

MINUTES OF THE MEETING  
LABOR & EMPLOYMENT RELATIONS COMMITTEE  
MONTANA STATE SENATE

March 19, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on March 19, 1981, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members of the Committee were present.

DISCUSSION BY THE COMMITTEE OF HOUSE BILL 557:

Staff Attorney, Katherine Orr, explained the amendments offered by Phil Strobe to the Committee. The main amendments do two things: (1) The section in the bill removing any obligation of waitresses to share tips is amended out and (2) For employers subject to the federal Fair Labor Standards Act by virtue of size, the second amendment excludes application of the amendatory language in the bill to these employers.

SENATOR GOODOVER: The employers are not interested in this bill unless the amendments are included.

Senator Goodover moved that the amendments offered by Phil Strobe Be Concurred In.

Ms. Orr stated that the intent of the amendment is to exclude large employers from coverage of the bill although the amendment as written and as approved by Mr. Strobe may not accomplish this goal since the Fair Labor Standards Act contains a provision to the effect that state laws resulting in greater benefit to employees are not preempted by the federal act.

SENATOR ANDERSON: This bill started out to be an Act to raise the state minimum wage.

SENATOR NELSON: This was not the original bill.

SENATOR ANDERSON: Asked if all this additional language might not be amended out.

SENATOR GOODOVER: Questioned the title of the bill as amended, and asked if this was the intent of Mr. Strobe's amendment.

MS. ORR: Stated that it was.

SENATOR KEATING: We are talking about the state minimum wage law, but we got involved in the "tips" situation.

SENATOR KEATING: The same thing does not apply to those under the Fair Labor Standards Act. If this bill were amended as proposed, it would apply only to those employees not covered by the Fair Labor Standards Act.

MS. ORR: The wrinkle is that there are situations where both the federal act and the state act may apply to large volume employers and the question is which act applies.

SENATOR AKLESTAD: Without this amended language whose property would the tips belong to?

SENATOR KEATING: With regards to banquets: The management takes 15 percent in an area where they are subject to Fair Labor Standards Act and the employer distributes 15 percent more to the employees.

SENATOR ANDERSON: We are right back to amending everything that is in there.

SENATOR RYAN: Our difficulty here is in the restaurant business--at least half of the bill's intent. We are not talking only about waitresses.

SENATOR AKLESTAD: All he is trying to do is get a workable bill, and make sure that the banquet people will be able to divide the tips.

SENATOR GOODOVER: I think you are having a misunderstanding. The employer does not take any of the tips. Is that correct? In many restaurants where they work together they will have a pot and the employees divide it up. This is what we are addressing.

The Montana Restaurant Association is not in favor of the bill without the amendments. If there is a problem with the wage, let them work it out. He would still move that the Committee accept the amendments.

SENATOR AKLESTAD: Why not take out subsection 3 (b) in section 2?

MS. ORR: The amendment does strike this language.

SENATOR AKLESTAD: What does the new section proposed to be added by the amendment do as compared to 3 (b)?

MS. ORR: They don't address the same thing.

SENATOR AKLESTAD: What does the new section address?

MS. ORR: Section 2, subsection 3 (b) says no employee need share his tips. The new section "3" addresses to whom the bill would apply.

SENATOR ANDERSON: What is the difference between the bill the way it is now and by adopting the amendments proposed by Mr. Strobe deleting all the language that has been amended?

MS. ORR: Without subsection 3 (b) the sharing of tips would be left to informal agreement.

SENATOR ANDERSON: Under which way would a good waitress make the most money?

MS. ORR: Under my calculations under the bill with the new amendments, the waitress would get \$2.75 per hour plus tips under state law and \$2.01 plus tips if an employer is subject to the minimum wage requirements of the federal law.

The question is how much would the employer have to pay under the federal or state act not how much of tips are included in the minimum wage. Under the federal act the employer would save 74 cents per hour.

SENATOR NORMAN: I move to strike the amendment language put in by the House.

It was noted there was a prior motion before the Committee.

SENATOR GOODOVER: The employers want the bill with this amendment.

SENATOR NORMAN: You have a minimum wage bill. I don't think we are going to debate the minimum wage. We are going to talk about banquets, etc. which is inappropriate.

