

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 635, L.D. 905, Bill, "An Act to Increase Penalties for Child Labor Law Violations"

Amend the bill by striking out the title and substituting the following:

'An Act to Amend the Child Labor Laws and to Allow Illegally Employed Minors to Bring Suit Against Their Employers for Work Related Injuries'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 26 MRSA §664, last ¶, as amended by PL 1969, c. 504, §43, is further amended to read:

Employees who are under the age of 19 and are regularly enrolled in an educational institution or are on vacation therefrom may be paid a rate of not less than 75% ~~85%~~ of the applicable minimum wage rate required for other employees in the same occupation.

Sec. 2. 26 MRSA §702, as amended by PL 1979, c. 468, §1, is further amended to read:

§702. Record of work hours of minors under 16 years of age

Every employer shall keep a time book or record for every minor under ~~16~~ 18 years of age employed in any occupation, except the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, or household work, stating the number of hours worked by each minor under ~~16~~ 18 years of age on each day of the week. ~~Such~~ The time book or record shall ~~must~~ be open at all reasonable hours to the inspection of the director, a

2 director's deputy or any authorized agent of the bureau. Any  
3 employer who fails to keep the record required by this section or  
4 makes any false entry ~~therein~~ to the record, or refuses to  
5 exhibit the time book or record or makes any false statement to  
6 the director, a director's deputy or any authorized agent of the  
7 bureau in reply to any question in carrying out section 701 and  
8 this section shall ~~be~~ is liable for a violation ~~thereof~~ of this  
section and section 701.

10 **Sec. 3. 26 MRSA §704**, as amended by PL 1981, c. 698, §115, is  
11 repealed and the following enacted in its place:

12 **§704. Penalty for employers**

13 **1. Strict liability.** An employer who violates either  
14 section 701 or 702 is subject to the following forfeiture or  
15 civil penalty, payable to the State and recoverable in a civil  
16 action:

17 **A.** For the first violation or a violation not subject to an  
18 enhanced sanction under paragraph B or C, a forfeiture of  
19 not less than \$50 nor more than \$250;

20 **B.** For a 2nd violation occurring within 3 years of a prior  
21 adjudication, a forfeiture of not less than \$100 nor more  
22 than \$1,000; or

23 **C.** For a 3rd and subsequent violation occurring within 3  
24 years of 2 or more prior adjudications, a forfeiture or  
25 penalty of not less than \$250 nor more than \$2,500.

26 **2. Adjudications.** As used in this section, a prior  
27 adjudication includes a consent decree that contains an admission  
28 of a violation. The dates of prior adjudications for any  
29 violation of sections 701 and 702 or a combination must precede  
30 the commission of the violation being enhanced, although prior  
31 adjudications involving a combination may have occurred on the  
32 same day. The date of any adjudication is the date the  
33 forfeiture or penalty is adjudged or the consent decree allowed,  
34 even though an appeal was taken.

35 **Sec. 4. 26 MRSA §771**, as amended by PL 1979, c. 468, §2, is  
36 further amended to read:

37 **§771. Minors under 14 years of age**

38 ~~No-child~~ A minor under 14 years of age shall may not be  
39 employed, permitted or suffered to work in, about or in  
40 connection with agriculture, except for the planting, cultivating  
41 or harvesting of field crops or other agricultural employment not  
42 in direct contact with hazardous machinery or hazardous

2 substances, any eating place, automatic laundries, retail  
3 establishment where frozen dairy products are manufactured on the  
4 premises, sporting or overnight camp, mercantile establishment or  
5 in outdoor occupations on the grounds of a hotel, and ~~no child a~~  
6 minor between the ages of 14 and 16 years shall may not be so  
7 employed when the distance between the work place and the home of  
8 the ~~child~~ minor, or any other factor, necessitates the ~~child's~~  
9 minor's remaining away from home overnight. ~~Except as otherwise~~  
10 ~~provided, no child under 15 years of age shall be employed,~~  
11 ~~permitted or suffered to work at any business or service for~~  
12 ~~hire, whatever, during the hours that the public schools of the~~  
13 ~~town or city in which he resides are in session.~~ This section  
14 shall does not apply to any such child minor who is employed  
15 directly by, with or under the supervision of either or both of  
16 ~~its~~ the minor's parents; or to any such child minor employed in  
17 school lunch programs, if limited to serving food and cleaning up  
18 dining rooms.

