

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 175

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO LABOR; REVISING CHILD LABOR PROVISIONS TO INCLUDE
THE FILM INDUSTRY; MODIFYING AGE REQUIREMENTS; PROVIDING FOR
APPEAL PROCEDURES; CHANGING PENALTIES; AMENDING, REPEALING AND
ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50, Article 6 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Chapter 50, Article 6 NMSA
1978 may be cited as the "Child Labor Act"."

Section 2. A new section of the Child Labor Act is
enacted to read:

"[NEW MATERIAL] EXCEPTIONS.--

A. A child under the age of sixteen may be employed
without obtaining a work permit and without the restrictions on

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1 the age of the child or time of employment imposed by Sections
2 50-6-1 through 50-6-3 NMSA 1978 if the child is employed:

3 (1) by a parent in an occupation other than
4 manufacturing or mining or other than an occupation found to be
5 particularly hazardous or detrimental to the health of children
6 under the age of sixteen;

7 (2) as an actor or performer in motion
8 picture, theatrical, radio or television productions; or

9 (3) to sell or deliver newspapers, with the
10 parent's consent, during the school term or during vacation and
11 the child is attending school as required by law and does not
12 engage in such employment except at times when the child's
13 presence is not required at school.

14 B. The employer of a child employed pursuant to
15 Subsection A of this section is not required to obtain and
16 preserve a work permit in accordance with Section 50-6-9 NMSA
17 1978 for that child."

18 Section 3. A new section of Chapter 50, Article 6 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] CHILDREN WORKING IN THE PERFORMING ARTS.--

21 A. For the purposes of this section, a "performer"
22 means a person employed to act or otherwise participate in the
23 performing arts, including motion picture, theatrical, radio or
24 television products.

25 B. A performer under eighteen years of age is

1 considered a child subject to the Child Labor Act unless:

2 (1) the performer has satisfied the compulsory
3 education laws of the state;

4 (2) the performer is married;

5 (3) the performer is a member of the armed
6 forces; or

7 (4) the performer is legally emancipated.

8 C. A child may not begin work earlier than 5:00
9 a.m. and the workday must end no later than 10:00 p.m. on
10 evenings preceding school days and 12:00 a.m. on mornings of
11 nonschool days.

12 D. A child-performer's working hours, including
13 school time, are limited as follows:

14 (1) a child under the age of six shall not be
15 employed or permitted to labor for more than six hours in one
16 day;

17 (2) a child over the age of six and under the
18 age of nine shall not be employed or permitted to labor for
19 more than eight hours in one day;

20 (3) a child over the age of nine and under the
21 age of sixteen shall not be employed or permitted to labor for
22 more than nine hours in one day; and

23 (4) a child over the age of sixteen and under
24 the age of eighteen shall not be employed or permitted to labor
25 for more than ten hours in one day.

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1 E. If a child engages in employment on school days,
2 a teacher with credentials appropriate to the level of
3 education needed shall be provided by the employer.

4 F. The labor department shall promulgate rules for
5 employers in the performing arts, including education and
6 safety requirements."

7 Section 4. Section 50-6-1 NMSA 1978 (being Laws 1925,
8 Chapter 79, Section 1, as amended) is amended to read:

9 "50-6-1. CHILDREN UNDER FOURTEEN--EMPLOYMENT [~~DURING~~
10 ~~SCHOOL HOURS~~] PROHIBITED.--No child under fourteen years of age
11 shall be employed or permitted to labor at any gainful
12 occupation [~~during the hours during which the schools in the~~
13 ~~district in which the child resides are in session. No child~~
14 ~~under the age of fourteen years shall be employed at any~~
15 ~~gainful occupation when the school of the district in which~~
16 ~~such child resides is not in session unless such child obtains~~
17 ~~a permit certificate issued in the manner and by the authority~~
18 ~~herein directed]~~ unless otherwise provided for in the Child
19 Labor Act."

