

# Senate File 2416 - Reprinted

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 effective date.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 SF 2416  
7 ak/ml/12

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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 (4) For the purposes of this chapter, persons licensed  
1 24 under chapter 543B are not employees.  
1 25 b. In order to establish the absence of an employment  
1 26 relationship, a putative employer has the burden to establish  
1 27 all of the following:  
1 28 (1) The putative employer and putative employee share the  
1 29 intention to create an independent contractor relationship.  
1 30 (2) The putative employer does not control or direct the  
1 31 performance of services by the putative employee.  
1 32 (3) The putative employer is not responsible for payment  
1 33 of wages to the putative employee.  
1 34 (4) The putative employer does not have the right to  
1 35 discharge the putative employee or terminate the working  
2 1 relationship with the putative employee.  
2 2 (5) The putative employer is not the authority in charge  
2 3 of the work or for whose benefit the putative employee is  
2 4 providing services.  
2 5 Sec. 2. Section 91A.2, subsection 6, Code 2007, is amended  
2 6 to read as follows:  
2 7 6. "Liquidated damages" means the sum of five percent  
2 8 multiplied by the amount of any wages that were not paid or of  
2 9 any authorized expenses that were not reimbursed on a regular  
2 10 payday or on another day pursuant to section 91A.3 multiplied  
2 11 by the total number of days, excluding Sundays, legal  
2 12 holidays, and the first seven days after the regular payday on  
2 13 which wages were not paid or expenses were not reimbursed.  
2 14 However, such sum shall not exceed twice the amount of the  
2 15 unpaid wages and shall not accumulate ~~when an employer is~~  
~~2 16 subject to a petition filed in bankruptcy.~~

2 17 Sec. 3. Section 91A.6, subsections 1 and 2, Code 2007, are  
2 18 amended to read as follows:

~~2 19 1. An employer shall after being notified by the  
2 20 commissioner pursuant to subsection 2 do the following:~~

2 21 a. Notify its employees in writing at the time of hiring  
2 22 what wages and regular paydays are designated by the employer.

2 23 b. Notify, at least one pay period prior to the initiation  
2 24 of any changes, its employees of any changes in the  
2 25 arrangements specified in this subsection ~~†~~ that reduce wages  
2 26 or alter the regular paydays. The notice shall either be in  
2 27 writing or posted at a place where employee notices are  
2 28 routinely posted.

2 29 c. Make available to its employees upon written request, a  
2 30 written statement enumerating employment agreements and  
2 31 policies with regard to vacation pay, sick leave,  
2 32 reimbursement for expenses, retirement benefits, severance  
2 33 pay, or other comparable matters with respect to wages.  
2 34 Notice of such availability shall be given to each employee in  
2 35 writing or by a notice posted at a place where employee

3 1 notices are routinely posted.  
3 2 d. Establish, maintain, and preserve for three calendar  
3 3 years the payroll records showing the hours worked, wages  
3 4 earned, and deductions made for each employee and any  
3 5 employment agreements entered into between an employer and  
3 6 employee. Failure to do so shall raise a rebuttable

~~3 7 presumption that the employer did not pay the required minimum  
3 8 wage under section 91D.1.~~

~~3 9 2. The commissioner shall notify an employer to comply  
3 10 with subsection 1 if the employer has paid a claim for unpaid  
3 11 wages or nonreimbursed authorized expenses and liquidated  
3 12 damages under section 91A.10 or if the employer has been  
3 13 assessed a civil money penalty under section 91A.12. However,  
3 14 a court may, when rendering a judgment for wages or  
3 15 nonreimbursed authorized expenses and liquidated damages or  
3 16 upholding a civil money penalty assessment, order that an  
3 17 employer shall not be required to comply with the provisions  
3 18 of subsection 1 or that an employer shall be required to  
3 19 comply with the provisions of subsection 1 for a particular  
3 20 period of time.~~

3 21 Sec. 4. Section 91A.8, Code 2007, is amended to read as  
3 22 follows:

3 23 91A.8 VIOLATIONS BY EMPLOYER, DAMAGES RECOVERABLE BY AN  
3 24 EMPLOYEE UNDER THIS CHAPTER.

