

FEB 20 2006
COMMERCE, REGULATION & LABOR

HOUSE FILE 2446
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and WATTS

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

A BILL FOR

1 An Act relating to noncitizens of the United States including
2 restricting the allocation of housing trust fund moneys,
3 prohibiting the servicing of first mortgages, relating to
4 employment, and providing for penalties.

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

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HF 2446

1 Section 1. Section 16.181, Code 2005, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3A. Funds allocated from the housing
4 trust fund shall not be used for the provision of housing for
5 persons who are not lawfully present in the United States.

6 Sec. 2. NEW SECTION. 73A.22 STATE ASSISTANCE
7 RESTRICTIONS -- PERSONS EMPLOYING UNAUTHORIZED ALIENS.

8 1. a. A state department, institution, or agency, or any
9 board member, commissioner, director, manager, or other person
10 connected with any such department, institution, or agency,
11 shall not award a contract or provide developmental assistance
12 to an employer as defined in section 91F.1 in which the
13 employer or corporate officer of the employer has been found
14 in violation of section 91F.2 within the past five years.

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

32 2. Any contract or developmental assistance awarded shall
33 provide that if, during the effective period of the contract
34 or developmental assistance, the vendor, contractor,
35 subcontractor, or developmental assistance recipient violates

1 the provisions of section 91F.2, the contract or developmental
2 assistance shall be terminated.

3 3. A state department, institution, or agency may enforce
4 its rights under this section by instituting a civil action in
5 district court in this state. In addition, a state
6 department, institution, or agency shall not award a contract
7 or provide developmental assistance to any person that
8 violates this section for a period of five years after the
9 date of the violation.

10 Sec. 3. NEW SECTION. 91F.1 DEFINITIONS.

11 As used in this chapter:

12 1. "Commissioner" means the labor commissioner.

13 2. "Employee" means a natural person who is employed in
14 this state for wages paid on an hourly basis by an employer.

15 3. "Employer" means a person, as defined in section 4.1,
16 who in this state employs for wages, paid on an hourly basis,
17 one or more natural persons. An employer does not include a
18 client, patient, customer, or other person who obtains
19 professional services from a licensed person who provides the
20 services on a fee service basis or as an independent
21 contractor, or the state, or an agency or governmental
22 subdivision of the state.

23 4. "Unauthorized alien" means a person who is not a
24 citizen or legal resident and who has not been lawfully
25 admitted to the United States for permanent residence or who
26 is not authorized to work in the United States.

27 Sec. 4. NEW SECTION. 91F.2 UNAUTHORIZED ALIENS --
28 EMPLOYER PROHIBITION.

29 An employer shall not knowingly employ as an employee an
30 unauthorized alien. For purposes of this section, "knowingly
31 employ as an employee an unauthorized alien" includes cases in
32 which an employer actually knows a person is an unauthorized
33 alien and cases in which any person exercising reasonable care
34 should know from facts and circumstances that a person is an
35 unauthorized alien.

1 Sec. 5. NEW SECTION. 91F.3 PENALTIES.

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

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

7 3. An employer who, through repeated violation of section
8 91F.2, demonstrates a pattern of employing unauthorized aliens
9 may be ordered to pay punitive damages.

10 Sec. 6. NEW SECTION. 91F.4 DUTIES AND AUTHORITY OF THE
11 COMMISSIONER -- ENFORCEMENT BY ATTORNEY GENERAL.

12 1. The commissioner shall adopt rules to implement and
13 enforce this chapter.

14 2. In order to carry out the purposes of this chapter, the
15 commissioner or the commissioner's representative, upon
16 presenting appropriate credentials to an employer's owner,
17 operator, or agent in charge, may:

18 a. Inspect employment records relating to the employees of
19 the employer.

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

22 3. If the commissioner has reason to believe than an
23 employer may be in violation of this chapter, the commissioner
24 shall notify the attorney general, and provide the attorney
25 general with any supporting information, for prosecution of
26 the violation by the attorney general.

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

29 1. An employer shall not discharge an employee or take or
30 fail to take action regarding an employee's appointment or
31 proposed appointment or promotion or proposed promotion, or
32 regarding any advantage of an employee as a reprisal for a
33 failure by that employee to inform the employer that the
34 employee made a disclosure of information to any law
35 enforcement agency if the employee reasonably believes the

1 information evidences a violation of section 91F.2.

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

4 3. An employer who violates subsection 1 commits a simple
5 misdemeanor.

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

7 a. An employer who violates subsection 1 is liable to an
8 aggrieved employee for affirmative relief, including
9 reinstatement, with or without back pay, or any other
10 equitable relief the court deems appropriate, including
11 attorney fees and costs.

