

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

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 Section 4. A new section of the Child Labor Act is
5 enacted to read:

6 "[NEW MATERIAL] CIVIL PENALTY--ISSUANCE OF CITATION.--

7 A. If the director of the labor and industrial
8 division of the labor department, after affording a respondent
9 a hearing consistent with the requirements of the
10 Administrative Procedures Act, finds that an employer has
11 violated a provision of the Child Labor Act, the director shall
12 issue a citation and impose a civil penalty on the employer of
13 not less than one hundred dollars (\$100) and not more than five
14 thousand dollars (\$5,000) for each violation of that act. Each
15 violation of a provision of the Child Labor Act constitutes a
16 separate offense.

17 B. If the director of the labor and industrial
18 division of the labor department finds that an employer has
19 violated a provision of the Child Labor Act, in addition to
20 issuing the citation and imposing the appropriate fine upon the
21 employer, the director shall refer the case to the district
22 attorney in the county in which the violation occurred for
23 criminal prosecution."

24 Section 5. A new section of the Child Labor Act is
25 enacted to read:

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1 "[NEW MATERIAL] APPEAL OF ADMINISTRATIVE DECISIONS.--

2 A. The aggrieved party may appeal the issuance of a
3 citation by the director of the labor and industrial division
4 of the labor department made pursuant to the Child Labor Act to
5 the labor and industrial commission sitting as the appeals
6 board by filing notice of the appeal with the director within
7 fifteen days after notice of a citation.

8 B. The labor and industrial commission, sitting as
9 the appeals board, shall adopt rules as it deems necessary for
10 the prompt disposition of appeals. A copy of the rules shall
11 be filed in accordance with the State Rules Act.

12 C. The appeals board, within ten days after the
13 filing of the appeal, shall set the matter for an oral hearing
14 within thirty days and, following the hearing, shall enter a
15 decision within ten days after the close of the hearing and
16 promptly mail copies of the decision to the parties.

17 D. Decisions of the appeals board may be appealed
18 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

21 "50-6-1. CHILDREN UNDER FOURTEEN--EMPLOYMENT [~~DURING~~
22 ~~SCHOOL HOURS]~~ PROHIBITED.--No child under fourteen years of age
23 shall be employed or permitted to labor at any gainful
24 occupation [~~during the hours during which the schools in the~~
25 ~~district in which the child resides are in session. No child~~

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1 ~~under the age of fourteen years shall be employed at any~~
2 ~~gainful occupation when the school of the district in which~~
3 ~~such child resides is not in session unless such child obtains~~
4 ~~a permit certificate issued in the manner and by the authority~~
5 ~~herein directed] unless otherwise provided for in the Child~~
6 Labor Act."

7 Section 7. Section 50-6-2 NMSA 1978 (being Laws 1925,
8 Chapter 79, Section 2, as amended) is amended to read:

9 "50-6-2. [~~CERTIFICATE~~] WORK PERMIT FOR CHILDREN FOURTEEN
10 TO SIXTEEN [~~DURING SCHOOL TERM~~].--[~~No~~] A child over the age of
11 fourteen years and under the age of sixteen years shall not be
12 employed or permitted to labor at any gainful occupation
13 [~~during the term of the school of the district in which the~~
14 ~~child resides unless the child has procured and filed] without
15 procuring and filing a work permit [~~certificate as herein~~]
16 unless otherwise provided for in the Child Labor Act."~~

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

19 "50-6-3. MAXIMUM HOURS FOR CHILDREN [~~UNDER~~] FOURTEEN TO
20 SIXTEEN.--[~~No child~~]

21 A. Children over the age of fourteen and under the
22 age of [~~fourteen~~] sixteen years shall not be employed or
23 permitted to labor at any gainful occupation for more than
24 [~~forty-four~~] forty hours in any one week nor more than eight
25 hours in any one day [~~except under special circumstances to be~~

1 ~~determined by the officer who issued the permit; but in no case~~
 2 ~~shall such child be permitted to work more than forty-eight~~
 3 ~~hours in any one week nor shall such child begin work before~~
 4 ~~7:00 a.m. nor continue after 9:00 p.m. of any one day] when~~
 5 school is not in session unless otherwise provided for in the
 6 Child Labor Act.