SENATOR GOODOVER: Stated that in discussing these amendments with the Department of Labor, with some of the union people, with some of the workers, and non-union employees, these amendments of Mr. Strobe's are really not acceptable to all of these people. They feel these amendments are unnecessary. Most everybody says, "let's go back to the way it was". They do not have as many problems as they will have if the amendments go in.

Senator Goodover further stated that one thing that should be taken into consideration if the amendments are not put in the bill is that the larger operations under the Fair Labor Standards Act could wind up paying on last year's business over \$100,000, and these higher costs would have to be passed on to the consumer through raising the price of food.

SENATOR RYAN: If this bill had never appeared before us we would be going on with the same minimum wage and they would still be going on with their tips.

SENATOR AKLESTAD: The difference would be that the people working in the large establishment would be making more on tips.

ACTION ON HOUSE BILL 557:

Senator Aklestad made a substitute motion that everything be deleted out of the bill that was put in by the House in section 2.

Ms. Orr stated that would be the amendatory language in section 2.

There was a Roll Call Vote on the substitute motion, and the motion carried 5-3. This Roll Call Vote is attached.

Senator Anderson moved that House Bill 557 Be Concurred In. On a Roll Call Vote, the Committee voted 4-4 that HB 557 Be Concurred In, so HB 557 stays in Committee. This Roll Call Vote is attached.

ACTION ON HOUSE BILL 414:

Senator Anderson moved that the Committee reconsider previous action on House Bill 414. On a Roll Call Vote, the Committee voted 4-4 on the motion so HB 414 stays in Committee. This Roll Call Vote is attached.

Senator Goodover moved that HB 414 Be Not Concurred In.

Senator Nelson stated that the bill must be reconsidered before any action could take place.

Senator Keating moved that the Committee reconsider its action on House Bill 414. On a Roll Call Vote, the Committee voted 5-3 to reconsider HB 414. This Roll Call Vote is attached.

Senator Goodover moved that HB 414 Be Not Concurred In. On a Roll Call Vote, the Committee voted 5-3 that HOUSE BILL 414 BE NOT CONCURRED IN. This Roll Call Vote is attached.

Senator Goodover will carry HB 414 on the floor.

ACTION ON HOUSE JOINT RESOLUTION 25:

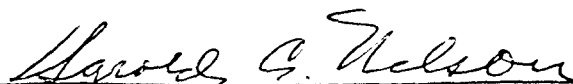
Staff Attorney, Katherine Orr, gave a brief resume of Child Labor Law studies in Montana. Ms. Orr concluded by stating that really no study had been completed in Montana.

Exhibits "B" and "C" were submitted to the Committee by Attorney Orr. These attachments address studies regarding child labor laws.

Senator Keating moved that House Joint Resolution 25 Be Concurred In. On a voice vote the Committee voted unanimously, except for Senator Goodover who was absent for the vote, that HOUSE JOINT RESOLUTION 25 BE CONCURRED IN.

Senator Aklestad will carry HJR 25 on the floor.

ADJOURN: There being no further business, the meeting adjourned at 2:30 p.m.

  
Harold C. Nelson, Chairman

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date Mar. 19

NAME	PRESENT	ABSENT	EXCUSED
GARY C. AKLESTAD, VICE-CH.	✓		
MIKE ANDERSON	✓		
PAT M. GOODOVER	✓		
WILLIAM HAFFERMAN	✓		
THOMAS F. KEATING	✓		
BILL NORMAN	✓		
PATRICK L. RYAN	✓		
HAROLD C. NELSON, CHAIRMAN	✓		

Each day attach to minutes.

# STANDING COMMITTEE REPORT

March 19, 1931

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 414

Wardtvedt (Nelson)

Respectfully report as follows: That HOUSE Bill No. 414

BE NOT CONCURRED IN  
DO PASS

*FL.*

# STANDING COMMITTEE REPORT

March 19, 19 81

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE JOINT RESOLUTION Bill No. 25

Harper (Aklestad)

Respectfully report as follows: That HOUSE JOINT RESOLUTION Bill No. 25

third reading copy, be amended as follows:

1. Page 2.

Following: line 10

Insert: "BE IT FURTHER RESOLVED, that in the course of this interim study that the issues also be studied of protection of employers and school districts from liability for events arising in the course of employment of young persons subject to child labor laws."