19 **Sec. 5. 26 MRSA §§774 and 775**, as amended by PL 1989, c. 700,  
20 Pt. A, §§102 and 103, are repealed and the following enacted in  
21 their place:

22 **§774. Hours of employment**

23 **1. Minors under 18 years of age.** A minor under 18 years of  
24 age, enrolled in school, may not be employed as follows:

25 A. More than 48 hours in any week when school is not in  
26 session;

27 B. More than 20 hours in any week when school is in session;

28 C. More than 8 hours in any day when school is not in  
29 session;

30 D. More than 4 hours in any day when school is in session;

31 E. More than 6 consecutive days; or

32 F. Between the hours of 10 p.m. and 7 a.m. on a day  
33 preceding a school day or between the hours of 12 a.m. and 7  
34 a.m. on a day that does not precede a school day.

35 **2. Minors under 16 years of age.** A minor under 16 years of  
36 age may not be employed as follows:

37 A. More than 40 hours in any week when school is not in  
38 session;

39 B. More than 18 hours in any week when school is in session;

2 C. More than 8 hours in any day when school is not in  
session;

4 D. More than 3 hours in any day when school is in session;

6 E. More than 6 consecutive days; or

8 F. Between the hours of 7 p.m. and 7 a.m. in any day when  
10 school is in session or between the hours of 9 p.m. and 7  
a.m. during summer school vacation.

12 3. Employment during hours school in session. A minor  
14 under 17 years of age may not be employed during the hours that  
the public schools of the town or city in which the minor resides  
16 are in session.

18 A. Exceptions. This subsection does not apply to:

20 (1) A minor who has been excused from attendance by  
22 school officials in accordance with Title 20-A, section  
24 5001-A, subsection 2 or subsection 3, except that a  
minor who has been excused in accordance with  
subsection 3 may not be employed during the hours that  
the minor's school is in session;

26 (2) A student in an alternative education plan that  
includes a work experience component;

28 (3) A student in an approved vocational cooperative  
30 education program; or

32 (4) A student who is granted permission for an early  
34 school release by the school principal.

36 The hours worked by a student in an alternative education plan  
or in an approved vocational cooperative education program may  
38 not be included in determining the student's total hours of  
permitted employment under subsection 1 and subsection 2.

40 4. Exemptions. Work performed in the planting, cultivating  
42 or harvesting of field crops or other agricultural employment not  
in direct contact with hazardous machinery or hazardous  
44 substances or any occupation that does not offer continuous,  
year-round employment is exempt from this section, provided a  
46 minor under 16 years of age has been excused by the local  
superintendent of schools in accordance with the policy  
48 established by the Commissioner of Education and the Director of  
the Bureau of Labor. Work performed in the taking or catching of  
50 lobsters, fish or other marine organisms by any methods or means,  
or in the operating of ferries or excursion boats, is exempt from  
subsection 1, paragraphs A and C.

2        §775. Work permits

4            1. Work permit authority. A minor under 17 years of age  
6            may not be employed without a work permit issued to the minor by  
8            the superintendent of schools of the school administrative unit  
             in which the minor resides. The superintendent may designate a  
             school official to issue a work permit and that official is  
             directly responsible to the superintendent for this activity.

10

2. Conditions for issuance. The superintendent shall issue  
12           a permit in the following circumstances:

14           A. If the school is in session or the minor is attending  
16           summer school, the minor must be enrolled in school, not  
             habitually truant, not under suspension and passing a  
18           majority of courses during the current grading period. Upon  
20           request of the minor, the superintendent may waive the  
             requirements for one grading period if, in the opinion of  
             the superintendent, there are extenuating circumstances or  
22           if imposing the requirements would create an undue hardship  
             for the minor;

24           B. If school is not in session, the minor must furnish to  
26           the superintendent a certificate signed by the principal of  
             the school last attended showing that the minor has  
28           satisfactorily completed Kindergarten to grade 8 in the  
             public schools or their equivalent. If the certificate can  
30           not be obtained, the superintendent shall examine the minor  
             to determine whether the minor meets these educational  
             standards; or

32

C. If the minor has been granted an exception to compulsory  
34           education under Title 20-A, section 5001-A, subsection 2,  
             the minor must only submit proof of age as provided in  
36           subsection 3.

