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COMMERCE, REGULATION & LABOR

HOUSE FILE 2534
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D. TAYLOR, REASONER, and
HEDDENS

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

A BILL FOR

1 An Act relating to employment practices and human trafficking and
2 related offenses and providing penalties and remedies and an
3 appropriation.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2534

1 Section 1. NEW SECTION. 13.6A SPECIAL ASSISTANT -- HUMAN
2 TRAFFICKING AND RELATED OFFENSES -- EMPLOYMENT OF UNAUTHORIZED
3 ALIENS.

4 The attorney general shall appoint a special assistant
5 attorney general for claims who shall, under the direction of
6 the attorney general, investigate and prosecute all claims
7 relating to the crime of human trafficking and related
8 offenses pursuant to sections 710A.2, 710A.3, and 710A.4 and
9 the employment of unauthorized aliens pursuant to section
10 91F.2. The special assistant attorney general appointed
11 pursuant to this section shall work with the director of
12 revenue and the commissioner of insurance in investigating the
13 employment of unauthorized aliens, including the examination
14 of certain tax and insurance documents.

15 Sec. 2. Section 15.330, Code Supplement 2005, is amended
16 by adding the following new subsection:

17 NEW SUBSECTION. 5. a. A statement that the business has
18 not, within the past ten years, knowingly employed an
19 unauthorized alien as an employee and will not knowingly
20 employ an unauthorized alien as an employee during the period
21 of time the business is eligible to receive incentives.

22 b. If a business that is approved to receive incentives
23 under this part employs unauthorized aliens in violation of
24 section 91F.2, the department shall have the discretion to
25 reduce or eliminate some or all of the incentives, and the
26 business may be subject to repayment of all or a portion of
27 the incentives that it has received.

28 c. For purposes of this subsection, "unauthorized alien"
29 means the same as defined in section 91F.1, and "knowingly
30 employ as an employee an unauthorized alien" means the same as
31 defined in section 91F.2.

32 Sec. 3. NEW SECTION. 73A.22 STATE ASSISTANCE
33 RESTRICTIONS -- PERSONS EMPLOYING UNAUTHORIZED ALIENS.

34 1. a. A state department, institution, or agency, or any
35 board member, commissioner, director, manager, or other person

1 connected with any such department, institution, or agency,
2 shall not award a contract or provide developmental assistance
3 to an employer as defined in section 91F.1 if the employer or
4 a corporate officer of the employer has been found in
5 violation of section 91F.2 within the past five years.

6 b. For purposes of this section, "developmental
7 assistance" means any form of public assistance, including tax
8 expenditures, made for the purpose of stimulating the economic
9 development of a corporation, industry, geographic
10 jurisdiction, or any other sector of the state's economy,
11 including but not limited to industrial development bonds,
12 training grants, loans, loan guarantees, enterprise zones,
13 empowerment zones, tax increment financing, fee waivers, land
14 price subsidies, infrastructure constructed or improved for
15 the benefit of a single business or defined group of
16 businesses at the time it is built or improved, matching
17 funds, tax abatements, tax credits and tax discounts of every
18 kind, including corporate, franchise, personal income, sales
19 and use, raw materials, real property, job creation,
20 individual investment, excise, utility, inventory, accelerated
21 depreciation, and research and development tax credits and
22 discounts.

23 2. Any contract or developmental assistance awarded shall
24 provide that if, during the effective period of the contract
25 or developmental assistance, the vendor, contractor,
26 subcontractor, or developmental assistance recipient violates
27 the provisions of section 91F.2, the contract or developmental
28 assistance shall be terminated.

29 3. A state department, institution, or agency may enforce
30 its rights under this section by instituting a civil action in
31 district court in this state. In addition, a state
32 department, institution, or agency shall not award a contract
33 or provide developmental assistance to any person that
34 violates this section for a period of five years after the
35 date of the violation.

1 Sec. 4. NEW SECTION. 91F.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Employee" means a natural person who is employed in
4 this state for wages paid on an hourly basis by an employer.

5 2. "Employer" means a person, as defined in section 4.1,
6 who in this state employs for wages one or more natural
7 persons.

8 3. "Unauthorized alien" means a person who is not a
9 citizen or legal resident and who has not been lawfully
10 admitted to the United States for permanent residence or who
11 is not authorized to work in the United States.

12 Sec. 5. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS --
13 EMPLOYER PROHIBITION.

14 An employer shall not knowingly employ as an employee an
15 unauthorized alien. For purposes of this section, "knowingly
16 employ as an employee an unauthorized alien" includes cases in
17 which an employer actually knows a person is an unauthorized
18 alien and cases in which any person exercising reasonable care
19 should know from facts and circumstances that a person is an
20 unauthorized alien.