20 Section 5. Section 50-6-2 NMSA 1978 (being Laws 1925,
21 Chapter 79, Section 2, as amended) is amended to read:

22 "50-6-2. [~~GERTIFICATE~~] WORK PERMIT FOR CHILDREN FOURTEEN
23 TO SIXTEEN [~~DURING SCHOOL TERM~~].--[~~No~~] A child over the age of
24 fourteen years and under the age of sixteen years shall not be
25 employed or permitted to labor at any gainful occupation

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1 ~~[during the term of the school of the district in which the~~
 2 ~~child resides unless the child has procured and filed]~~ without
 3 procuring and filing a work permit [certificate as herein]
 4 unless otherwise provided for in the Child Labor Act."

5 Section 6. Section 50-6-3 NMSA 1978 (being Laws 1925,
 6 Chapter 79, Section 3, as amended) is amended to read:

7 "50-6-3. MAXIMUM HOURS FOR CHILDREN ~~[UNDER]~~ FOURTEEN TO
 8 SIXTEEN.--~~[No child]~~

9 A. Children over the age of fourteen and under the
 10 age of [fourteen] sixteen years shall not be employed or
 11 permitted to labor at any gainful occupation for more than
 12 [forty-four] forty hours in any one week nor more than eight
 13 hours in any one day [except under special circumstances to be
 14 determined by the officer who issued the permit; but in no case
 15 shall such child be permitted to work more than forty-eight
 16 hours in any one week nor shall such child begin work before
 17 7:00 a.m. nor continue after 9:00 p.m. of any one day] when
 18 school is not in session unless otherwise provided for in the
 19 Child Labor Act.

20 B. Children over the age of fourteen or under the
 21 age of sixteen shall not be employed unless otherwise provided
 22 for in the Child Labor Act:

23 (1) before 7:00 a.m. or after 7:00 p.m. during
 24 the calendar school year;

25 (2) before 7:00 a.m. or after 9:00 p.m.

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1 outside of the calendar school year;

2 (3) during school hours, except as provided
3 for in work experience and career exploration programs;

4 (4) more than three hours per day during
5 school days; or

6 (5) more than eighteen hours per week during
7 school weeks."

8 Section 7. Section 50-6-4 NMSA 1978 (being Laws 1925,
9 Chapter 79, Section 5, as amended) is amended to read:

10 "50-6-4. PROHIBITED OCCUPATIONS FOR CHILDREN UNDER
11 SIXTEEN--EXCEPTIONS.--~~[No child]~~

12 A. A child under the age of sixteen years shall not
13 be employed or permitted to labor at any of the following
14 occupations or in any of the following positions:

15 (1) on or around belted machines while in
16 motion;

17 (2) on or around power-driven woodworking
18 machines used for cutting, shaping, forming, surfacing,
19 nailing, stapling, wire stitching, fastening or otherwise
20 assembling, processing or printing wood or veneer;

21 (3) on or around power-driven hoisting
22 apparatus with the exception that this section shall not
23 prohibit the operation of an automatic elevator ~~[which]~~ that is
24 controlled by pushbuttons making leveling, holding, opening and
25 closing of the car and hoistway doors entirely automatic;

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1 [prohibited]

2 (4) in or about plants, establishments or jobs
 3 using, manufacturing or storing explosives or articles
 4 containing explosive components;

5 (5) electronics jobs where the child is
 6 exposed to electrical hazards;

7 (6) in or about any establishment where malt
 8 or alcoholic beverages are manufactured, packed, wrapped or
 9 bottled;

10 (7) municipal firefighting whether using
 11 volunteers or paid employees;

12 (8) manufacture of goods for immoral purposes;
 13 [nor]

14 (9) in any employment dangerous to lives and
 15 limbs or injurious to the health or morals of children under
 16 the age of sixteen years; [Provided further, that] or

17 (10) soliciting door-to-door for other than a
 18 nonprofit organization.