38           3. Proof of age. The superintendent may issue a permit  
40           only upon receiving and examining satisfactory evidence of the  
             minor's age. Satisfactory evidence consists of a certified copy  
42           of the minor's birth certificate or baptismal record, a passport  
             showing the date of birth or other documentary evidence of age  
             satisfactory to the superintendent and approved by the director.  
44           The superintendent may require, in doubtful cases, a certificate  
             signed by a physician appointed by the school board, stating that  
46           the minor has been examined and, in that physician's opinion, has  
             reached the normal development of a minor of the same age and is  
48           in sufficiently sound health and physically able to perform the  
             work the minor intends to do.

50

4. Conditions for revocation. The superintendent may

2 revoke the work permit issued to a minor if the superintendent  
4 determines that the minor has not maintained the conditions for  
6 issuance of the work permit under subsection 2, paragraph A. The  
8 superintendent shall notify the Director of the Bureau of Labor  
10 Standards and the minor's employer in writing upon revoking a  
12 minor's work permit. The revocation is effective upon receipt by  
14 the employer of the superintendent's notice.

5. Permit on file. The employer shall keep all work  
10 permits issued for the employer's minor employees on file and  
12 accessible to any attendance officer, factory inspector or other  
14 authorized officer charged with the enforcement of this  
16 subchapter.

6. Exception. This section does not apply to minors  
16 engaged in work performed in the planting, cultivating or  
18 harvesting of field crops or other agricultural employment not in  
20 direct contact with hazardous machinery or hazardous substances,  
22 household work or any occupation that does not offer continuous,  
24 year-round employment.

22 **Sec. 6. 26 MRSA §776 is repealed.**

24 **Sec. 7. 26 MRSA §777, as amended by PL 1971, c. 620, §13, is**  
26 **further amended to read:**

28 **§777. Blanks furnished; filing of triplicate permits;**  
30 **surrender and cancellation of permits**

30 The blank work permit and other papers required by sections  
32 section 775 and 776 shall must be formulated by the director and  
34 furnished by him the director to the persons authorized to issue  
36 work permits. The forms of such permits and other papers shall  
38 must be approved by the Attorney General. Every work permit and  
40 every vacation permit shall must be made out in duplicate  
42 triplicate. All duplicates triplicates, accompanied by the  
44 original papers on which such permits were issued, shall must be  
46 forwarded to the bureau by the officer issuing same the permits,  
48 within 24 hours of the time that said the permit was issued.  
50 Said The bureau shall examine such papers and promptly return  
52 them to the officer who sent the them after validating the copies  
and retaining one copy for bureau files. Such The officer may  
thereupon then return to the minor all papers with him filed in  
proof of age. Whenever there is reason to believe that a work  
permit was improperly issued, the director, his deputy director  
or agent shall notify the local superintendent of schools of the  
place in which such certificate was issued. The local  
superintendent shall cancel such permit when directed to do so by  
the director.

52 **Sec. 8. 26 MRSA §778, as amended by PL 1971, c. 620, §13, is**  
**repealed.**

2           Sec. 9. 26 MRSA §780 is amended to read:

4           **§780. Work permit conclusive for employer; documentary**  
6           **evidence of age**

8           A work permit in regular form signed by a duly authorized  
10          officer, for all minors under ~~16~~ 17 years of age, shall-be is  
12          conclusive evidence of age and educational attainment, in behalf  
14          of the employer of any ~~child~~ minor, upon any prosecution for  
16          violation of the law relating to the employment of ~~children~~  
18          minors. An inspector of factories, attendance officer or other  
20          officer charged with the enforcement of this subchapter may make  
            demand on any employer in or about whose place or establishment a  
            minor apparently under the age of ~~16~~ 17 years is employed,  
            permitted or suffered to work, that such employer shall either  
            furnish ~~him~~ the inspector within 10 days documentary evidence of  
            age as specified in section 775, or shall cease to employ, permit  
            or suffer such ~~child~~ minor to work in such place or  
            establishment.

