

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 225

3 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

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10 AN ACT

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

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. A new section of Chapter 50, Article 6 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] SHORT TITLE.--Chapter 50, Article 6 NMSA
20 1978 may be cited as the "Child Labor Act"."

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

23 "[NEW MATERIAL] EXCEPTIONS.--

24 A. A child under the age of sixteen may be employed
25 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 heavy manufacturing or mining or other than an occupation found
5 to be particularly hazardous or detrimental to the health of
6 children under the age of sixteen;

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

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; or

14 (4) to perform child care, babysitter maid or
15 domestic services.

16 B. The employer of a child employed pursuant to
17 Subsection A of this section is not required to obtain and
18 preserve a work permit in accordance with Section 50-6-9 NMSA
19 1978 for that child."

20 Section 3. A new section of Chapter 50, Article 6 NMSA
21 1978 is enacted to read:

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

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

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1 television products.

2 B. A performer under eighteen years of age is
3 considered a child subject to the Child Labor Act unless:

4 (1) the performer has satisfied the compulsory
5 education laws of the state;

6 (2) the performer is married;

7 (3) the performer is a member of the armed
8 forces; or

9 (4) the performer is legally emancipated.

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

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

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

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

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

25 (4) a child over the age of sixteen and under

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1 the age of eighteen shall not be employed or permitted to labor
2 for more than ten hours in one day.

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

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

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

9 A. If the director of the labor and industrial
10 division of the labor department 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 with the librarian of the supreme court law library.

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

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

23 A. Whenever a child is employed in the performing
 24 arts, the child's parent, guardian or trustee shall establish a
 25 trust account in the child's state of residence for the benefit

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1 of the child within seven business days after the child's
2 employment contract is signed, and the employer shall deposit
3 fifteen percent of the child's gross earnings directly into the
4 child's trust account.

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

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

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

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

25 F. Once the child's employer deposits fifteen

1 percent of the child's gross earnings in trust, the child's
 2 employer shall have no further obligation or duty to monitor
 3 the funds.

4 G. The trustee shall be the only individual with an
 5 obligation to monitor and account for the funds, in compliance
 6 with state law.

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

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

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

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

24 "50-6-1. CHILDREN UNDER FOURTEEN--EMPLOYMENT [DURING
 25 SCHOOL HOURS] PROHIBITED.--No child under fourteen years of age

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1 shall be employed or permitted to labor at any gainful
2 occupation [~~during the hours during which the schools in the~~
3 ~~district in which the child resides are in session. No child~~
4 ~~under the age of fourteen years shall be employed at any~~
5 ~~gainful occupation when the school of the district in which~~
6 ~~such child resides is not in session unless such child obtains~~
7 ~~a permit certificate issued in the manner and by the authority~~
8 ~~herein directed]~~ unless otherwise provided for in the Child
9 Labor Act."

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

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

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

22 "50-6-3. MAXIMUM HOURS FOR CHILDREN [~~UNDER~~] FOURTEEN TO
23 SIXTEEN.--[~~No child~~]

24 A. Children over the age of fourteen and under the
25 age of [~~fourteen~~] sixteen years shall not be employed or

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

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

13 (1) before 6:00 a.m. or after 7:00 p.m. during
 14 the calendar school year;

15 (2) before 6:00 a.m. or after 9:00 p.m.
 16 outside of the calendar school year;

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

19 (4) more than four hours per day during school
 20 days; or

21 (5) more than twenty hours per week during
 22 school weeks."

23 Section 10. Section 50-6-4 NMSA 1978 (being Laws 1925,
 24 Chapter 79, Section 5, as amended) is amended to read:

25 "50-6-4. PROHIBITED OCCUPATIONS FOR CHILDREN UNDER

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1 SIXTEEN--EXCEPTIONS.--~~[No child]~~

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

5 (1) on or around belted machines while in
6 motion;

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

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

17 (4) in or about plants, establishments or jobs
18 using, manufacturing or storing explosives or articles
19 containing explosive components;

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

22 (6) in or about any establishment where malt
23 or alcoholic beverages are manufactured, packed, wrapped or
24 bottled;

25 (7) municipal firefighting whether using

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1 volunteers or paid employees;

2 (8) manufacture of goods for immoral purposes;

3 [~~nor~~] or

4 (9) in any employment dangerous to lives and
 5 limbs or injurious to the health or morals of children under
 6 the age of sixteen years. [~~Provided further, that~~]

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

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

14 (2) apprentices while under the supervision of
 15 a journeyman [~~or instructor~~] in a certified apprenticeship
 16 program.