~~3 25 1. A violation of this chapter shall occur any week when  
3 26 an individual employee was not paid the legally required wages  
3 27 under this chapter, state taxes were not withheld, or in the  
3 28 case of improper discharge, discrimination, or retaliation  
3 29 against an employee, every week after the improper discharge,  
3 30 discrimination, or retaliation has occurred until compensation  
3 31 is finally made.~~

~~3 32 2. When it has been shown that an employer has  
3 33 intentionally failed to pay an employee wages or reimburse  
3 34 expenses pursuant to section 91A.3, whether as the result of a  
3 35 wage dispute or otherwise, the employer shall be liable to the  
4 1 employee for any the unpaid wages or expenses that are so  
4 2 intentionally failed to be paid or reimbursed, plus liquidated  
4 3 damages, court costs, and any attorney's attorney fees  
4 4 incurred in recovering the unpaid wages and determined to have  
4 5 been usual and necessary. In other instances the employer  
4 6 shall be liable only for unpaid wages or expenses, court costs  
4 7 and usual and necessary attorney's fees incurred in recovering  
4 8 the unpaid wages or expenses.~~

4 9 Sec. 5. Section 91A.9, subsection 2, Code 2007, is amended  
4 10 to read as follows:

~~4 11 2. a. The commissioner may, consistent with due process  
4 12 of law, enter any place of employment to inspect records  
4 13 concerning wages and payrolls, to question the employer and  
4 14 employees, and to investigate such facts, conditions, or  
4 15 matters as are deemed appropriate in determining whether any  
4 16 person has violated the provisions of this chapter. However,  
4 17 such entry by the commissioner shall only be in response to a  
4 18 written complaint.~~

~~4 19 b. A complaining employee may submit a written request for  
4 20 confidentiality of identifying information. Upon such  
4 21 request, the commissioner shall determine if the commissioner  
4 22 can effectively pursue the matter while keeping the identity  
4 23 of the complaining employee confidential. If the commissioner  
4 24 determines that an employee's identity must be disclosed in  
4 25 order to effectively pursue the matter, the commissioner may  
4 26 do so only with the employee's consent. Otherwise, the  
4 27 commissioner shall keep the complaining employee's identity~~

4 28 confidential notwithstanding chapter 22.

4 29 Sec. 6. Section 91A.10, subsection 1, Code 2007, is  
4 30 amended to read as follows:

4 31 1. a. Upon the written complaint of the employee  
4 32 involved, the commissioner may determine whether wages have  
4 33 not been paid and may constitute an enforceable claim. If for  
4 34 any reason the commissioner decides not to make such  
4 35 determination, the commissioner shall so notify the  
5 1 complaining employee within fourteen days of receipt of the  
5 2 complaint. The commissioner shall otherwise notify the  
5 3 employee of such determination within a reasonable time ~~and if~~  
5 4 ~~it is determined.~~

5 5 b. Without regard to whether the commissioner received a  
5 6 written complaint from an employee or initiated an  
5 7 investigation, if the commissioner determines that there is an  
5 8 enforceable claim, the commissioner shall, with the consent of  
5 9 the complaining employee, take an assignment in trust for the  
5 10 wages and for any claim for liquidated damages ~~without being~~  
5 11 ~~bound by any of the.~~ The technical rules respecting the  
5 12 validity of the assignment shall not apply. However, the  
5 13 commissioner shall not accept any complaint for unpaid wages  
5 14 and liquidated damages after one year from the date the wages  
5 15 became due and payable.

5 16 Sec. 7. Section 91A.10, subsection 5, Code 2007, is  
5 17 amended to read as follows:

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

6 1 reasons. Any employee may file a complaint with the  
6 2 commissioner alleging discharge, ~~or discrimination, or~~  
6 3 retaliation within thirty days after such violation occurs.

6 4 Upon receipt of the complaint, the commissioner shall cause an  
6 5 investigation to be made to the extent deemed appropriate. If  
6 6 the commissioner determines from the investigation that the  
6 7 provisions of this subsection have been violated, the  
6 8 commissioner shall bring an action in the appropriate district  
6 9 court against such person. The district court shall have  
6 10 jurisdiction, for cause shown, to restrain violations of this  
6 11 subsection and order all appropriate relief including rehiring  
6 12 or reinstatement of the employee to the former position with  
6 13 back pay.