22          **Sec. 10. 26 MRSA §781**, as amended by PL 1989, c. 415, §33, is  
24          repealed and the following enacted in its place:

26          **§781. Penalties**

28          **1. Strict liability.** An employer who employs, permits or  
30          suffers any minor to be employed or to work in violation of this  
32          article or Title 20-A, section 5054 is subject to the following  
34          forfeiture or civil penalty, payable to the State and recoverable  
36          in a civil action:

38          A. For the first violation or a violation not subject to an  
40          enhanced sanction under paragraph B or C, a forfeiture or  
42          penalty of not less than \$250 nor more than \$5,000;

44          B. For a 2nd violation occurring within 3 years of a prior  
46          adjudication, a forfeiture or penalty of not less than \$500  
48          nor more than \$5,000; or

50          C. For a 3rd and subsequent violation occurring within 3  
            years of 2 or more prior adjudication, a penalty of not less  
            than \$2,000 nor more than \$10,000.

**2. Intentional or knowing violation of section 771, 772, or**  
            773. An employer who intentionally or knowingly employs, permits  
            or suffers any minor to be employed or to work in violation of  
            section 771, 772 or 773 is subject to the following forfeiture or  
            civil penalty, payable to the State and recoverable in a civil  
            action:



2           A. For the first violation or a violation not subject to an  
4           enhanced sanction under paragraph B or C, a forfeiture or  
          penalty of not less than \$500;

6           B. For a 2nd violation occurring within 3 years of a prior  
8           adjudication, a penalty of not less than \$5,000 nor more  
          than \$20,000; or

10          C. For a 3rd and subsequent violation occurring within 3  
12          years of 2 or more prior adjudications, a penalty of not  
          less than \$10,000 nor more than \$50,000.

14          3. Adjudications. As used in this section, a prior  
16          adjudication includes a consent decree that contains an admission  
18          of a violation. The dates of prior adjudications for any  
20          violation or a combination of violations must precede the  
22          commission of the violation being enhanced, although prior  
          adjudications involving a combination may have occurred on the  
          same day. The date of any adjudication is the date the  
          forfeiture or penalty is adjudged or the consent decree allowed,  
          even though an appeal was taken.

24          **Sec. 11. 39 MRSA §4, first ¶,** as amended by PL 1985, c. 737, Pt.  
26          A, §117, is further amended to read:

28            An employer who has secured the payment of compensation in  
30            ~~conformity~~ conformity with sections 21-A to 27 is exempt from  
32            civil actions, either at common law or under sections 141 to 148,  
34            Title 14, sections 8101 to 8118, and Title 18-A, section 2-804,  
36            involving personal injuries sustained by an employee arising out  
38            of and in the course of his employment, or for death resulting  
40            from those injuries. ~~This--exemption~~ These exemptions from  
          liability ~~applies~~ apply to all employees, supervisors, officers  
          and directors of the employer for any personal injuries arising  
          out of and in the course of employment, or for death resulting  
          from those injuries. These exemptions also apply to occupational  
          diseases sustained by an employee or for death resulting from  
          those diseases. These exemptions do not apply to an illegally  
          employed minor as described in section 28-A, subsection 2.

42          **Sec. 12. 39 MRSA §28,** as amended by PL 1989, c. 502, Pt. A,  
44          §149, is repealed.

46          **Sec. 13. 39 MRSA §28-A** is enacted to read:

48          §28-A. Waiver of right of action; minors

50            Except as provided in subsection 2, an employee of an  
          employer who has secured the payment of compensation as provided  
          in sections 21-A to 27 is deemed to have waived the employee's

right of action at common law and under section 4 to recover damages for the injuries sustained by the employee.

1. Legally employed minors. A minor is deemed sui juris for the purpose of this Act if the minor's employer was not in violation of Title 26, section 771, 772 or 773 at the time of the minor's injury. No other person has any cause of action or right to compensation for an injury to that minor employee except as expressly provided.

2. Illegally employed minors. A minor is not deemed to have waived the minor's right of action at common law and under section 4 if the minor's employer was in violation of Title 26, section 771, 772 or 773 at the time of the minor's injury.

A. The minor employee, the minor's parent or guardian or any other person, as permitted by common law or statute, may file a civil action permitted under this subsection.

B. The minor employee is entitled to compensation under this Act in addition to any right of action permitted under this subsection.