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

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

12 (2) before 7:00 a.m. or after 9:00 p.m.
 13 outside of the calendar school year;

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

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

18 (5) more than eighteen hours per week during
 19 school weeks."

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

22 "50-6-4. PROHIBITED OCCUPATIONS FOR CHILDREN UNDER
 23 SIXTEEN--EXCEPTIONS.--~~[No child]~~

24 A. A child under the age of sixteen years shall not
 25 be employed or permitted to labor at any of the following

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1 occupations or in any of the following positions:

2 (1) on or around belted machines while in
3 motion;

4 (2) on or around power-driven woodworking
5 machines used for cutting, shaping, forming, surfacing,
6 nailing, stapling, wire stitching, fastening or otherwise
7 assembling, processing or printing wood or veneer;

8 (3) on or around power-driven hoisting
9 apparatus with the exception that this section shall not
10 prohibit the operation of an automatic elevator ~~[which]~~ that is
11 controlled by pushbuttons making leveling, holding, opening and
12 closing of the car and hoistway doors entirely automatic;
13 ~~[prohibited]~~

14 (4) in or about plants, establishments or jobs
15 using, manufacturing or storing explosives or articles
16 containing explosive components;

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

19 (6) in or about any establishment where malt
20 or alcoholic beverages are manufactured, packed, wrapped or
21 bottled;

22 (7) municipal firefighting whether using
23 volunteers or paid employees;

24 (8) manufacture of goods for immoral purposes;
25 ~~[nor]~~

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

4 (10) soliciting door-to-door for other than a
5 nonprofit organization.

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

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

12 (2) apprentices while under the supervision of
13 a journeyman [~~or instructor~~] in a certified apprenticeship
14 program; or

15 (3) children employed in a film or television
16 production, where the set may be considered physically
17 hazardous or special effects are used; provided that a New
18 Mexico-certified trainer or technician accredited in a United
19 States department of labor occupational safety and health
20 administration-certified safety program specific to the film or
21 television industry is present at all times that the child is
22 exposed to the potentially hazardous condition.

23 C. Additional hazardous occupations not
24 specifically listed in this section [~~will~~] shall be determined
25 by the state child labor inspector following consultation with

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1 the employer who wishes to employ minors over the age of
2 fourteen years and under sixteen years of age."

3 Section 10. Section 50-6-7 NMSA 1978 (being Laws 1925,
4 Chapter 79, Section 8, as amended) is amended to read:

5 "50-6-7. [~~LABOR~~] WORK PERMIT [~~GERTIFICATES~~]~~--ISSUANCE--~~
6 ~~AUTHORIZED OFFICIALS--APPLICATION--CONTENTS--PROOF--COPIES--~~
7 ~~MAXIMUM TERM.--~~

8 A. [~~Permit certificates~~] Work permits shall be
9 issued only by the school superintendents, school principals,
10 designated issuing school officers or the director of the labor
11 and industrial division of the labor department or the
12 director's designee.

13 B. [~~No~~] A work permit [~~certificate~~] shall not be
14 issued to [~~any~~] a child until satisfactory proof has been
15 furnished that the work in which the child is to engage is not
16 dangerous to the child [~~nor~~] or injurious to [~~his~~] the child's
17 health or morals.

18 C. The application for the [~~certificate must~~] work
19 permit shall show that the [~~child is in good physical health~~
20 ~~and that the~~] work to be performed would not result in injury
21 to the health, morals or mental development of the child.

22 Satisfactory proof of the age of the child at the date of the
23 application shall be furnished. [~~In the case of children over~~
24 ~~the age of fourteen years and under the age of sixteen years]~~

25 Any application for the employment of children at any gainful

1 occupation during the session hours of the school of the
 2 district in which the child resides shall set forth, in
 3 addition to the foregoing, the necessity to the family or the
 4 dependents of the child or for ~~[his]~~ the child's own support of
 5 the income to be derived from the employment or labor.

6 D. Whenever the person authorized to issue the
 7 ~~[labor]~~ work permit is satisfied that the provisions of this
 8 section have been complied with, ~~[he]~~ the person shall issue to
 9 the child a ~~[labor]~~ work permit, keeping one copy on file and
 10 sending one copy of ~~[this]~~ the permit to the labor and
 11 industrial ~~[commission]~~ division of the labor department.

12 E. No work permit ~~[certificate]~~ shall be in force
 13 without renewal for a longer period than one year from the date
 14 of issuance."