6 14 Sec. 8. Section 91A.10, Code 2007, is amended by adding  
6 15 the following new subsection:

6 16 NEW SUBSECTION. 6. A civil action to enforce this section  
6 17 may also be maintained in any court of competent jurisdiction  
6 18 by the commissioner or by any party injured by a violation of  
6 19 this section. An employer or other person who retaliates  
6 20 against an employee or other person in violation of this  
6 21 section shall be required to pay the person an amount set by  
6 22 the commissioner or a court sufficient to compensate the  
6 23 employee or other person and deter future violations, but not  
6 24 less than one hundred fifty dollars for each day that the  
6 25 violation continued.

6 26 Sec. 9. Section 91A.12, subsection 1, Code 2007, is  
6 27 amended to read as follows:

6 28 1. Any employer who violates the provisions of this  
6 29 chapter or the rules ~~promulgated under it~~ adopted pursuant to  
6 30 this chapter shall be subject to a civil money penalty of not  
6 31 more than ~~one~~ five hundred dollars for each violation. The  
6 32 commissioner may recover such civil money penalty according to  
6 33 the provisions of subsections 2 ~~to~~ through 5. Any civil money  
6 34 penalty recovered shall be deposited in the general fund of  
6 35 the state.

7 1 DIVISION II  
7 2 EMPLOYEE CLASSIFICATION  
7 3 Sec. 10. NEW SECTION. 91G.1 PURPOSE.

7 4 The purpose of this chapter is to address the practice of  
7 5 misclassifying employees as independent contractors.

7 6 Sec. 11. NEW SECTION. 91G.2 DEFINITIONS.

7 7 1. "Commissioner" means the labor commissioner appointed  
7 8 pursuant to section 91.2 or the labor commissioner's designee.

7 9 2. "Construction" means any constructing, altering,  
7 10 reconstructing, repairing, rehabilitating, refinishing,  
7 11 refurbishing, remodeling, remediating, renovating, custom  
7 12 fabricating, maintenance, landscaping, improving, wrecking,  
7 13 painting, decorating, demolishing, and adding to or  
7 14 subtracting from any building, structure, airport facility,  
7 15 highway, roadway, street, alley, bridge, sewer, drain, ditch,  
7 16 sewage disposal plant, water works, parking facility,  
7 17 railroad, excavation or other project, development, real  
7 18 property, or improvement, or to do any part thereof, whether  
7 19 or not the performance of the work described in this  
7 20 subsection involves an addition to, or fabrication into, any  
7 21 structure, project, development, real property, or improvement  
7 22 described in this subsection of any material or article of  
7 23 merchandise.

7 24 3. "Contractor" means any person, as defined in section  
7 25 4.1, engaged in construction. "Contractor" includes general  
7 26 contractors, subcontractors, and the state of Iowa and its  
7 27 officers, agencies, and political subdivisions.

7 28 4. "Division" means the division of labor services of the  
7 29 department of workforce development.

7 30 5. "Interested party" means an individual performing  
7 31 services for a contractor who alleges a violation of this  
7 32 chapter or a person with an interest in compliance with this  
7 33 chapter.

7 34 6. "Performing services" means any constructing, altering,  
7 35 reconstructing, repairing, rehabilitating, refinishing,  
8 1 refurbishing, remodeling, remediating, renovating, custom  
8 2 fabricating, maintenance, landscaping, improving, wrecking,  
8 3 painting, decorating, demolishing, and adding to or  
8 4 subtracting from any building, structure, airport facility,  
8 5 highway, roadway, street, alley, bridge, sewer, drain, ditch,  
8 6 sewage disposal plant, water works, parking facility,  
8 7 railroad, excavation or other project, development, real  
8 8 property, or improvement, or to do any part thereof, whether  
8 9 or not the performance of the work described in this  
8 10 subsection involves an addition to, or fabrication into, any  
8 11 structure, project, development, real property, or improvement  
8 12 described in this subsection of any material or article of  
8 13 merchandise.

8 14 Sec. 12. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS  
8 15 PERFORMING SERVICES.

8 16 1. An individual performing services shall be classified  
8 17 as an employee unless all of the following conditions are  
8 18 present and the contractor and the individual both intend to  
8 19 create an independent contractor relationship between the  
8 20 contractor and the individual:

8 21 a. The contractor does not control or direct the  
8 22 performance of services by the individual.