19 B. The provisions of this [~~act shall~~] section do
 20 not apply to:

21 (1) children engaged in working with equipment
 22 in any school or place where [~~manual training~~] cooperative
 23 education or science is taught while under supervision of an
 24 instructor; [~~This provision shall not apply to apprenticeships~~]

25 (2) apprentices while under the supervision of

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1 a journeyman [~~or instructor~~] in a certified apprenticeship
2 program; or

3 (3) children employed in a film or television
4 production, where the set may be considered physically
5 hazardous or special effects are used; provided that a New
6 Mexico-certified trainer or technician accredited in a United
7 States department of labor occupational safety and health
8 administration-certified safety program specific to the film or
9 television industry is present at all times that the child is
10 exposed to the potentially hazardous condition.

11 C. Additional hazardous occupations not
12 specifically listed in this section [~~will~~] shall be determined
13 by the state child labor inspector following consultation with
14 the employer who wishes to employ minors over the age of
15 fourteen years and under sixteen years of age."

16 Section 8. Section 50-6-7 NMSA 1978 (being Laws 1925,
17 Chapter 79, Section 8, as amended) is amended to read:

18 "50-6-7. [~~LABOR~~] WORK PERMIT [~~GERTIFICATES~~]--ISSUANCE--
19 AUTHORIZED OFFICIALS--APPLICATION--CONTENTS--PROOF--COPIES--
20 MAXIMUM TERM.--

21 A. [~~Permit certificates~~] Work permits shall be
22 issued only by the school superintendents, school principals,
23 designated issuing school officers or the director of the labor
24 and industrial division of the labor department or the
25 director's designee.

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1 B. ~~[No]~~ A work permit ~~[certificate]~~ shall not be
2 issued to ~~[any]~~ a child until satisfactory proof has been
3 furnished that the work in which the child is to engage is not
4 dangerous to the child ~~[nor]~~ or injurious to ~~[his]~~ the child's
5 health or morals.

6 C. The application for the ~~[certificate must]~~ work
7 permit shall show that the ~~[child is in good physical health~~
8 ~~and that the]~~ work to be performed would not result in injury
9 to the health, morals or mental development of the child.
10 Satisfactory proof of the age of the child at the date of the
11 application shall be furnished. ~~[In the case of children over~~
12 ~~the age of fourteen years and under the age of sixteen years]~~
13 Any application for the employment of children at any gainful
14 occupation during the session hours of the school of the
15 district in which the child resides shall set forth, in
16 addition to the foregoing, the necessity to the family or the
17 dependents of the child or for ~~[his]~~ the child's own support of
18 the income to be derived from the employment or labor.

19 D. Whenever the person authorized to issue the
20 ~~[labor]~~ work permit is satisfied that the provisions of this
21 section have been complied with, ~~[he]~~ the person shall issue to
22 the child a ~~[labor]~~ work permit, keeping one copy on file and
23 sending one copy of ~~[this]~~ the permit to the labor and
24 industrial ~~[commission]~~ division of the labor department.

25 E. No work permit ~~[certificate]~~ shall be in force

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1 without renewal for a longer period than one year from the date
2 of issuance."

3 Section 9. Section 50-6-8 NMSA 1978 (being Laws 1925,
4 Chapter 79, Section 9, as amended) is amended to read:

5 "50-6-8. RENEWAL OF [~~LABOR~~] WORK PERMITS.--The officer
6 authorized to issue work permits may renew [~~any labor~~] a work
7 permit at the expiration date thereof for a period not
8 exceeding one year upon a satisfactory showing upon the part of
9 the child, [~~its~~] the child's parent, [~~or~~] guardian or [~~person~~
10 ~~in loco parentis~~] custodian that the provisions of [~~Sections~~
11 ~~59-6-1 through 59-6-16 NMSA 1953~~] the Child Labor Act are being
12 complied with and that [~~such~~] the child is in good health.