21 Sec. 6. NEW SECTION. 91F.3 PENALTIES.

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

24 2. A corporate officer of an employer who, through
25 repeated violation of section 91F.2, demonstrates a pattern of
26 employing unauthorized aliens commits a serious misdemeanor.

27 3. An employer who, through repeated violation of section
28 91F.2, demonstrates a pattern of employing unauthorized aliens
29 may be ordered to pay punitive damages.

30 Sec. 7. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE
31 ATTORNEY GENERAL -- ENFORCEMENT.

32 1. In order to carry out the purposes of this chapter, the
33 attorney general or the attorney general's representative,
34 upon presenting appropriate credentials to an employer's
35 owner, operator, or agent in charge, may:

1 a. Inspect employment records relating to the employees of
2 the employer.

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

5 2. The attorney general shall enforce provisions of this
6 chapter.

7 Sec. 8. NEW SECTION. 91F.5 PROHIBITIONS RELATING TO
8 CERTAIN ACTIONS BY EMPLOYEES -- PENALTY -- CIVIL REMEDY.

9 1. An employer shall not discharge an employee or take or
10 fail to take action regarding an employee's appointment or
11 proposed appointment or promotion or proposed promotion, or
12 regarding any advantage of an employee as a reprisal for a
13 failure by that employee to inform the employer that the
14 employee made a disclosure of information to any law
15 enforcement agency if the employee reasonably believes the
16 information evidences a violation of section 91F.2, 710A.2,
17 710A.3, or 710A.4.

18 2. Subsection 1 does not apply if the disclosure of the
19 information is prohibited by statute.

20 3. An employer who violates subsection 1 commits a simple
21 misdemeanor.

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

23 a. An employer who violates subsection 1 is liable to an
24 aggrieved employee for affirmative relief, including
25 reinstatement, with or without back pay, or any other
26 equitable relief the court deems appropriate, including
27 attorney fees and costs.

28 b. If an employer commits, is committing, or proposes to
29 commit an act in violation of subsection 1, an injunction may
30 be granted through an action in district court to prohibit the
31 person from continuing such acts. The action for injunctive
32 relief may be brought by an aggrieved employee or the attorney
33 general.

34 Sec. 9. NEW SECTION. 710A.1 DEFINITIONS.

35 As used in this chapter:

- 1 1. "Commercial sexual activity" means any sex act on
2 behalf of which anything of value is given, promised to, or
3 received by any person and includes, but is not limited to,
4 prostitution, participation in the production of pornography,
5 and performance in strip clubs.
- 6 2. "Forced labor or services" means labor or services that
7 are performed or provided by another person and that are
8 obtained or maintained through any of the following:
- 9 a. Causing or threatening to cause serious physical injury
10 to any person.
- 11 b. Physically restraining or threatening to physically
12 restrain another person.
- 13 c. Abusing or threatening to abuse the law or legal
14 process.
- 15 d. Knowingly destroying, concealing, removing,
16 confiscating, or possessing any actual or purported passport
17 or other immigration document, or any other actual or
18 purported government identification document, of another
19 person.
- 20 3. "Labor" means work of economic or financial value.
- 21 4. "Maintain" means, in relation to labor and services, to
22 secure continued performance thereof, regardless of any
23 initial agreement on the part of the victim to perform such
24 type of services.
- 25 5. "Minor" means a person under the age of eighteen years.
- 26 6. "Obtain" means, in relation to labor or services, to
27 secure performance thereof.
- 28 7. "Services" means an ongoing relationship between a
29 person and the actor in which the person performs activities
30 under the supervision of or for the benefit of the actor,
31 including commercial sexual activity and sexually explicit
32 performances.
- 33 8. "Sexually explicit performance" means a live or public
34 act or show intended to arouse or satisfy the sexual desires
35 or appeal to the prurient interest of patrons.

1 9. "Venture" means any group of two or more persons
2 associated in fact, whether or not a legal entity.

3 10. "Victim" means a person subjected to the practices set
4 forth in section 710A.2, 710A.3, or 710A.4.

5 Sec. 10. NEW SECTION. 710A.2 FORCED LABOR AND SERVICES.

6 1. A person who knowingly subjects, attempts to subject,
7 or engages in a conspiracy to subject another person to forced
8 labor or services by causing or threatening to cause serious
9 physical injury to that other person is guilty of a class "B"
10 felony, except that if that other person is a minor, a person
11 who violates this subsection is guilty of a class "A" felony.