8 23 b. The contractor is not responsible for the payment of  
8 24 the individual's wages.

8 25 c. The contractor does not have the right to discharge the  
8 26 individual or terminate the employment relationship with the  
8 27 individual.

8 28 d. The contractor is not the authority in charge of the  
8 29 work or for whose benefit the individual is providing  
8 30 services.

8 31 2. An individual classified as an employee under this  
8 32 section shall also be classified as an employee pursuant to  
8 33 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits  
8 34 a violation of this chapter by not treating the individual so  
8 35 classified under this chapter as an employee pursuant to  
9 1 chapters 85, 85A, 85B, 88, 91A, and 96.

9 2 3. An individual who is an owner-operator as described in  
9 3 section 85.61, subsection 11, and not deemed an employee under  
9 4 that subsection shall not be classified as an employee under  
9 5 this section.

9 6 Sec. 13. NEW SECTION. 91G.4 NOTICE OF LAW.

9 7 1. The commissioner shall create posters in both English  
9 8 and Spanish summarizing the requirements of this chapter. The  
9 9 English and Spanish versions of the poster shall be posted on  
9 10 the division's internet site and on bulletin boards in the  
9 11 workforce centers.

9 12 2. The commissioner shall provide the posters without  
9 13 charge to contractors upon request.

9 14 3. If a contractor violates section 91G.3 or 91G.8 or

9 15 rules adopted pursuant to any of those sections, the  
9 16 contractor shall post the English and Spanish versions of the  
9 17 poster created by the commissioner. The posters shall be  
9 18 posted in conspicuous locations at the places where notices to  
9 19 employees are normally posted at each job site and office of  
9 20 the contractor.

9 21 Sec. 14. NEW SECTION. 91G.5 ENFORCEMENT.

9 22 1. An interested party may file a complaint with the  
9 23 commissioner alleging a violation of section 91G.3, 91G.4, or  
9 24 91G.8 or rules adopted pursuant to any of those sections. An  
9 25 interested party who makes a complaint when the interested  
9 26 party knows such representation to be false commits a simple  
9 27 misdemeanor.

9 28 2. The commissioner shall adopt rules pursuant to and  
9 29 consistent with chapter 17A regarding investigations to  
9 30 determine whether a contractor has violated any provisions of  
9 31 this chapter or any rules adopted pursuant to this chapter.

9 32 3. A person acting in an official capacity related to  
9 33 services provided by the commissioner for the purposes of  
9 34 workplace safety training and education, pursuant to section  
9 35 88.16, shall not file or investigate a complaint pursuant to  
10 1 this chapter if the information leading to the complaint was  
10 2 received due to services provided pursuant to section 88.16.

10 3 4. The commissioner shall enforce the provisions of this  
10 4 chapter. The commissioner may conduct investigations in  
10 5 connection with the administration and enforcement of this  
10 6 chapter and may visit and inspect, at all reasonable times,  
10 7 any places where individuals are performing services for a  
10 8 contractor and may inspect, at all reasonable times, documents  
10 9 related to the determination of whether an individual is an  
10 10 employee under section 91G.3.

10 11 5. The commissioner and an employee of the commissioner  
10 12 shall be indemnified for any damages and legal expenses  
10 13 incurred as a result of the good-faith performance of the  
10 14 employee's official duties under this chapter, in regard to  
10 15 any claim for civil damages not specifically covered by the  
10 16 Iowa tort claims Act, chapter 669.

10 17 6. The commissioner may compel by subpoena the attendance  
10 18 and testimony of witnesses and the production of books,  
10 19 payrolls, records, papers, and other evidence in an  
10 20 investigation and may administer oaths to witnesses.

10 21 7. Upon the failure or refusal of any person to obey a  
10 22 subpoena, the commissioner may petition a district court of  
10 23 competent jurisdiction, and upon proper showing, the court may  
10 24 enter an order compelling the witness to appear and testify or  
10 25 produce documentary evidence. Failure to obey the court order  
10 26 is punishable as contempt of court.

10 27 8. A determination by the commissioner as to whether a  
10 28 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted  
10 29 pursuant to any of those sections has occurred shall be  
10 30 considered final agency action under chapter 17A.

