

SENATE BILL 327

IN THE SENATE

February 1, 1979

Introduced and referred to
Committee on Labor and
Employment Relations.

April 20, 1979

Died in Committee.

1 *Smith* BILL NO. *327*
 2 INTRODUCED BY ~~Smith~~ *McHenry*
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE MONTANA
 6 CHILD LABOR LAW OF 1979; PROHIBITING AND REGULATING THE
 7 EMPLOYMENT OF CHILDREN UNDER 18 YEARS OF AGE UNDER CERTAIN
 8 CIRCUMSTANCES; PROVIDING A CRIMINAL PENALTY FOR VIOLATION;
 9 AND REPEALING SECTIONS 41-2-101, 41-2-111 THROUGH 41-2-114,
 10 AND 41-2-121, MCA."
 11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Short title. [This act] may be cited as the
 14 "Montana Child Labor Law of 1979".

15 Section 2. Purpose. The purpose of [this act] is to
 16 make the Montana child labor laws more responsive to modern
 17 technology, more protective of the school-age children of
 18 Montana, and more reflective of modern society.

19 Section 3. Definitions. As used in [this act], the
 20 following definitions apply:

21 (1) "Commissioner" means the commissioner of the
 22 department of labor and industry or his authorized
 23 representative.

24 (2) "Department" means the department of labor and
 25 industry.

1 Section 4. Employment of children under eighteen years
 2 of age prohibited in certain occupations. (1) Except as
 3 provided in [this act], no person, company, firm,
 4 association, partnership, or corporation engaged in business
 5 in this state or any agent, officer, foreman, or other
 6 employee having control or management of employees or having
 7 the power to hire or discharge employees may knowingly
 8 employ or permit to be employed a child under 18 years of
 9 age to render or perform any service or labor, whether under
 10 contract of employment or otherwise, in occupations
 11 prohibited by [this act].

12 (2) Prohibited occupations include:

13 (a) occupations in or about plants or establishments
 14 manufacturing or storing explosives or articles containing
 15 explosive components;

16 (b) occupations of motor vehicle driver and outside
 17 helper;

18 (c) coal mine occupations;

19 (d) logging occupations and occupations in the
 20 operation of any sawmill, lath mill, shingle mill, or
 21 cooperage-stock mill;

22 (e) occupations involved in the operation of
 23 power-driven woodworking machines;

24 (f) occupations involving exposure to radioactive
 25 substances of a toxic nature or to ionizing radiation;

1 (g) occupations involved in the operation of elevators
 2 and other power-driven hoisting apparatus;
 3 (h) occupations involved in the operation of
 4 power-driven metal forming, punching, and shearing machines;
 5 (i) occupations in connection with mining, including
 6 excavation and crushing of gravel;
 7 (j) occupations involving slaughtering, meat packing,
 8 or meat processing or rendering;
 9 (k) occupations involved in the operation of
 10 power-driven bakery machines;
 11 (l) occupations involved in the operation of
 12 power-driven paper products machines;
 13 (m) occupations involved in the manufacture of brick,
 14 tile, and like products;
 15 (n) occupations involved in the operation of circular
 16 saws, bandsaws, and guillotine shears;
 17 (o) occupations involved in wrecking and demolition;
 18 (p) occupations involved in roofing operations;
 19 (q) occupations in excavation operations;
 20 (r) any other occupation that is declared hazardous by
 21 the secretary of labor of the United States.

22 Section 5. Employment of an apprentice. An apprentice
 23 under 18 years of age may be employed in occupations covered
 24 by (e), (h), (j), (n), (p), and (q) of [section 4] if:

25 (1) the apprentice is employed in a craft recognized

1 as an apprenticeable trade;

2 (2) the work of the apprentice in the occupation is
 3 incidental to his training;

4 (3) the work is intermittent and for short periods of
 5 time and under the direct and close supervision of a
 6 journeyman as a necessary part of the training; and

7 (4) the apprentice is:

8 (a) registered by the bureau of apprenticeship and
 9 training of the U.S. department of labor as employed in
 10 accordance with the standards established by that bureau; or

11 (b) registered by a state agency as employed in
 12 accordance with the standards of the state apprenticeship
 13 agency recognized by the bureau of apprenticeship and
 14 training.