And, as so amended, BE CONCURRED IN  
DO PASSE

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 557 Time 2:11

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER		✓
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING	✓	
BILL NORMAN	✓	
PATRICK L. RYAN	✓	
HAROLD C. NELSON, CHAIRMAN		✓

Margorie L. Nichols  
Secretary

Harold C. Nelson  
Chairman

Motion: Substitute Motion by Senator Aklestad to take  
out amendatory language including amendatory language  
in the catchline.

(include enough information on motion—put with yellow copy of committee report.)



SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 557 Time 2:16

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER	<del>✓</del> *	✓
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING		✓
BILL NORMAN	✓	
PATRICK L. RYAN	✓	
HAROLD C. NELSON, CHAIRMAN		✓

Margie Nichols  
Secretary

Harold C. Nelson  
Chairman

Motion: Senator Anderson moved that HB 557  
Be Concurred In.

\* Sen. Goodover changed vote from "aye" to "noe".  
Motion failed 4-4 vote.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 414 Time 2:20

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER		✓
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING	✓	
BILL NORMAN		✓
PATRICK L. RYAN		✓
HAROLD C. NELSON, CHAIRMAN	✓	

Margie L. Nichols  
Secretary

Harold C. Nelson  
Chairman

Motion: by Senator Anderson that SB 414  
be reconsidered.

Motion failed 4-4 vote.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 414 Time 2:25

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER		✓
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING	✓	
BILL NORMAN		✓
PATRICK L. RYAN	✓	
HAROLD C. NELSON, CHAIRMAN	✓	

Margie Nichols  
Secretary

Harold C. Nelson  
Chairman

Motion: by Senator Keating that the Committee  
Reconsider HB 414.

Passed 5-3

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 414 Time 2:26

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN		✓
MIKE ANDERSON		✓
PAT M. GOODOVER	✓	
WILLIAM HAFFERMAN	✓	
THOMAS F. KEATING		✓
BILL NORMAN	✓	
PATRICK L. RYAN	✓	
HAROLD C. NELSON, CHAIRMAN	✓	

Margaret L. Nichols  
Secretary

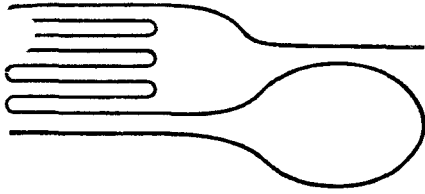
Harold C. Nelson  
Chairman

Motion: by Senator Goodover that HB 414  
Be Not Concurred In.

Motion passed 5-3 that HB 414 Be Not Concurred In.  
(Sen. Goodover will carry on the floor.)  
(include enough information on motion—put with yellow copy of committee report.)

*Exhibit A was submitted to the  
Committee before the meeting  
by Carol Harrison*

P.O. Box 6664  
Great Falls, Montana 59



March 18, 1981

To: The Honorable Members of the Senate <sup>LABOR</sup>~~Business~~ and Industry Committee:

From: Carol Harrison, Lobbyist, Montana Restaurant Association

Regarding: House Bill 557 "A BILL FOR AN ACT ENTITLED "AN ACT TO RAISE THE STATE MINIMUM WAGE: PROVIDING THAT TIPS ARE THE SOLE PROPERTY OF THE EMPLOYEE: PROHIBITING AN EMPLOYER FROM REQUIRING AN EMPLOYEE TO POOL TIPS BUT ALLOWING THE EMPLOYEE TO DO SO ON A VOLUNTARY BASIS: AMENDING SECTIONS 39-3-204 and 39-3-404, MCA."

Please allow this memorandum to serve as a position statement from the Montana Restaurant Association. It is also hopeful that it will clear up some confusion with regard to H.B. 557.

The Montana Restaurant Association does not oppose an increase in the state minimum wage.