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

22 Section 11. Section 50-6-7 NMSA 1978 (being Laws 1925,
 23 Chapter 79, Section 8, as amended) is amended to read:

24 "50-6-7. [~~LABOR~~] WORK PERMIT [~~GERTIFICATES~~]--ISSUANCE--
 25 AUTHORIZED OFFICIALS--APPLICATION--CONTENTS--PROOF--COPIES--

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1 MAXIMUM TERM.--

2 A. [~~Permit certificates~~] Work permits shall be
3 issued only by the school superintendents, school principals,
4 designated issuing school officers or the director of the labor
5 and industrial division of the labor department or the
6 director's designee.

7 B. [~~No~~] A work permit [~~certificate~~] shall not be
8 issued to [~~any~~] a child until satisfactory proof has been
9 furnished that the work in which the child is to engage is not
10 dangerous to the child [~~nor~~] or injurious to [~~his~~] the child's
11 health or morals.

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

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

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

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

12 "50-6-8. RENEWAL OF [~~LABOR~~] WORK PERMITS.--The officer
 13 authorized to issue work permits may renew [~~any labor~~] a work
 14 permit at the expiration date thereof for a period not
 15 exceeding one year upon a satisfactory showing upon the part of
 16 the child, [~~its~~] the child's parent, [~~or~~] guardian or [~~person~~
 17 ~~in loco parentis~~] custodian that the provisions of [~~Sections~~
 18 ~~59-6-1 through 59-6-16 NMSA 1953~~] the Child Labor Act are being
 19 complied with and that [~~such~~] the child is in good health.

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

25 Section 13. Section 50-6-9 NMSA 1978 (being Laws 1925,
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1 Chapter 79, Section 10, as amended) is amended to read:

2 "50-6-9. EMPLOYER'S RECORDS--FORM OF PERMITS.--Whenever
3 any child is employed or permitted to labor at any gainful
4 occupation permitted by the laws of this state, the employer of
5 [~~such~~] the child shall preserve on file the [~~labor~~] work permit
6 of [~~such~~] the child and shall keep posted in a conspicuous
7 place about the premises where [~~such~~] the child is employed a
8 list of all children there at work by virtue of [~~labor~~] work
9 permits. The form for all [~~labor~~] work permits shall be
10 prepared by and shall contain such information concerning the
11 identity of the child as may be prescribed by the labor and
12 industrial [~~commission~~] division of the labor department."

13 Section 14. Section 50-6-10 NMSA 1978 (being Laws 1925,
14 Chapter 79, Section 11, as amended) is amended to read:

15 "50-6-10. INSPECTION OF [~~CERTIFICATES~~] WORK PERMITS,
16 RECORDS AND PREMISES BY THE LABOR AND INDUSTRIAL [~~COMMISSION~~]
17 DIVISION OF THE LABOR DEPARTMENT.--All [~~employment~~
18 ~~certificates~~] work permits and records and the premises where
19 children are employed are subject to inspection by
20 representatives of the labor and industrial [~~commission~~]
21 division of the labor department. The [~~commission~~] director of
22 the division may, for cause, cancel [~~any labor~~] a work permit
23 with the concurrence of the officer issuing the permit but, in
24 case they disagree, the district court may cancel the permit on
25 complaint setting forth the grounds therefor under the

1 provisions of [~~Sections 59-6-1 through 59-6-15 NMSA 1953~~] the
 2 Child Labor Act."

3 Section 15. Section 50-6-12 NMSA 1978 (being Laws 1925,
 4 Chapter 79, Section 13, as amended) is amended to read:

5 "50-6-12. PENALTIES [~~FOR VIOLATION OF ACT~~].--~~[Whoever]~~

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

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1 A third or subsequent conviction of an employer for violation
2 of the Child Labor Act is a fourth degree felony.

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

12 Section 16. Section 50-6-13 NMSA 1978 (being Laws 1925,
13 Chapter 79, Section 14) is amended to read:

14 "50-6-13. DISTRICT COURT JURISDICTION.--The district
15 courts are hereby given original jurisdiction in all cases of
16 violations of the provisions of [~~this act~~] the Child Labor
17 Act."

18 Section 17. Section 50-6-14 NMSA 1978 (being Laws 1925,
19 Chapter 79, Section 15, as amended) is amended to read:

20 "50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--
21 DIRECTION--QUALIFICATIONS.--There shall be a "state child labor
22 inspector", appointed by and subject to the [~~labor~~
23 ~~commissioner~~] director of the labor and industrial division of
24 the labor department. The inspector must be qualified by
25 special training and experience for this work and must pass a

1 satisfactory examination given by the [~~labor commissioner~~]
2 director for this purpose."

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

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