15 Section 6. Employment of a student-learner. (1) A
 16 student-learner under 18 years of age may be employed in
 17 occupations covered by (e), (h), (j), (n), (p), and (q) of
 18 [section 4] if:

19 (a) the student-learner is enrolled in a course of
 20 study and training in a cooperative vocational training
 21 program under a recognized state or local educational
 22 authority or in a course of study in a similar program
 23 conducted by a private school; and

24 (b) the student-learner is employed under a written
 25 agreement which provides that:

1 (i) the work of the student-learner in the occupation
2 is incidental to his training;

3 (ii) the work is intermittent and for short periods of
4 time and under the direct and close supervision of a
5 qualified and experienced person;

6 (iii) safety instructions must be given by the school
7 and correlated by the employer with on-the-job training; and

8 (iv) a schedule of organized and progressive work
9 processes to be performed on the job has been prepared.

10 (2) The written agreement required by subsection (1)
11 must contain the name of the student-learner and must be
12 signed by the employer and the school coordinator or
13 principal. Copies of each agreement must be kept on file by
14 both the school and the employer, and a copy of each
15 agreement must be sent to the commissioner.

16 (3) The privilege of employing a student-learner may
17 be revoked by the commissioner in any individual situation
18 if it is found that reasonable precautions have not been
19 observed for the safety of the student-learner.

20 Section 7. Employment of children in agricultural
21 occupations. (1) Children 16 years of age or older may be
22 employed in any occupation of an agricultural nature on a
23 ranch or farm.

24 (2) Children under 16 years of age may not be employed
25 in an agricultural occupation determined under [section 8]

1 to be hazardous.

2 (3) (a) Children under 16 years of age may not be
3 employed in an agricultural occupation during school hours.
4 The term "school hours" means hours when the school for the
5 school district where the child lives while employed is in
6 session.

7 (b) This subsection does not apply in the spring of
8 the year if the school the child last attended has closed
9 for the current school year.

10 (4) This section does not apply to a child employed on
11 a farm or ranch belonging to a parent or legal guardian.

12 Section 8. Hazardous agricultural occupations.
13 Hazardous agricultural occupations prohibited by [section 7]
14 for children under 16 years of age are:

15 (1) handling or applying anhydrous ammonia, organic
16 arsenic herbicides, organic phosphate pesticides,
17 halogenated hydrocarbon pesticides, or heavy-metal
18 fungicides, including cleaning or decontamination of
19 equipment used in application or mixing of such chemicals;

20 (2) handling or using a blasting agent. The term
21 "blasting agent" includes explosives such as but not limited
22 to dynamite, black powder, sensitized ammonium nitrate,
23 blasting caps, and primer cord.

24 (3) serving as flagman for aircraft;

25 (4) working as:

1 (a) driver of a truck or automobile on a public road
2 or highway;

3 (b) driver of a bus.

4 (5) operating, driving, or riding on a tractor (track
5 or wheel) or attaching an implement or power-take-off unit
6 to or detaching it from a tractor while the motor is
7 turning;

8 (6) operating or riding on a self-unloading
9 bunk-feeder wagon, self-unloading bunk-feeder trailer,
10 self-unloading forage-box wagon, self-unloading box trailer,
11 or self-unloading auger wagon, or self-unloading auger
12 trailer;

13 (7) operating or riding on a dump wagon, hoist wagon,
14 forklift, rotary lift, rotary tiller (except walking type),
15 power-driven earthmoving equipment, or power-driven
16 trenching equipment;

17 (8) operating or unclogging a power-driven combine,
18 field baler, hay conditioner, cornpicker, forage harvester,
19 or vegetable harvester;

20 (9) operating, feeding, or unclogging any of the
21 following machines if power driven: stationary baler,
22 thresher, huller, feed grinder, chopper, silo filler, or
23 crop dryer;

24 (10) feeding materials into or unclogging a roughage
25 blower or auger conveyor;

1 (11) operating a power-driven posthole digger or
2 power-driven post driver;

3 (12) operating, adjusting, or cleaning a power-driven
4 saw;

5 (13) felling, bucking, skidding, loading, or unloading
6 timber with a butt diameter of more than 6 inches;

7 (14) working from a ladder or scaffold at a height
8 over 10 feet;

9 (15) working inside a gas-tight type fruit enclosure,
10 gas-tight type grain enclosure, or gas-tight type forage
11 enclosure or inside a silo when a top unloading device is in
12 operating position;

13 (16) working in a yard, pen, or stall occupied by a
14 dairy bull, boar, or studhorse.

15 Section 9. Employment of children under 16 years of
16 age prohibited in certain occupations or under certain
17 conditions. A person, company, firm, association
18 partnership, or corporation engaged in business in this
19 state or any agent, officer, foreman, or other employee
20 having control or management of employees or having the
21 power to hire or discharge employees who knowingly employs
22 or permits to be employed a child under 16 years of age to
23 render or perform any service or labor, whether under
24 contract of employment or otherwise, in certain occupations
25 under conditions that interfere with the child's schooling,

1 health, or well-being is guilty of a misdemeanor.