However, section (3) (a) concerns us greatly. My understanding of this section is that it is really the heart of HB 190 (killed in House B & I Committee) which was Rep. Waldron's bill to eliminate tip credit on the state level. (Mr. Waldron was angry because his daughter worked in an establishment, Sambos, that invoked the tip credit. What he was not aware of was that Sambos fell under the Federal Minimum Wage Regulations and therefore this situation would not have been rectified by this bill).

As the situation now exists, Montana law does not address the subject of a tip credit. It does not say an employer can take a tip credit, it does not say an employer cannot take a tip credit. Therefore, some employers have followed along with the Federal regulation and do take a tip credit. The detrimental ramification to the restaurant industry of section (3) (a) in H.B. 557 is this:

Any restaurant doing business over \$325,000 gross a year falls under Interstate Commerce regulations and in turn federal wage laws. The federal minimum wage law now provides for a minimum wage of \$3.35/hr. with a 40% tip credit. This calculates out to \$2.01 per hour plus tips. If you leave section (3) (a) in H.B. 557 the people who do not do \$325,000 worth of gross will have to pay \$2.50 to \$2.75 an hour with no tip credit. The bottom line here is that the small restaurants that need the most help and support are the ones being penalized by this bill. The mom and pop establishments in the rural communities and the fellow just starting his own business will have to pay up to \$.74 more an hour under H.B. 557. How can they compete with their bigger competitors when their labor costs are more. These people should not be penalized. They should be encouraged and supported. They create jobs and these jobs create more jobs. Out of 50 states, 49 states allow a tip credit (California

being the exception.) Please give this your careful consideration and strike section (3) (a) of H. B. 557.

As for section (3) (b): If an employee is not required to split or share his/her tips with anyone else, how can a 15% gratuity be added in banquet situations? What about bus boys/girls? Most often, these are young people most happy to have the work at the minimum wage. They help the waiters/waitresses tremendously, clearing tables, setting up, bringing the customer water, cream for his coffee, etc. They enhance the waitress/waiter's position and encourage the tip. Do they deserve a small part of that tip?

The "Plouffe" decision brought into play by Mr. Strobe: Mr. Strobe feels the ramifications of this decision would allow employees to pick and choose the most beneficial elements out of the state and federal laws. The result of this would be a choice of a minimum wage of \$3.35 (federal law) and no tip credit (state law) by the employee if H. B. 557 was passed in its current form. If you take into account tips earned at \$3.35/hr. with no tip credit and give credence to the testimony of Roger Anderson of Robbies Restaurant in Great Falls (testimony given in the House B & I Committee, not the Senate) who says his waitresses earn an average of \$20 a day in tips, you will find this calculates out to approximately \$6.00 per hr. for waitresses, waiters-- a considerably higher wage than many employees receive. Is this the intent of a minimum wage bill? Those representing Labor state the "Plouffe" decision does not have any impact on H. B. 557. If this is indeed the case, what harm can there be in inserting language that specifically spells out that an employee cannot pick and choose out of each law? Why would Labor protest such an amendment as amendment #4 if they believed what they are saying?

The Montana Restaurant Association supports Mr. Strobe's proposed amendments in their entirety and respectfully requests that you send this bill out of committee in its amended form and support it on the floor of the Senate.

Memorandum

To: Members of the Senate Labor Committee  
From: Katherine Orr  
Date: March 18, 1981  
Re: House Joint Resolution 25 calling for an interim study committee on child labor laws.

In 1977 and 1979 resolutions were passed which called for an interim study of Montana's child labor laws. House Joint Resolution 25 introduced this session is very similar to resolutions passed in former years.

The disposition of the 1977 resolution (SJR 40) calling for a child labor law study is as follows: After the resolution passed, the Committee on Priorities (the Rules Committee) voted against having an interim study done pursuant to SJR 40. As a compromise measure, however, the Committee on Priorities requested that the Legislative Council conduct a hearing on the need for updating Montana's child labor laws and bringing these laws into conformance with the federal Fair Labor Standards Act as it applies to minors. In preparation for this hearing a Legislative Council researcher, Stan Zezotarski, was asked to write a memorandum on the issues to be addressed at the hearing. The hearing was never held although the memorandum written by the researcher was considered to be sufficiently detailed to be termed a study. This "study" (attached) was submitted to the sponsor of the resolution who apparently did introduce a bill in 1979 (SB 327 was a result of the "study") revising the child labor laws.

