

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Swisstack **DATE TYPED** 3/3/2005 **HB** 507/aHLHRC/aHJC

SHORT TITLE Revise Child Labor Age Requirements **SB** _____

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children Youth and Families Department (CYFD)

Department of Labor (DOL)

Attorney General (AG)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 507 modifies the bill as follows:

1. Removes the language in the title of the bill on “expanding jurisdiction”
2. Strikes language pertaining to sentencing an individual who is in default of a payment for violation of provisions of the act in section 50-6-12 B. In the same Section, concerning a second violation of chapter 50, the director of the labor and industrial division shall forward the matter to the local district attorney who shall prosecute the matter. Additionally, upon conviction, the individual may be sentenced to jail and for succeeding violations, the person may be guilty of a forth degree felony.
3. Strikes the Jurisdiction Section 50-6-13.
4. Strikes language as to where the state child labor inspector will be located.

Synopsis of HLHRC Amendment

The House Labor Human Resources Amendment to House Bill 507 excludes children under 14 from employment at any gainful occupation. As specified in “significant issues” below the change removes any conflict with federal law.

Synopsis of Original Bill

House Bill 507 revises the child labor provisions of Chapter 50, Article 6 NMSA 1978, to remove the distinction between employment restrictions for children between fourteen and sixteen and children under fourteen. The bill increases the fines for violation of child labor provisions and provides a process for violators to appeal determinations, findings and citations issued by the director of the labor and industrial division of the Department of Labor. The bill changes original jurisdiction for cases of violations from the district court to the magistrate or metropolitan courts.

The bill specifies that children under the age of sixteen may not be employed for more than forty hours in any one week nor more than eight hours in any one day when school is not in session. Also the bill adds language that children in the age category shall not be employed before 7:00 a.m. and after 7:00 p.m. during the calendar school year, before 7:00 a.m. and after 9:00 p.m. outside the calendar school year, during school hours (except in work experience programs), for more than three hours a day during school days and for more than eighteen hours a week during school weeks. Children under the age of sixteen are prohibited from being employed to solicit door-to-door except for nonprofit organizations. The provisions exempt’s children under the age of sixteen who are employed by their parents, children employed as actors or children engaged in the sale or delivery of newspapers to the consumer.

Significant Issues

Current New Mexico law has two categories: (a) children under 14; and (b) children between 14-16. This bill consolidates these into one category “children under the age of 16.”

Federal law bars “oppressive child labor.” 29 USCA 203(l). This term has been interpreted to generally mean that children under 14 cannot work, children 14-16 can work if it doesn’t interfere with schooling, and children who are 16 cannot work in hazardous positions. The AG is concerned that since the bill appears to repeal the absolute protections for children under 14, the Legislature may need to add “Findings” to this bill to explain why this change will not result in “oppressive child labor.” DOL is also uneasy with the removal of language referencing children between the ages of 14 to 16.

This bill attempts to streamline the penalty/appeal process. It authorizes the Department of Labor the right to issue citations and authorizes the employer the right to file an administrative appeal to the Labor and Industrial Commission. It appears that the intent of the bill is that after two citations within a two-year period, the Department of Labor can then petition the magistrate/metropolitan court to enforce criminal penalties. However, the AG is concerned that the bill, as currently written, overlays the existing judicial appeal process and new administrative appeal process together in a confusing way. It leaves the reader with the incorrect impression that an administrative body can impose criminal penalties on its own.

CONFLICT

This proposed language may conflict with Federal law that prohibits the employment of a child under fourteen (14) years.

TECHNICAL ISSUES

The AG indicates that the penalty/appeal section of the bill must be clarified. One method (which appears to be the intent of the bill) is for the Department to issue a citation, the employer to appeal to the administrative Labor and Industrial Commission, and then the employer to appeal that administrative decision to the courts. If employer loses and refuses to pay the fine, the Department can petition the courts for enforcement of the fine and request criminal sanctions. Another method (which appears to be the status quo) is for the Department to issue a citation and petition that Court with original jurisdiction to enforce the citation. Whatever the approach, the AG's opinion is the bill as currently written uses loosely the terms "citation", "conviction", and "original jurisdiction."

A sentence stating the appeal to the Labor and Industrial Commission will follow the Commission's hearing rules would clarify how that hearing would be conducted.

WD/njw:lg:yr