12 b. If an employer commits, is committing, or proposes to
13 commit an act in violation of subsection 1, an injunction may
14 be granted through an action in district court to prohibit the
15 person from continuing such acts. The action for injunctive
16 relief may be brought by an aggrieved employee or the attorney
17 general.

18 Sec. 8. Section 535B.11, Code 2005, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 8. Refuse to service a first mortgage
21 loan for residential real property intended to be used as a
22 primary residence in this state to a person who is neither a
23 citizen of the United States nor lawfully admitted for
24 permanent residence under the federal Immigration and
25 Nationality Act, 8 U.S.C. § 1101 et seq.

26 EXPLANATION

27 This bill relates to the financing of housing for
28 noncitizens of the United States. The bill prohibits funds
29 allocated from the housing trust fund in Code section 16.181
30 by the Iowa finance authority to be used to provide housing
31 for persons who are not lawfully present in the United States.
32 The housing trust fund provides funds to local housing
33 authorities for the local housing trust fund program and the
34 project-based housing program.

35 The bill also provides that a mortgage banker or mortgage

1 broker licensed under Code chapter 535B or other mortgagee who
2 services mortgages on residential real estate in this state
3 shall refuse to provide certain mortgage loans to a person who
4 is not either a citizen of the United States or a lawful
5 permanent resident under the federal Immigration and
6 Nationality Act. This restriction under the bill applies only
7 to first mortgage loans for residential real property that is
8 intended to be used as a primary residence of the mortgage
9 applicant. Under current law, a "first mortgage loan" is
10 defined as a loan of money secured by a first lien on
11 residential real property and includes a refinancing of a
12 contract of sale, an assumption of a prior loan, and a
13 refinancing of a prior loan. A violation of this provision of
14 the bill would be a violation of Code chapter 535B and subject
15 to enforcement by the superintendent of the division of
16 banking of the department of commerce. The superintendent may
17 conduct an investigation or examination, issue a cease and
18 desist order, and request that the attorney general file a
19 civil action for injunctive relief, restitution for an
20 aggrieved mortgagor, and costs for the investigation and
21 prosecution.

22 New Code section 73A.22 is created to prohibit state
23 entities from awarding a contract or providing developmental
24 assistance to a person who violates the provisions of the bill
25 concerning the employment of unauthorized aliens as
26 established in new Code section 91F.2. The bill defines
27 "developmental assistance" as any form of public assistance,
28 including tax incentives, grants, or other subsidies. The
29 bill provides that a person violating this new provision shall
30 have their contract or developmental assistance terminated.
31 The bill grants state entities the right to enforce their
32 rights in district court and provides that a person violating
33 this provision shall be prohibited from receiving a state
34 contract or developmental assistance for five years.

35 The bill creates new Code chapter 91F prohibiting employers

1 from employing unauthorized aliens. The bill defines
2 "unauthorized aliens" as any person who is not a citizen or
3 legal resident and who has not been lawfully admitted to the
4 United States for permanent residence or who is not authorized
5 to work in the United States. An "employer" is any person who
6 employs for wages, paid on an hourly basis, one or more
7 natural persons. The bill prohibits employers from knowingly
8 employing an unauthorized alien. The bill provides that a
9 violation can occur in cases in which an employer actually
10 knows a person is an unauthorized alien as well as a situation
11 in which any person exercising reasonable care should know
12 from facts and circumstances that a person is an unauthorized
13 alien. The bill provides that a violation of this chapter is
14 subject to a civil penalty of \$1,000 and a corporate officer
15 of an employer who, through repeated violations of the
16 chapter, demonstrates a pattern of employing unauthorized
17 aliens, commits a serious misdemeanor. An employer who
18 demonstrates a pattern of employing unauthorized aliens may be
19 ordered to pay punitive damages. The bill further authorizes
20 the labor commissioner within the department of workforce
21 development to adopt rules to administer and enforce this new
22 chapter and grants the commissioner the authority to
23 investigate employer records and to interview employees. The
24 bill provides that the commissioner shall forward any
25 suspected violations of this chapter to the attorney general
26 for prosecution. The bill further provides that an employer
27 shall not discharge an employee from or take or fail to take
28 action regarding an employee's appointment or proposed
29 appointment, promotion or proposed promotion, or regarding any
30 advantage of an employee as a reprisal for a failure by that
31 employee to inform the employer that the employee made a
32 disclosure of information to any law enforcement agency if the
33 employee reasonably believes the information evidences a
34 violation of Code section 91F.2, 710A.2, 710A.3, or 710A.4.
35 An employer who violates the provisions of this chapter is

1 liable to an aggrieved employee for affirmative relief
2 including reinstatement, with or without back pay, or any
3 other equitable relief the court deems appropriate, including
4 attorney fees and costs. In addition, an action for
5 injunctive relief may be brought by an aggrieved employee or
6 the attorney general.

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