The 1979 resolution, SJR 35, calling for a study of child labor laws was adopted but was not implemented, again, because the Committee on Priorities decided the resolution was too low a priority to be implemented.

The resolution before the Committee this year, as stated above, is very similar to the child labor resolutions of past years with the exception that HJR 25 calls for study of the issue of protection of employers and schools against liability for physical harm to children.

Exhibit "C"

SENATE MEMBERS

ERROLL GRAHAM  
CHAIRMAN

FRANK HAZELBAKER  
VICE CHAIRMAN

CHET BLAYLOCK

PAT M. GOODOVER

TERRY C. WALKER  
EXECUTIVE DIRECTOR

ELENOR ECK  
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY  
DIRECTOR, LEGISLATIVE SERVICES



## Montana Legislative Council

State Capitol

Helena, 59601

(406) 449-3064

June 9, 1978

HOUSE MEMBERS

JOHN B. DRISCOLL

OSCAR KVALEN

J.D. LYNCH

ROBERT L. MARKS

DIANA DOWLING  
DIRECTOR, LEGAL SERVICES:  
CODE COMMISSIONER

ROBERT PERSON  
DIRECTOR, RESEARCH

To: Legislative Council

From: Stan Zezotarski, Staff Researcher

Re: Senate Joint Resolution No. 40

Senate Joint Resolution No. 40 requested "the Committee on Priorities to assign to the appropriate standing committee a study of Montana's child labor laws in relation to the present work environment and in relation to federal laws on this subject and submit a report and draft proposed legislation to update and modernize child labor laws of Montana." The Committee on Priorities in turn requested the Legislative Council to hold a hearing on this matter. The purpose of this paper is to provide background information on the questions raised in the resolution.

Based upon the information that I have gathered to date, two major areas of inquiry present themselves: 1) what objective criteria can be established to determine new or additional child labor laws are necessary in Montana today; and 2) what areas can be identified where Montana standards in child labor laws are at variance with the standards of the federal government and of various state governments. To understand these areas sufficiently it is necessary to look at how child labor legislation developed in this country and to compare present conditions with those at the turn of the century. Then we must turn to an analysis of current legislation and analyze our needs. This preliminary report of Montana child labor laws treats these areas of inquiry. These inquiries are then narrowed down to a recommended course of study to develop recommendations relative to Montana's child labor provisions.

### I. Historical Necessity for Child Labor Legislation

Based on this researcher's analysis of the child labor standards of the federal government and of various other states, it seems that there are three basic objectives of child labor laws: 1) to protect a child from being exploited; 2) to insure a child of an opportunity for an education; and 3) to protect a child's physical and moral well-being. At the turn of the century, none of these objectives were being achieved in the United States.



At the turn of the century, evidences of exploitation of children existed in the fact that there were large numbers of children employed in industrial occupations widely regarded as hazardous. The federal census for 1900 reported that there were 7,116 children under sixteen employed in the glass manufacturing industry and 25,000 children under sixteen years of age employed in and around the mines and quarries of the United States. The tobacco and cigar manufacturing industry employed 12,000 workers under sixteen years of age. More than 10,000 children under sixteen were employed in the woodworking industries; and many more children were employed in other hazardous occupations.<sup>1</sup>

In 1906, John Spargo reported in his book The Bitter Cry of the Children,<sup>2</sup> that the exploitation of children was detrimental to a child's education. Spargo reasoned that as a result of long hours of work after school, a working child did not have adequate time to rest or prepare for school each day. A working child, therefore, was not alert or responsive in the classroom.

In regard to the health of a working child, Spargo pointed out that long hours of employment of children in hot factories, dusty mines, sawdust-filled saw mills, and around dangerous machinery often affected the child's health. If the child's health were damaged as a result of his early years of hazardous employment, Spargo believed, the employment opportunities for the child in his adult years would also be damaged.