C. If the employer is self-insured for liability under this Act, any award received by the minor in an action permitted under this subsection must be reduced by the amount of compensation received under this Act.

D. If the employer is insured for liability under this Act, the employer is considered a 3rd party under section 68, and the employer's insurer is entitled to all rights of subrogation, contribution or other rights granted to an employer under section 68.

**Sec. 14. Application.** Sections 11, 12 and 13 apply only to injuries occurring on or after the effective date of this Act.

**Sec. 15. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
<b>LABOR, DEPARTMENT OF</b>		
<b>Bureau of Labor Standards</b>		
Positions	(1.0)	(1.0)
Personal Services	\$20,795	\$29,360
All Other	17,538	1,400

2 Provides funds for the  
3 salary, fringe benefits and  
4 general operating expenses of  
5 an Assistant Safety  
6 Compliance Officer position  
7 and for revision of the child  
8 labor laws poster.

10 DEPARTMENT OF LABOR  
11 TOTAL \$38,333 \$30,760

12 FISCAL NOTE

14  
16 1991-92 1992-93

18 APPROPRIATIONS/ALLOCATIONS

20 General Fund \$38,333 \$30,760

22 This bill amends the child labor laws and places additional  
23 responsibilities on the Department of Labor, Bureau of Labor  
24 Standards in the area of work permit processing. General Fund  
25 appropriations of \$38,333 in fiscal year 1991-92 and \$30,760 in  
26 fiscal year 1992-93 are required for an Assistant Safety  
27 Compliance Officer, fringe benefits and related operating  
28 expenses and costs related to revising the child labor laws  
29 poster. If other bills are enacted that also require changes to  
30 the child labor laws poster, the cost properly allocated to this  
31 bill can be reduced.

32 This bill increases the penalty levels for employers who  
33 illegally employ minors. The additional work load and  
34 administrative costs associated with a minimal number of new  
35 cases filed throughout the court system will be absorbed within  
36 the budgeted resources of the Judicial Department.

38 There will be an increase in revenue to the General Fund  
39 from the collections of additional fines in an amount that can  
40 not be determined at this time.'

42  
44 STATEMENT OF FACT

46 The amendment replaces the original bill and makes the  
47 following changes to the child labor laws and to the Workers'  
48 Compensation Act:

- 50 1. Increases the student minimum wage from 75% to 85% of  
the minimum wage;

COMMITTEE AMENDMENT "A" to H.P. 635, L.D. 905

2           2. Requires that employers maintain a time book or record  
4 for all minors employed under 18 years of age. Currently, such  
records need only be maintained for minors under 16 years of age;

6           3. Increases the penalties for employers who fail to comply  
8 with the posting of child labor laws in the workplace and  
record-keeping requirements;

10           4. Revises the requirements regarding permitted work hours  
12 for minors, limiting the hours that minors under 18 years of age  
may be employed both when school is in session and when school is  
14 not in session. The provisions pertaining to minors under 16  
years of age are similar to those provided by the federal child  
16 labor laws. Exemptions are provided for certain agricultural and  
maritime employment;

18           5. Revises the requirements for the issuance of work  
20 permits for minors. A minor under 17 years of age who has not  
been granted certain exceptions to compulsory education may not  
22 be employed without a permit issued by the superintendent of  
schools. If school is in session or the minor is attending  
24 summer school, a permit may only be issued if the minor is  
enrolled in school, not habitually truant, not under suspension  
and passing a majority of courses. The superintendent may waive  
26 these requirements for one grading period upon a showing of  
extenuating circumstances. The superintendent may remove a work  
28 permit issued if the minor has not maintained these  
requirements. The section substantially retains provisions  
30 currently in law relating to requirements regarding proper proof  
of age, the employer's maintenance of permits and exceptions for  
32 agricultural and other employment;

34           6. Deletes an obsolete provision regarding part-time and  
vacation work permits;

36           7. Conforms to current practice the provision regarding the  
38 filing and forms of work permits;

40           8. Deletes an obsolete provision regarding employment  
certificates;

42           9. Increases the penalties against employers who violate  
44 provisions of the child labor laws other than posting in the  
workplace and record-keeping requirements. Higher penalties are  
46 allowed for multiple violations and for intentional or knowing  
violations of the provisions relating to prohibited employment of  
48 minors;