12 2. A person who knowingly subjects, attempts to subject,
13 or engages in a conspiracy to subject another person to forced
14 labor or services by physically restraining or threatening to
15 physically restrain that other person is guilty of a class "C"
16 felony, except that if that other person is a minor, a person
17 who violates this subsection is guilty of a class "B" felony.

18 3. A person who knowingly subjects, attempts to subject,
19 or engages in a conspiracy to subject another person to forced
20 labor or services by abusing or threatening to abuse the law
21 or legal process is guilty of a class "D" felony, except that
22 if that other person is a minor, a person who violates this
23 subsection is guilty of a class "C" felony.

24 4. A person who knowingly subjects, attempts to subject,
25 or engages in a conspiracy to subject another person to forced
26 labor or services by knowingly destroying, concealing,
27 removing, confiscating, or possessing any actual or purported
28 passport or other immigration document, or any other actual or
29 purported government identification document, of that other
30 person is guilty of a class "D" felony, except that if that
31 other person is a minor, a person who violates this subsection
32 is guilty of a class "C" felony.

33 Sec. 11. NEW SECTION. 710A.3 HUMAN TRAFFICKING -- FORCED
34 LABOR AND SERVICES.

35 1. A person shall not knowingly recruit, entice, harbor,

1 transport, provide, or obtain by any means, or attempt to
2 recruit, entice, harbor, transport, provide, or obtain by any
3 means, another person, with the intent that the other person
4 be subjected to forced labor or services.

5 2. A person shall not knowingly benefit, financially or by
6 receiving anything of value, from participation in a venture
7 that involves a violation of this section.

8 3. A person who violates this section is guilty of a class
9 "B" felony, except that if the other person is a minor, a
10 person who violates this section is guilty of a class "A"
11 felony.

12 Sec. 12. NEW SECTION. 710A.4 HUMAN TRAFFICKING -- SEXUAL
13 EXPLOITATION OF A MINOR.

14 1. A person shall not knowingly recruit, entice, harbor,
15 transport, provide, or obtain by any means, or attempt to
16 recruit, entice, harbor, transport, provide, or obtain by any
17 means, a minor, with the intent that the minor be subjected to
18 sexual exploitation in violation of section 728.12.

19 2. A person shall not knowingly benefit, financially or by
20 receiving anything of value, from participation in a venture
21 that involves a violation of section 728.12.

22 3. A person who violates this section is guilty of a class
23 "A" felony.

24 Sec. 13. NEW SECTION. 710A.5 SENTENCING ENHANCEMENTS.

25 1. If a violation of section 710A.2 or 710A.3 results in
26 the death of the person or if the person is kidnapped in
27 violation of section 710.2 or 710.3, the defendant is guilty
28 of a class "A" felony.

29 2. In sentencing a person for a violation of section
30 710A.2, 710A.3, or 710A.4, the court shall sentence the
31 defendant to an additional term of confinement of ten years in
32 cases in which the victim was maintained or held for a period
33 greater than one hundred eighty days or if the offense
34 involved more than ten victims.

35 Sec. 14. NEW SECTION. 710A.6 CORPORATE LIABILITY.

1 If a corporation is convicted of an offense pursuant to
2 section 710A.2, 710A.3, or 710A.4, in addition to any other
3 penalties provided in this chapter, the court shall, where
4 appropriate, do any of the following:

5 1. Order the corporation's dissolution or reorganization.

6 2. Order the suspension or revocation of any license,
7 permit, or prior approval granted by a state agency.

8 3. Order the surrender of the corporation's organizational
9 authority if organized under state law or revocation of the
10 corporation's authority to conduct business in this state.

11 Sec. 15. NEW SECTION. 710A.7 RESTITUTION AND ADDITIONAL
12 FINE.

13 In addition to any fine or penalty imposed under this
14 chapter, the court shall order a defendant convicted of a
15 violation of this chapter to make restitution for damages
16 resulting directly from the violation, to the victim, pursuant
17 to chapter 910, and shall include an additional fine of the
18 greater of either the gross income or value of the victim's
19 labor or services or the value of the victim's wages of not
20 less than the applicable federal minimum wage under the
21 federal Fair Labor Standards Act.