13 [~~Such~~] The extension of time shall be made by [~~such~~] the
14 officer writing upon the certificate the following words:
15 "this [~~certificate~~] work permit is extended for a period of
16 days from this date" and by the officer signing [~~his or~~
17 ~~her name thereto~~] the certificate."

18 Section 10. Section 50-6-9 NMSA 1978 (being Laws 1925,
19 Chapter 79, Section 10, as amended) is amended to read:

20 "50-6-9. EMPLOYER'S RECORDS--FORM OF PERMITS.--Whenever
21 any child is employed or permitted to labor at any gainful
22 occupation permitted by the laws of this state, the employer of
23 [~~such~~] the child shall preserve on file the [~~labor~~] work permit
24 of [~~such~~] the child and shall keep posted in a conspicuous
25 place about the premises where [~~such~~] the child is employed a

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1 list of all children there at work by virtue of [~~labor~~] work
 2 permits. The form for all [~~labor~~] work permits shall be
 3 prepared by and shall contain such information concerning the
 4 identity of the child as may be prescribed by the labor and
 5 industrial [~~commission~~] division of the labor department."

6 Section 11. Section 50-6-10 NMSA 1978 (being Laws 1925,
 7 Chapter 79, Section 11, as amended) is amended to read:

8 "50-6-10. INSPECTION OF [~~CERTIFICATES~~] WORK PERMITS,
 9 RECORDS AND PREMISES BY THE LABOR AND INDUSTRIAL [~~COMMISSION~~]
 10 DIVISION OF THE LABOR DEPARTMENT.--All [~~employment~~
 11 ~~certificates~~] work permits and records and the premises where
 12 children are employed are subject to inspection by
 13 representatives of the labor and industrial [~~commission~~]
 14 division of the labor department. The [~~commission~~] director of
 15 the division may, for cause, cancel [~~any labor~~] a work permit
 16 with the concurrence of the officer issuing the permit but, in
 17 case they disagree, the district court may cancel the permit on
 18 complaint setting forth the grounds therefor under the
 19 provisions of [~~Sections 59-6-1 through 59-6-15 NMSA 1953~~] the
 20 Child Labor Act."

21 Section 12. Section 50-6-12 NMSA 1978 (being Laws 1925,
 22 Chapter 79, Section 13, as amended) is amended to read:

23 "50-6-12. PENALTIES [~~FOR VIOLATION OF ACT~~].--[~~Whoever~~]
 24 A. A person who employs a child, or [~~whoever having~~
 25 ~~under his control~~] who is the parent, guardian or custodian of

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1 a child, and who permits [such] that child to be employed in
2 violation of any of the provisions of [~~Sections 59-6-1 through~~
3 ~~59-6-16 NMSA 1953 shall be~~] the Child Labor Act is guilty of a
4 petty misdemeanor [~~and shall be fined not less than twenty-five~~
5 ~~dollars (\$25.00) nor more than three hundred dollars (\$300)~~
6 ~~and, on default of the payment of such fine, may be sentenced~~
7 ~~to the county jail for not less than five days nor more than~~
8 ~~fifteen days~~]. Each violation of [~~Sections 59-6-1 through~~
9 ~~59-6-16 NMSA 1953 shall constitute~~] the Child Labor Act
10 constitutes a separate offense. [~~In the event of a second~~
11 ~~conviction of employer for violation of Sections 59-6-1 through~~
12 ~~59-6-16 NMSA 1953, the court trying the cause shall sentence~~
13 ~~such employer to the county jail for a period of not less than~~
14 ~~thirty days; and for any succeeding conviction for the like~~
15 ~~offense, the court trying the cause shall sentence the employer~~
16 ~~to imprisonment in the state penitentiary for a period of not~~
17 ~~less than one year nor more than two years.~~] A second or
18 subsequent conviction of an employer, parent, guardian or
19 custodian for violation of the Child Labor Act is a
20 misdemeanor.