10 31 9. If the commissioner determines upon investigation that  
10 32 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted  
10 33 pursuant to any of those sections has occurred, the  
10 34 commissioner may do any of the following:

10 35 a. Issue and cause to be served on any party an order to  
11 1 cease and desist from any further violation.

11 2 b. Take affirmative or other action as deemed reasonable  
11 3 to eliminate the effect of any violation.

11 4 c. Collect the amount of any wages, salary, employment  
11 5 benefits, or other compensation denied or lost to an  
11 6 individual.

11 7 d. Assess any civil penalty allowed by this chapter.

11 8 e. Refer matters to the county attorney upon determining  
11 9 that a criminal violation may have occurred.

11 10 10. Judicial review of any final agency action of the  
11 11 commissioner taken pursuant to this section may be sought in  
11 12 accordance with the terms of chapter 17A. If a petition for  
11 13 judicial review is not filed within thirty days after service  
11 14 of the determination of the commissioner, the commissioner's  
11 15 determination shall be conclusive in connection with any  
11 16 petition for enforcement filed by the commissioner and in such  
11 17 case, the clerk of court, unless otherwise ordered by the  
11 18 court, shall forthwith enter a decree enforcing the  
11 19 commissioner's determination and shall transmit a copy of the  
11 20 decree to the commissioner and the contractor named in the  
11 21 petition.

11 22 11. A contractor shall not be liable under this chapter  
11 23 for any other contractor's failure to properly classify  
11 24 individuals.

11 25 12. In any civil action to enforce the provisions of this

11 26 chapter, the commissioner may be represented by an attorney  
11 27 employed by the division or, at the commissioner's request, by  
11 28 the attorney general.

11 29 Sec. 15. NEW SECTION. 91G.6 PENALTIES.

11 30 1. A contractor who violates section 91G.3, 91G.4, or  
11 31 91G.8 or rules adopted pursuant to one of those sections is  
11 32 subject to a civil penalty not to exceed one thousand two  
11 33 hundred fifty dollars for a first violation as determined by  
11 34 the commissioner. A contractor is subject to a civil penalty  
11 35 not to exceed one thousand eight hundred seventy-five dollars  
12 1 for a second violation occurring within six years of a first  
12 2 violation as determined by the commissioner. A contractor  
12 3 shall be subject to a civil penalty not to exceed three  
12 4 thousand one hundred twenty-five dollars for a third or  
12 5 successive violation occurring within six years of a first  
12 6 violation as determined by the commissioner.

12 7 2. A contractor who violates any provision of section  
12 8 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of  
12 9 those sections commits a simple misdemeanor. A contractor who  
12 10 commits such a second violation within six years of a first  
12 11 violation commits a serious misdemeanor. A contractor who  
12 12 commits such a third or subsequent violation within six years  
12 13 of a first violation commits an aggravated misdemeanor.

12 14 3. A contractor who obstructs the commissioner, the  
12 15 employee of the commissioner, or another person authorized to  
12 16 inspect places where individuals are performing services for a  
12 17 contractor is subject to a civil penalty not to exceed one  
12 18 thousand eight hundred seventy-five dollars.

12 19 4. Each violation described in this section for each  
12 20 individual and for each day the violation continues  
12 21 constitutes a separate and distinct violation. In determining  
12 22 the amount of a civil penalty, the commissioner shall consider  
12 23 the appropriateness of the civil penalty to the contractor and  
12 24 the gravity of the violation.

12 25 Sec. 16. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.

12 26 For a second or subsequent violation of section 91G.3 or  
12 27 91G.4 determined by the commissioner to have occurred within  
12 28 six years of an earlier violation or for a first or subsequent  
12 29 violation of section 91G.8, the commissioner shall add the  
12 30 contractor's name to a list to be posted on the division's  
12 31 internet site and notify the violating contractor of the  
12 32 posting. A state contract shall not be awarded to a  
12 33 contractor whose name appears on the list until three years  
12 34 have elapsed from the date of the determination of the last  
12 35 violation.

13 1 Sec. 17. NEW SECTION. 91G.8 RETALIATION.

13 2 1. A contractor or contractor's agent shall not retaliate  
13 3 through discharge or in any other manner against an individual  
13 4 for any of the following:

13 5 a. Making a good-faith complaint to the commissioner or to  
13 6 a state or federal agency regarding a violation of section  
13 7 91G.3 or 91G.4.