Finally, Spargo held that when a child under sixteen was employed in and about corrupt establishments, the influences of such establishments were potentially harmful to the child's moral character. Here, Spargo was referring to street trade occupations, e.g. a bootblack, messenger boy, newsboy, etc., in which a minor could possibly be exposed to harsher occupations such as prostitution and boot-legging.

It should be noted at this point that the exploitation of children in 1900 not only had harmful effects on working children, but also on the entire labor force in the United States. The two major allegations of harm to the labor force at the turn of the century were "1) the displacement of adults in the labor force; and 2) the lowering of adult wage standards."<sup>3</sup>

The macabre conditions of child labor and the adverse effect those conditions had on the entire labor force in 1900 led some legislative bodies around the country to enact child labor laws. These laws were designed to correct the social problems caused by the widespread abuse of child labor, and this appears to be the purpose of these laws even today. It would be important in developing recommendations for changing the laws to establish goals to be achieved by such laws today.

## II. Differences Between Montana's Child Labor Laws, Those of Other States, and the Federal Governments

Once the initial few states, including Montana, adopted child labor laws at the turn of the century, there was very little further legislative activity in the country until after 1938. Lying behind this state inaction was fear that by enacting legislation prohibiting the employment of children under sixteen years old, instate businesses would have to hire adults who would have to be paid a higher wage than children. Consequently, out-of-state businesses using cheaper child labor would be able to sell their products at lower prices than an in-state business. Thus, it was argued child labor laws could conceivably damage a state's economy.

This obstacle to the states was overcome with the passage of the child labor amendment of 1938. This forbade an employer to hire a person under sixteen years of age for hazardous occupations. This amendment also facilitated the passage of many more federal regulations protecting youth on the job.

Although Montana was one of the few states to adopt child labor laws in 1907, the state did not keep in step with federal developments after 1938. Consequently, Montana child labor laws do not conform with those standards of the federal government. The major differences between Montana's child labor laws, the federal government's, and the child labor laws of several other states at the present time are as follows:

1) Although Montana's child labor laws list the occupations for which minors may not be employed, the occupations listed are general and not specific occupations. For example, Montana's child labor laws prohibit the employment of minors in such general occupations as mines, mills, smelters, workshops, factories, railroads, or telephone or telegraph companies.

The federal child labor laws, found in the Fair Labor Standards Act of 1938, prohibits the employment of minors in more specifically enumerated occupations. For example, under federal law, minors are prohibited from working in the manufacturing and storing of explosives, in the operation of power-driven woodworking machines, and with power-driven circular saws, band saws, and guillotine shears.

In addition, Montana Child Labor Laws do not prohibit the employment of minors in or around dangerous occupations related to agriculture. For example, there is nothing in Montana child labor laws which would clearly forbid the hiring of a person under sixteen years old to work with livestock used for breeding purposes, with livestock with young offspring, or the handling of agricultural chemicals classified as poison. The federal government does have such child labor prohibitions.

2) Montana child labor laws do not enumerate the type of occupations in which minors may be employed. For instance, there are no provisions in Montana law that clearly endorse (or allow) the hiring of persons under sixteen for street trades, delivering magazines, or newspapers. As a result employers in Montana can oftentimes be confused on whether they are breaking the law when they hire a child under sixteen years old for a job that may be a questionable occupation under the current Montana child labor laws. For instance, many service stations may wish to employ a youth. In Montana it would be questionable whether a minor would be allowed to work in the service station since the youth may possibly be working near hazardous machinery. Under federal law, a minor would be allowed to work in a service station if he were performing duties which do not require him to be around or about hazardous machinery. Such work would include: dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; etc.

3) Montana child labor laws do not exempt the employment of minors in certain types of jobs. Such exemptions apply to domestic chores around the home, child actors, and employment in a campsite or a nonprofit corporation engaged in citizenship training. Here, parents would have some discretion beside whether to allow their children to work in limited occupations. Federal law as well as many state laws already contain such a provision.

4) Montana child labor laws do not prohibit employers from hiring minors during school hours. Montana does have laws requiring that children under sixteen attend school. Thus, the time allotted for school in Montana is not protected from exploitation by employers who may wish to hire a minor.