22 Sec. 16. NEW SECTION. 915.51 GENERAL RIGHTS OF HUMAN
23 TRAFFICKING VICTIMS.

24 1. In addition to other victim rights provided in this
25 chapter, including the right to receive victim compensation
26 pursuant to section 915.84 and the right to exert victim
27 counseling privileges pursuant to section 915.20A, victims of
28 a crime described in section 710A.2, 710A.3, or 710A.4 shall
29 have the following rights without regard to their immigration
30 status:

31 a. The right to receive prompt medical care including
32 mental health care, food, shelter, and other assistance, if
33 necessary.

34 b. The right to have access to legal assistance and
35 translation services, if necessary.

1 c. The right to receive reasonable police protection if a
2 victim's safety is at risk or if there is any danger of
3 additional harm, including measures to protect victims and
4 their family members from intimidation and threats of
5 reprisals from traffickers and their associates and ensuring
6 that the names and identifying information of victims and
7 their family members are not disclosed to the public.

8 2. The departments of human services, human rights,
9 health, public safety, justice, and other public state
10 agencies shall provide the requisite services to assist in the
11 administration of this section.

12 Sec. 17. DEPARTMENT OF JUSTICE -- HUMAN TRAFFICKING CRIMES
13 AND RELATED OFFENSES -- INVESTIGATION AND PROSECUTION --
14 APPROPRIATION. There is appropriated from the general fund of
15 the state to the department of justice for the fiscal year
16 beginning July 1, 2006, and ending June 30, 2007, the
17 following amount, or so much thereof as is necessary, to be
18 used for the purposes designated:

19 For the investigation and prosecution of human trafficking
20 crimes and related offenses pursuant to sections 710A.2,
21 710A.3, and 710A.4, and the employment of unauthorized aliens
22 pursuant to section 91F.2:

23 \$ 100,000

24 Notwithstanding section 8.33, moneys appropriated in this
25 section that remain unencumbered or unobligated at the close
26 of the fiscal year shall not revert but shall remain available
27 for expenditure for the purposes designated until the close of
28 the succeeding fiscal year.

29 EXPLANATION

30 This bill relates to employment practices and human
31 trafficking and related offenses and provides penalties.

32 The bill provides that a business that enters into an
33 agreement to be eligible to receive incentives under the high
34 quality job creation Act shall provide a statement that the
35 business has not, within the past 10 years, knowingly employed

1 an unauthorized alien as an employee and will not knowingly
2 employ an unauthorized alien as an employee during the time
3 the business is eligible to receive incentives. If the
4 business receives incentives and knowingly employs
5 unauthorized aliens, the department of economic development
6 may reduce some or all of the incentives, and the business may
7 be subject to repayment of the incentives it has received.

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

21 The bill creates new Code chapter 91F prohibiting employers
22 from employing unauthorized aliens. The bill defines
23 "unauthorized alien" as any person who is not a citizen or
24 legal resident and who has not been lawfully admitted to the
25 United States for permanent residence or who is not authorized
26 to work in the United States. An "employer" is any person who
27 employs for wages one or more natural persons. The bill
28 prohibits employers from knowingly employing an unauthorized
29 alien. The bill provides that a violation can occur in cases
30 in which an employer actually knows a person is an
31 unauthorized alien as well as a situation in which any person
32 exercising reasonable care should know from facts and
33 circumstances that a person is an unauthorized alien. The
34 bill provides that a violator of this new Code chapter is
35 subject to a civil penalty of \$1,000 and a corporate officer

1 of an employer who, through repeated violation of the chapter,
2 demonstrates a pattern of employing unauthorized aliens
3 commits a serious misdemeanor. An employer who demonstrates a
4 pattern of employing unauthorized aliens may be ordered to pay
5 punitive damages. The bill further authorizes the attorney
6 general to administer and enforce this new Code chapter and
7 grants the attorney general the authority to investigate
8 employer records and to interview employees. The bill further
9 provides that an employer shall not discharge an employee from
10 or take or fail to take action regarding an employee's
11 appointment or proposed appointment, promotion or proposed
12 promotion, or regarding any advantage of an employee as a
13 reprisal for a failure by that employee to inform the employer
14 that the employee made a disclosure of information to any law
15 enforcement agency if the employee reasonably believes the
16 information evidences a violation of new Code section 91F.2,
17 710A.2, 710A.3, or 710A.4, relating to unauthorized alien
18 employment or human trafficking. An employer who violates the
19 provisions of new Code chapter 91F is liable to an aggrieved
20 employee for affirmative relief, including reinstatement, with
21 or without back pay, or any other equitable relief the court
22 deems appropriate, including attorney fees and costs. In
23 addition, an action for injunctive relief may be brought by an
24 aggrieved employee or the attorney general.

