of the bill as a claim  
12 against the government, as defined in the bill, in any judicial  
13 or administrative proceeding or as defense in any judicial  
14 or administrative proceeding without regard to whether the  
15 proceeding is brought by or in the name of the government or  
16 any other party.

17 Claims under the bill are exempted from the state and  
18 municipal tort claims laws.