15 Section 11. Section 50-6-8 NMSA 1978 (being Laws 1925,
 16 Chapter 79, Section 9, as amended) is amended to read:

17 "50-6-8. RENEWAL OF ~~[LABOR]~~ WORK PERMITS.--The officer
 18 authorized to issue work permits may renew ~~[any labor]~~ a work
 19 permit at the expiration date thereof for a period not
 20 exceeding one year upon a satisfactory showing upon the part of
 21 the child, ~~[its]~~ the child's parent, ~~[or]~~ guardian or ~~[person~~
 22 ~~in loco parentis]~~ custodian that the provisions of ~~[Sections~~
 23 ~~59-6-1 through 59-6-16 NMSA 1953]~~ the Child Labor Act are being
 24 complied with and that ~~[such]~~ the child is in good health.
 25 ~~[Such]~~ The extension of time shall be made by ~~[such]~~ the

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1 officer writing upon the certificate the following words:
2 "this [~~certificate~~] work permit is extended for a period of
3 days from this date" and by the officer signing [~~his or~~
4 ~~her name thereto~~] the certificate."

5 Section 12. Section 50-6-9 NMSA 1978 (being Laws 1925,
6 Chapter 79, Section 10, as amended) is amended to read:

7 "50-6-9. EMPLOYER'S RECORDS--FORM OF PERMITS.--Whenever
8 any child is employed or permitted to labor at any gainful
9 occupation permitted by the laws of this state, the employer of
10 [~~such~~] the child shall preserve on file the [~~labor~~] work permit
11 of [~~such~~] the child and shall keep posted in a conspicuous
12 place about the premises where [~~such~~] the child is employed a
13 list of all children there at work by virtue of [~~labor~~] work
14 permits. The form for all [~~labor~~] work permits shall be
15 prepared by and shall contain such information concerning the
16 identity of the child as may be prescribed by the labor and
17 industrial [~~commission~~] division of the labor department."

18 Section 13. Section 50-6-10 NMSA 1978 (being Laws 1925,
19 Chapter 79, Section 11, as amended) is amended to read:

20 "50-6-10. INSPECTION OF [~~CERTIFICATES~~] WORK PERMITS,
21 RECORDS AND PREMISES BY THE LABOR AND INDUSTRIAL [~~COMMISSION~~]
22 DIVISION OF THE LABOR DEPARTMENT.--All [~~employment~~
23 ~~certificates~~] work permits and records and the premises where
24 children are employed are subject to inspection by
25 representatives of the labor and industrial [~~commission~~]

1 division of the labor department. The [~~commission~~] director of
 2 the division may, for cause, cancel [~~any labor~~] a work permit
 3 with the concurrence of the officer issuing the permit but, in
 4 case they disagree, the district court may cancel the permit on
 5 complaint setting forth the grounds therefor under the
 6 provisions of [~~Sections 59-6-1 through 59-6-15 NMSA 1953~~] the
 7 Child Labor Act."

8 Section 14. Section 50-6-12 NMSA 1978 (being Laws 1925,
 9 Chapter 79, Section 13, as amended) is amended to read:

10 "50-6-12. PENALTIES [~~FOR VIOLATION OF ACT~~].-- [~~Whoever~~]

11 A. A person who employs a child, or [~~whoever having~~
 12 ~~under his control~~] who is the parent, guardian or custodian of
 13 a child, and who permits [~~such~~] that child to be employed in
 14 violation of any of the provisions of [~~Sections 59-6-1 through~~
 15 ~~59-6-16 NMSA 1953 shall be~~] the Child Labor Act is guilty of a
 16 petty misdemeanor [~~and shall be fined not less than twenty-five~~
 17 ~~dollars (\$25.00) nor more than three hundred dollars (\$300)~~
 18 ~~and, on default of the payment of such fine, may be sentenced~~
 19 ~~to the county jail for not less than five days nor more than~~
 20 ~~fifteen days~~]. Each violation of [~~Sections 59-6-1 through~~
 21 ~~59-6-16 NMSA 1953 shall constitute~~] the Child Labor Act
 22 constitutes a separate offense. [~~In the event of~~] A second
 23 conviction of an employer, parent, guardian or custodian for
 24 violation of [~~Sections 59-6-1 through 59-6-16 NMSA 1953, the~~
 25 ~~court trying the cause shall sentence such employer to the~~

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1 ~~county jail for a period of not less than thirty days; and for~~
2 ~~any succeeding conviction for the like offense, the court~~
3 ~~trying the cause shall sentence the employer to imprisonment in~~
4 ~~the state penitentiary for a period of not less than one year~~
5 ~~nor more than two years]~~ the Child Labor Act is a misdemeanor.
6 A third or subsequent conviction of an employer, parent,
7 guardian or custodian for violation of the Child Labor Act is a
8 fourth degree felony.

