

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "B" 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'

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 ~~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,
11 is repealed and the following enacted in its place: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's 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
3 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
11 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
15 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
21 school officials in accordance with Title 20-A, section
22 5001-A, subsection 2 or subsection 3, except that a
23 minor who has been excused in accordance with
24 subsection 3 may not be employed during the hours that
25 the minor's school is in session;

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

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

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

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

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

§775. Work permits

1. Work permit authority. A minor under 17 years of age may not be employed without a work permit issued to the minor by 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.

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

A. If the school is in session or the minor is attending summer school, the minor must be enrolled in school, not habitually truant, not under suspension and passing a majority of courses during the current grading period. Upon 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 if imposing the requirements would create an undue hardship for the minor;

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

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

3. Proof of age. The superintendent may issue a permit only upon receiving and examining satisfactory evidence of the minor's age. Satisfactory evidence consists of a certified copy 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. The superintendent may require, in doubtful cases, a certificate signed by a physician appointed by the school board, stating that 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 in sufficiently sound health and physically able to perform the work the minor intends to do.

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

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

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

21 Sec. 6. 26 MRSA §776 is repealed.

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

24 **§777. Blanks furnished; filing of triplicate permits;
25 surrender and cancellation of permits**

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

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

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

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

10 A work permit in regular form signed by a duly authorized
12 officer, for all minors under ~~16~~ 17 years of age, shall-be is
14 conclusive evidence of age and educational attainment, in behalf
of the employer of any ~~child~~ minor, upon any prosecution for
16 violation of the law relating to the employment of ~~children~~
minors. An inspector of factories, attendance officer or other
18 officer charged with the enforcement of this subchapter may make
demand on any employer in or about whose place or establishment a
20 minor apparently under the age of ~~16~~ 17 years is employed,
permitted or suffered to work, that such employer shall either
22 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.

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

28 §781. Penalties

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

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

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

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

48 2. Intentional or knowing violation of section 771, 772 or
50 773. An employer who intentionally or knowingly employs, permits
or suffers any minor to be employed or to work in violation of

2 section 771, 772 or 773 is subject to the following forfeiture or
3 civil penalty, payable to the State and recoverable in a civil
4 action:

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

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

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

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

23 **Sec. 11. Appropriation.** The following funds are appropriated
24 from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
LABOR, DEPARTMENT OF		
Bureau of Labor Standards		
Positions	(1.0)	(1.0)
Personal Services	\$20,795	\$29,360
All Other	17,538	1,400
Provides funds for the salary, fringe benefits and general operating expenses of an Assistant Safety Compliance Officer position and for revision of the child labor laws poster.		
DEPARTMENT OF LABOR		
TOTAL	<u>\$38,333</u>	<u>\$30,760</u>

FISCAL NOTE

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1991-92

1992-93

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APPROPRIATIONS/ALLOCATIONS

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General Fund

\$38,333

\$30,760

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12

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

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

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

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STATEMENT OF FACT

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

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

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

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

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4. Revises the requirements regarding permitted work hours 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

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2 not in session. The provisions pertaining to minors under 16
years of age are similar to those provided by the federal child
4 labor laws. Exemptions are provided for certain agricultural and
maritime employment;

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

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

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

28 8. Deletes an obsolete provision regarding employment
certificates;

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

38 10. Adds an appropriation and a fiscal note to the bill.

Reported by the Minority of the Committee on Labor
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