13 8 b. Testifying or otherwise cooperating in an investigation  
13 9 or proceeding under this chapter.

13 10 2. Such retaliation shall subject a contractor or  
13 11 contractor's agent to civil penalties and a prohibition on  
13 12 being awarded state contracts pursuant to this chapter and may  
13 13 give rise to a private right of action.

13 14 Sec. 18. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.

13 15 Any penalties assessed and collected by the commissioner  
13 16 pursuant to this chapter shall be deposited in the general  
13 17 fund of the state.

13 18 Sec. 19. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

13 19 1. An individual, who has not received compensatory  
13 20 damages under section 91G.5, alleging a contractor's violation  
13 21 of this chapter or a rule adopted pursuant to this chapter and  
13 22 damages may file suit in district court against the  
13 23 contractor, in the county where the alleged violation  
13 24 occurred, or where any person who is party to the action  
13 25 resides, without regard to exhaustion of any alternative  
13 26 administrative remedies provided in this chapter. Actions may  
13 27 be brought by one or more aggrieved individuals for and on  
13 28 behalf of themselves and other individuals similarly situated.

13 29 2. If it is established that an individual has been  
13 30 damaged through a proceeding under subsection 1 by a  
13 31 contractor who has willfully violated a provision of this  
13 32 chapter or a rule adopted pursuant to this chapter, the  
13 33 individual shall be entitled to collect the following:

13 34 a. The amount of any wages, salary, employment benefits,  
13 35 or other compensation denied or lost to the individual due to  
14 1 the violation or a retaliatory action, and court costs and

14 2 interest at the statutory rate from the date of filing.  
14 3 b. Punitive damages, not to exceed five times the amount  
14 4 awarded in paragraph "a".  
14 5 c. Reasonable attorney fees, if the contractor who has  
14 6 damaged the individual has committed a second or subsequent  
14 7 violation of section 91G.3, 91G.4, or 91G.8, or rules adopted  
14 8 pursuant to this chapter, occurring within six years of a  
14 9 first violation.

14 10 3. The right of a damaged individual to bring an action  
14 11 under this section terminates five years from the date of the  
14 12 alleged violation by the contractor.

14 13 Sec. 20. NEW SECTION. 91G.11 COOPERATION.

14 14 1. All state agencies shall cooperate under this chapter  
14 15 by sharing information concerning possible misclassification  
14 16 by a contractor of one or more of the contractor's employees  
14 17 as independent contractors.

14 18 2. Upon determining that a contractor misclassified one or  
14 19 more employees as independent contractors in violation of this  
14 20 chapter, the commissioner shall notify the division  
14 21 administering unemployment insurance services, the division of  
14 22 workers' compensation, and the department of revenue, each of  
14 23 which shall investigate the contractor's compliance with  
14 24 applicable laws.

14 25 3. Cooperation under this chapter shall be considered a  
14 26 duty of office for the heads of state agencies or their  
14 27 designees. Failure to so cooperate constitutes a violation of  
14 28 section 721.2, subsection 6.

14 29 Sec. 21. NEW SECTION. 91G.12 AGRICULTURAL ACTIVITIES.

14 30 A person shall not be classified as an employee or a  
14 31 contractor under this chapter when the person participates in  
14 32 agricultural activities on agricultural land. Agricultural  
14 33 activities include the raising, harvesting, handling, drying,  
14 34 processing, or storage of crops used for feed, food, fuel,  
14 35 seed, or fiber; the production, care, feeding, or keeping of  
15 1 livestock; fencing; drainage; the handling or transportation  
15 2 of crops or livestock; the storage, treatment, land  
15 3 application, or disposal of livestock manure; the application  
15 4 of fertilizers, soil conditioners, pesticides, and herbicides  
15 5 on crops; environmental protection or preservation activities;  
15 6 and any accessory or related activities.

15 7 Sec. 22. Section 84A.5, subsection 4, Code Supplement  
15 8 2007, is amended to read as follows:

15 9 4. The division of labor services is responsible for the  
15 10 administration of the laws of this state under chapters 88,  
15 11 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91G, 92,  
15 12 and 94A, and section 85.68. The executive head of the  
15 13 division is the labor commissioner, appointed pursuant to  
15 14 section 91.2.