9 B. The director of the labor and industrial
10 division of the labor department shall report a violation of
11 the Child Labor Act to the local district attorney, who shall
12 prosecute the alleged violator. Upon conviction, the employer,
13 parent, guardian or custodian may be sentenced to county jail
14 for a period of not less than thirty days and for any
15 succeeding conviction for the like offense, the employer,
16 parent, guardian or custodian is guilty of a fourth degree
17 felony."

18 Section 15. Section 50-6-13 NMSA 1978 (being Laws 1925,
19 Chapter 79, Section 14) is amended to read:

20 "50-6-13. DISTRICT COURT JURISDICTION.--The district
21 courts are hereby given original jurisdiction in all cases of
22 violations of the provisions of [~~this act~~] the Child Labor
23 Act."

24 Section 16. Section 50-6-14 NMSA 1978 (being Laws 1925,
25 Chapter 79, Section 15, as amended) is amended to read:

1 "50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--
 2 DIRECTION--QUALIFICATIONS.--There shall be a "state child labor
 3 inspector", appointed by and subject to the [~~labor~~
 4 ~~commissioner. The inspector must be qualified by special~~
 5 ~~training and experience for this work and must pass a~~
 6 ~~satisfactory examination given by the labor commissioner for~~
 7 ~~this purpose]~~ director of the labor and industrial division of
 8 the labor department."

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

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

13 A. Whenever a child is employed in the performing
 14 arts, the child's parent, guardian or trustee shall establish a
 15 trust account for the benefit of the child within seven
 16 business days after the child's employment contract is signed,
 17 and the employer shall deposit fifteen percent of the child's
 18 gross earnings directly into the child's trust account.

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

22 C. The parent, guardian or trustee shall provide
 23 the child's employer with a trustee statement within fifteen
 24 days after the start of employment. Upon the presentation of
 25 the trustee statement, the employer shall provide the parent,

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1 guardian or trustee with a written acknowledgment of receipt of
2 the statement.

3 D. If the parent, guardian or trustee fails to
4 provide the child's employer with a trustee statement within
5 ninety days after the start of employment, the child's employer
6 shall refer the matter to the district court and a trustee
7 shall be appointed for the child.

8 E. The child's employer shall deposit fifteen
9 percent of the child's gross earnings into the child's trust
10 account within fifteen business days of services rendered. If
11 the account is not established, the child's employer shall
12 withhold fifteen percent until a trust account is established
13 for the child's benefit.

14 F. Once the child's employer deposits fifteen
15 percent of the child's gross earnings in trust, the child's
16 employer shall have no further obligation or duty to monitor
17 the funds.

18 G. The trustee shall be the only individual with an
19 obligation to monitor and account for the funds, in compliance
20 with state law.

21 H. The district court shall have continuing
22 jurisdiction over the trust and may at any time, upon petition
23 of the parent, guardian, trustee or child, order that the trust
24 be terminated or amended for good cause. An order amending or
25 terminating the trust shall be made only after reasonable

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1 notice and the opportunity for all parties to appear and be
2 heard have been given.

3 I. This section applies only to contracts in an
4 amount equal to or greater than ten thousand dollars (\$10,000)
5 in gross earnings.

6 J. For the purposes of this section, "gross
7 earnings" means the total compensation payable to the child
8 under the contract or, if the child's services are being
9 rendered through a third party, the compensation payable to
10 that third party for the services of the child."

11 Section 18. REPEAL.--Sections 50-6-6, 50-6-15 and 50-6-16
12 NMSA 1978 (being Laws 1925, Chapter 79, Section 7, Laws 1963,
13 Chapter 175, Section 4 and Laws 1959, Chapter 298, Section 1,
14 as amended) are repealed.

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