21 B. The director of the labor and industrial
22 division of the labor department may report a violation of the
23 Child Labor Act to the local district attorney, who may
24 prosecute the alleged violator."

25 Section 13. Section 50-6-13 NMSA 1978 (being Laws 1925,

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1 Chapter 79, Section 14) is amended to read:

2 "50-6-13. DISTRICT COURT JURISDICTION.--The district
 3 courts are hereby given original jurisdiction in all cases of
 4 violations of the provisions of [~~this act~~] the Child Labor
 5 Act."

6 Section 14. Section 50-6-14 NMSA 1978 (being Laws 1925,
 7 Chapter 79, Section 15, as amended) is amended to read:

8 "50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--
 9 DIRECTION--QUALIFICATIONS.--There shall be a "state child labor
 10 inspector", appointed by and subject to the [~~labor~~
 11 ~~commissioner. The inspector must be qualified by special~~
 12 ~~training and experience for this work and must pass a~~
 13 ~~satisfactory examination given by the labor commissioner for~~
 14 ~~this purpose~~] director of the labor and industrial division of
 15 the labor department."

16 Section 15. A new section of the Child Labor Act is
 17 enacted to read:

18 "[NEW MATERIAL] CHILDREN EMPLOYED IN THE PERFORMING ARTS--
 19 TRUST ACCOUNT--REQUIREMENTS.--

20 A. Whenever a child is employed in the performing
 21 arts, the child's parent, guardian or trustee shall establish a
 22 trust account in the child's state of residence for the benefit
 23 of the child within seven business days after the child's
 24 employment contract is signed, and the employer shall deposit
 25 fifteen percent of the child's gross earnings directly into the

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1 child's trust account.

2 B. The money placed in trust shall not be accessed
3 until the child is eighteen years of age or becomes legally
4 emancipated, unless otherwise ordered by the district court.

5 C. The parent, guardian or trustee shall provide
6 the child's employer with a trustee statement within fifteen
7 days after the start of employment. Upon the presentation of
8 the trustee statement, the employer shall provide the parent,
9 guardian or trustee with a written acknowledgment of receipt of
10 the statement.

11 D. If the parent, guardian or trustee fails to
12 provide the child's employer with a trustee statement within
13 ninety days after the start of employment, the child's employer
14 shall refer the matter to the district court and a trustee
15 shall be appointed for the child.

16 E. The child's employer shall deposit fifteen
17 percent of the child's gross earnings into the child's trust
18 account within fifteen business days of services rendered. If
19 the account is not established, the child's employer shall
20 withhold fifteen percent until a trust account is established
21 for the child's benefit.

22 F. Once the child's employer deposits fifteen
23 percent of the child's gross earnings in trust, the child's
24 employer shall have no further obligation or duty to monitor
25 the funds.

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1 G. The trustee shall be the only individual with an
2 obligation to monitor and account for the funds, in compliance
3 with state law.

4 H. The district court shall have continuing
5 jurisdiction over the trust and may at any time, upon petition
6 of the parent, guardian, trustee or child, order that the trust
7 be terminated or amended for good cause. An order amending or
8 terminating the trust shall be made only after reasonable
9 notice and the opportunity for all parties to appear and be
10 heard have been given.

11 I. This section applies only to contracts in an
12 amount equal to or greater than one thousand dollars (\$1,000)
13 in gross earnings.

14 J. For the purposes of this section, "gross
15 earnings" means the total compensation payable to the child
16 under the contract or, if the child's services are being
17 rendered through a third party, the compensation payable to
18 that third party for the services of the child."

19 Section 16. REPEAL.--Sections 50-6-6, 50-6-15 and 50-6-16
20 NMSA 1978 (being Laws 1925, Chapter 79, Section 7, Laws 1963,
21 Chapter 175, Section 4 and Laws 1959, Chapter 298, Section 1,
22 as amended) are repealed.