15 15 Sec. 23. Section 85.61, subsection 11, paragraph b, Code  
15 16 Supplement 2007, is amended to read as follows:

15 17 b. (1) "Worker" or "employee" includes an inmate as  
15 18 defined in section 85.59 and a person described in section  
15 19 85.60.

15 20 (2) "Worker" or "employee" includes an individual who is  
15 21 classified as an employee pursuant to section 91G.3.

15 22 Sec. 24. Section 86.45, subsection 2, Code 2007, is  
15 23 amended by adding the following new paragraph:

15 24 NEW PARAGRAPH. j. To cooperate with the division of labor  
15 25 services, the division of the department of workforce  
15 26 development that administers unemployment insurance services,  
15 27 and the department of revenue pursuant to chapter 91G by  
15 28 sharing information concerning possible misclassification of  
15 29 one or more employees as independent contractors.

15 30 Sec. 25. Section 88.3, subsection 4, Code 2007, is amended  
15 31 to read as follows:

15 32 4. "Employee" means an employee of an employer who is  
15 33 employed in a business of the employer. "Employee" also means  
15 34 an inmate as defined in section 85.59, when the inmate works  
15 35 in connection with the maintenance of the institution, in an  
16 1 industry maintained in the institution, or while otherwise on  
16 2 detail to perform services for pay. "Employee" also means a  
16 3 volunteer involved in responses to hazardous waste incidences.  
16 4 The employer of a volunteer is that entity which provides or  
16 5 which is required to provide workers' compensation coverage  
16 6 for the volunteer. "Employee" includes an individual who is  
16 7 classified as an employee pursuant to section 91G.3.

16 8 Sec. 26. Section 91.4, subsection 5, Code Supplement 2007,  
16 9 is amended to read as follows:

16 10 5. The director of the department of workforce  
16 11 development, in consultation with the labor commissioner,  
16 12 shall, at the time provided by law, make an annual report to

16 13 the governor setting forth in appropriate form the business  
16 14 and expense of the division of labor services for the  
16 15 preceding year, the number of disputes or violations processed  
16 16 by the division and the disposition of the disputes or  
16 17 violations, and other matters pertaining to the division which  
16 18 are of public interest, together with recommendations for  
16 19 change or amendment of the laws in this chapter and chapters  
16 20 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,  
16 21 and 94A, and section 85.68, and the recommendations, if any,  
16 22 shall be transmitted by the governor to the first general  
16 23 assembly in session after the report is filed.

16 24 Sec. 27. Section 91A.2, subsection 3, unnumbered paragraph  
16 25 1, Code 2007, is amended to read as follows:

16 26 "Employee" means a natural person who is employed in this  
16 27 state for wages by an employer. Employee also includes a  
16 28 commission salesperson who takes orders or performs services  
16 29 on behalf of a principal and who is paid on the basis of  
16 30 commissions but does not include persons who purchase for  
16 31 their own account for resale. "Employee" includes an  
16 32 individual who is classified as an employee pursuant to

16 33 section 91G.3. For the purposes of this chapter, the  
16 34 following persons engaged in agriculture are not employees:

16 35 Sec. 28. Section 96.11, Code Supplement 2007, is amended  
17 1 by adding the following new subsection:

17 2 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.

17 3 a. All state agencies shall cooperate with the director  
17 4 and the department pursuant to chapter 91G by sharing  
17 5 information concerning possible misclassification of employees  
17 6 as independent contractors.

17 7 b. Cooperation under this chapter shall be considered a  
17 8 duty of office for the heads of the state agencies or their  
17 9 designees. Failure to so cooperate constitutes a violation of  
17 10 section 721.2, subsection 6.

17 11 Sec. 29. Section 96.19, subsection 18, paragraph a,  
17 12 subparagraph (2), Code 2007, is amended to read as follows:

17 13 (2) Any individual who, under the usual common law rules  
17 14 applicable in determining the employer=employee relationship,  
17 15 has the status of an employee, or any individual who is  
17 16 classified as an employee pursuant to section 91G.3, or

17 17 DIVISION III

17 18 SEVERABILITY AND EFFECTIVE DATE

17 19 Sec. 30. SEVERABILITY. The provisions of this Act are  
17 20 severable in the manner provided by section 4.12.

17 21 Sec. 31. EFFECTIVE DATE. This Act takes effect January 1,  
17 22 2009.

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