2 Section 10. Hours of work for children under sixteen
3 years of age. (1) Except as provided in subsections (2) and
4 (3), a child under 16 years of age who is enrolled in school
5 may not be employed:

6 (a) more than 3 hours on any school day;

7 (b) more than 18 hours in any one week when school is
8 in session;

9 (c) more than 8 hours in any one day when school is
10 not in session;

11 (d) more than 40 hours in any one week when school is
12 not in session;

13 (e) more than 6 days a week; or

14 (f) before 7 a.m. or after 7 p.m. except that they may
15 be employed until 9 p.m. from June 1 through Labor Day.

16 (2) A child 14 years of age or older and under 16
17 years of age who is enrolled in and employed pursuant to a
18 school-supervised and school-administered work experience or
19 career exploration program approved by the department may be
20 employed when such program is in session, up to 23 hours in
21 any one week, any portion of which may be during school
22 hours.

23 (3) A child 12 years of age or older and under 16
24 years of age engaged in delivering newspapers to the
25 consumer may be so engaged starting at 6 a.m., but not for

1 more than 3 hours on any school day or more than 25 hours in
2 any one week when school is in session or more than 5 hours
3 on any day when school is not in session and not later in
4 the evening than is allowed by subsection (1){f}.

5 Section 11. Hours of work for children sixteen years
6 of age or older and under eighteen years of age. A child 16
7 years of age or older and under 18 years of age who is
8 enrolled in school may not be employed more than:

9 (1) 4 hours on any school day;

10 (2) 28 hours in any one week when school is in
11 session;

12 (3) 8 hours in any one day when school is not in
13 session;

14 (4) 48 hours in any one week when school is not in
15 session; or

16 (5) 6 days a week.

17 Section 12. Lunch break required. A child under 18
18 years of age may not be permitted to work more than 5 hours
19 continuously without an interval of at least 30 minutes for
20 a lunch period. No period of less than 30 minutes may be
21 considered to interrupt a continuous period of work.

22 Section 13. Permitted occupations in retail, food
23 service, and gasoline service establishments for children
24 under sixteen years of age. Children under 16 years of age
25 may be employed in retail, food service, and gasoline

1 service establishments in the following types of employment:

2 (1) office and clerical work, including operation of
3 office machines;

4 (2) cashiering, selling, modeling, artwork, work in
5 advertising departments, window trimming, and comparative
6 shopping;

7 (3) price marking and tagging by hand or by machine,
8 assembling orders, packing, and shelving;

9 (4) bagging and carrying out customers' orders;

10 (5) errand and delivery work by foot, bicycle, or
11 public transportation;

12 (6) clean-up work, including the use of vacuum
13 cleaners and floor waxers, and maintenance of grounds, but
14 not including the use of power-driven mowers or cutters;

15 (7) kitchen work and other work involved in preparing
16 and serving food and beverages, including the operation of
17 machines and devices used in the performance of the work,
18 such as, but not limited to, dishwashers, toasters,
19 dumbwaiters, popcorn poppers, milk-shake blenders, and
20 coffee grinders;

21 (8) work in connection with cars and trucks if
22 confined to the following:

23 (a) dispensing gasoline and oil;

24 (b) courtesy service;

25 (c) car cleaning, washing, and polishing;

1 (9) cleaning vegetables and fruits and wrapping,
2 sealing, labeling, weighing, pricing, and stocking goods
3 when performed in areas physically separate from areas where
4 meat is prepared for sale and outside freezers or meat
5 coolers.

6 Section 14. Permitted employment in other occupations
7 for children under sixteen years of age. (1) Children under
8 16 years of age may be employed in any occupation in
9 establishments other than retail, food service, and gasoline
10 service, with the exception of the occupations listed in
11 subsection (2).

12 (2) Children under 16 years of age may not be employed
13 in the following occupations:

14 (a) any manufacturing occupation;

15 (b) any mining occupation;

16 (c) processing occupations, except in retail, food
17 service, or gasoline service establishments in the
18 specific occupations expressly permitted in accordance with
19 [this act];

20 (d) occupations requiring the performance of any
21 duties in workrooms or workplaces where goods are
22 manufactured, mined, or otherwise processed, except to the
23 extent expressly permitted in retail, food service, or
24 gasoline service establishments in accordance with [this
25 act];

1 (e) operation or tending of hoisting apparatus or of
2 any power-driven machinery other than office machines and
3 those machines specified in [section 13] as allowable for
4 operation by such children;

5 (f) any occupations found and declared by the U.S.
6 department of labor or the department to be hazardous.