25 The bill provides that a person who knowingly subjects,
26 attempts to subject, or engages in a conspiracy to subject
27 another person to forced labor or services by causing or
28 threatening to cause serious physical injury to that person,
29 by physically restraining or threatening to physically
30 restrain another person, by abusing or threatening to abuse
31 the law or legal process, or by destroying, concealing,
32 removing, confiscating, or possessing any actual or purported
33 passport or other immigration document, or any other actual or
34 purported government identification document, of another
35 person is guilty of the crime of forced labor and services and

1 is subject to a class "B" felony, a class "C" felony, or a
2 class "D" felony, depending upon the circumstances of the
3 offense. A class "B" felony is punishable by confinement for
4 no more than 25 years, a class "C" felony is punishable by
5 confinement for no more than 10 years and a fine of at least
6 \$1,000 but not more than \$10,000, and a class "D" felony is
7 punishable by confinement for no more than five years and a
8 fine of at least \$750 but not more than \$7,500. The bill
9 provides sentencing enhancements for a crime involving a minor
10 victim, depending on the circumstances of the offense, ranging
11 from a class "A" felony, punishable by confinement for life
12 without the possibility of parole, to a class "C" felony.

13 The bill provides that a person who knowingly recruits,
14 entices, harbors, transports, provides, or obtains by any
15 means, or attempts to recruit, entice, harbor, transport,
16 provide, or obtain by any means, another person, with the
17 intent that the person be subjected to forced labor or
18 services, or a person who knowingly benefits, financially or
19 by receiving anything of value, from participation in a
20 venture that involves forced labor or services, is guilty of a
21 class "B" felony, except if the person being trafficked is a
22 minor, a person who commits either act is guilty of a class
23 "A" felony.

24 The bill further provides that a person who knowingly
25 recruits, entices, harbors, transports, provides, or obtains
26 by any means, or attempts to recruit, entice, harbor,
27 transport, provide, or obtain by any means, a minor, with the
28 intent that the minor be subjected to sexual exploitation in
29 violation of Code section 728.12, Iowa's sexual exploitation
30 of a minor statute, or a person who knowingly benefits,
31 financially or by receiving anything of value, from
32 participation in a venture that involves a violation of Code
33 section 728.12, is guilty of a class "A" felony.

34 The bill provides sentencing enhancements for the crimes of
35 forced labor and services and human trafficking in forced

1 labor and services. The bill provides that if a violation of
2 any such offenses results in the death of the person or if the
3 person is kidnapped, the defendant is guilty of a class "A"
4 felony.

5 The bill provides that if a corporation is convicted of the
6 crimes of forced labor and services, human trafficking in
7 forced labor and services, or human trafficking in the sexual
8 exploitation of a minor, the court shall order the
9 corporation's dissolution or reorganization, order the
10 suspension or revocation of any license, permit, or prior
11 approval granted by a state agency in Iowa, or order the
12 surrender of the corporation's charter if organized under
13 state law or revocation of the corporation's certificate to
14 conduct business in the state.

15 The bill provides that a victim under this bill shall
16 receive restitution for damages resulting directly from the
17 violation pursuant to Code chapter 910, which shall include a
18 fine of the greater of either the gross income or value of the
19 victim's labor or services or the value of the victim's labor
20 as guaranteed under the provisions of the federal Fair Labor
21 Standards Act.

22 The bill provides that in addition to other victim rights
23 provided in Code chapter 915, including the right to receive
24 victim compensation pursuant to Code section 915.84 and the
25 right to exert victim counseling privileges pursuant to Code
26 section 915.20A, victims shall have the right to receive
27 prompt medical care including mental health care, food,
28 shelter, and other assistance, the right to have access to
29 legal assistance and translation services, and the right to
30 receive reasonable police protection and including ensuring
31 that the names and identifying information of victims and
32 their family members are not disclosed to the public if a
33 victim's safety is at risk or if there is any danger of
34 additional harm, without regard to their immigration status.

35 The bill authorizes the attorney general to appoint a

1 special assistant attorney general who shall, under the
2 direction of the attorney general, investigate and prosecute
3 all claims relating to the crime of human trafficking and
4 related offenses and the employment of unauthorized aliens and
5 appropriates up to \$100,000 from the state general fund to the
6 department of justice for the fiscal year beginning July 1,
7 2006, and ending June 30, 2007, to be used by the department
8 of justice for such purposes. Notwithstanding Code section
9 8.33, appropriated moneys that remain unencumbered or
10 unobligated at the close of the fiscal year do not revert but
11 remain available for expenditure for the purposes designated
12 until the close of the succeeding fiscal year.

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