5) Montana child labor laws do not restrict the hours that a minor can work. Here, many states not only have provisions that prohibit employers from hiring a minor during school hours, but also contain provisions requiring that minors may only be employed during specified hours. For instance, many states, as well as federal laws, require that a newspaper carrier cannot work more than four hours per day, not before 6:00 a.m., and not more than two hours after school. Many states, as well as the federal standards, also have provisions prohibiting the employment of minors after a certain hour in the evening. (e.g., in many states a minor may not be employed after 7:00 p.m. during the school year, and not later than 9:00 p.m. during the summer vacation.)

The purpose restricting the number of hours a child can work per day is to allow adequate preparation time for school, and enough time to adequately rest for school.

6) To insure that there will be a sufficient work force trained to work in hazardous occupations in the future, the federal government permits 16 and 17 year old persons to work in certain hazardous occupations if they obtain either a learner's or an apprenticeship permit. Such

occupations would include jobs where a minor would have to work with power-driven working machines, with power-driven metal forming, punching, and shearing machines; in occupations involving slaughtering, meat-packing or processing or rendering; with power-driven paper-products machines; with power-driven circular saws, band saws, and guillotine shears; in roofing operations; and in excavation operations.

7) Montana child labor laws do not contain any provisions for "employer certificates", (certificates certifying the age of a minor that an employer must obtain from the superintendent of public instruction). Under such a provision, employers would be required to obtain and keep on file a certificate from the superintendent of public instruction, verifying the age of a minor. This would be for the employer's own protection.

There are also several minor differences between the child labor laws of Montana and those of other states. Notable differences include provisions in Arkansas child labor laws which would allow a minor under sixteen who is married or a parent to work later than the state mandated time on school nights and during summer vacation; and provisions in California statutes protecting the health, safety, and welfare of minors who work in sheltered workshops.

It should be noted that the federal child labor standards also apply to Montana in cases where a business has a minor handling goods from out-of-state markets, and where the business is grossing more than \$275,000 per year (effective July 1, 1978). Consequently, in all instances where a business is grossing less than \$275,000 per year or if it does not handle any goods from an out-of-state market, Montana child labor laws apply.

Recommendations for the Study to Revise  
Montana Child Labor Laws

The United States Department of Labor and the Montana Department of Labor have prepared model child labor legislation for Montana. A copy of the model legislation is included with this report. Either the enclosed child labor model legislation may be recommended in the next session or some other recommendation may be developed. The following study plan was designed to assist in reviewing the implications of changes in child labor laws. It could be helpful in preparing for a hearing on child labor laws before the Council.

I. Determine how many and the different types of retail businesses there are in Montana grossing less than \$275,000 per year.

II. Determine how many persons under sixteen and between the ages of sixteen and eighteen are employed in each type of retail business in Montana grossing less than \$275,000 per year.

III. Develop alternative criteria for measuring abusive child labor practices.

- A. Use the federal child labor standards as the first standard.
- B. Use the Montana child labor standards as a second standard.

Memo to Legislative Council  
June 9, 1978  
Page 6

C. Study the oppressive conditions of child labor in 1900 and compare them with the conditions of child labor and the workplace generally as they exist in Montana in 1978 for a third standard.

IV. Based on the findings of I, II, and III, determine:

A. If the safety of employed minors is being abused.

B. If the educational opportunities of a minor are being denied.

(i) Attempt to determine whether a minor's education might be enhanced through employment opportunity.

(ii) Examine the possibility of providing for a balance of half of a day of school and half a day of employment for those youth who are not education oriented.

C. If the moral attitudes of an employed youth are grossly violated in any of the businesses that must comply with Montana child labor provisions.

D. Study the effect the employment of youths has on the labor force and labor wages in Montana.

V. Final recommendations of new provisions to incorporate in Montana child labor standards to adequately meet the needs of the present industrial environment.

Any recommendations that you may have for the above study outline will be greatly appreciated. I hope to hear from all concerned very soon.

Encl. SJR 40  
Model Child Labor Laws for Montana

# FOOTNOTES

1. John Spargo, Bitter Cry of the Children, p. 154.
2. Ibid
3. Ibid, p. 192

Note: "other state governments" used in this report include:  
California, Alaska, Kentucky, Illinois, New York and Arkansas.