7 (g) occupations, other than office or sales work not
8 performed on the transportation media or at the actual
9 construction site, performed in connection with:

10 (i) transportation of persons or property by rail,
11 highway, air, pipeline, or other means;

12 (ii) warehousing and storage;

13 (iii) communications and public utilities; or

14 (iv) construction, including repair.

15 Section 15. Prohibited work by children under sixteen
16 years of age in retail, food service, or gasoline service
17 establishments. Children under 16 years of age employed in
18 retail, food service, or gasoline service establishments may
19 not perform the following types of work:

20 (1) work performed in or about a boiler or engine
21 room;

22 (2) work in connection with maintenance or repair of
23 establishment machines or equipment;

24 (3) outside window washing that involves working from
25 windowsills and all work requiring the use of ladders,

1 scaffolds, or their substitutes;

2 (4) cooking (except at soda fountains, lunch counters,
3 snack bars, or cafeteria serving counters) and baking;

4 (5) occupations that involve operating, setting up,
5 adjusting, cleaning, oiling, or repairing power-driven food
6 slicers and grinders, food choppers and cutters, and
7 bakery-type mixers;

8 (6) work in freezers and meat coolers and all work in
9 preparation of meats for sale except wrapping, sealing,
10 labeling, weighing, pricing, and stocking when performed in
11 areas other than freezers and coolers;

12 (7) loading and unloading goods to and from trucks,
13 railroad cars, or conveyors;

14 (8) all occupations in warehouses, except office and
15 clerical work; and

16 (9) work in a gasoline service establishment involving
17 the use of of a pit, rack, or lifting apparatus or involving
18 the inflation of a tire mounted on a rim equipped with a
19 removable retaining ring.

20 Section 16. Employment of children under fourteen
21 years of age. A child under 14 years of age may not be
22 employed in any type of commercial establishment or
23 enterprise unless the establishment is solely owned by a
24 parent or legal guardian of the child.

25 Section 17. Children under eighteen prohibited from

1 working where required to serve alcohol. Children under 18
 2 years of age are prohibited from performing work that
 3 requires them to handle, serve, dispense, or mix alcoholic
 4 beverages.

5 Section 18. Children under eighteen years of age
 6 prohibited from working where required to participate in
 7 games of chance. Children under 18 years of age are
 8 prohibited from working in any capacity in a game of chance.

9 Section 19. Age certificates. A child 14 years of age
 10 or older may apply to the commissioner for an age
 11 certificate that must be presented to any employer with whom
 12 the child seeks employment. The application must be
 13 accompanied by a birth certificate as proof of age. The
 14 commissioner must keep on file a record of all age
 15 certificates issued.

16 Section 20. Employer to check age certificate. (1) A
 17 person, company, firm, association, partnership, or
 18 corporation engaged in business in this state may not employ
 19 a child who is 14 years of age or older and under 18 years
 20 of age unless the child has obtained and exhibited to the
 21 employer an age certificate.

22 (2) The employer must maintain the employee's age
 23 certificate serial number on his payroll records as proof of
 24 having checked the employee's age certificate.

25 Section 21. Falsification of certificate. No person,

1 firm, company, association, partnership, or corporation may
 2 falsify, participate in falsifying, or knowingly display a
 3 false age certificate.

4 Section 22. Enforcement. (1) The commissioner and all
 5 county attorneys shall, each upon their own volition or upon
 6 the sworn complaint of any person that [this act] is being
 7 violated, prosecute such violations.

8 (2) Whenever it appears from reliable information
 9 satisfactory to the commissioner that a person, company,
 10 firm, association, partnership, or corporation engaged in
 11 business in this state has violated [this act], he may
 12 deliver that information to the county attorney of the
 13 county wherein the operations of the employer are being
 14 carried on and request the county attorney to file a
 15 complaint in the district court of that county in accordance
 16 with [this act].

17 (3) If a county attorney, on his own volition or
 18 the sworn complaint of any person, ascertains that [this
 19 act] is being violated by a person, company, firm,
 20 association, partnership, or corporation engaged in business
 21 within the county, he may file charges in district court in
 22 accordance with [this act].

23 (4) Any employee may make complaint directly to the
 24 county attorney relative to a violation of [this act].

25 (5) The county attorney of the county shall promptly

1 notify the commissioner of any complaint made by an employee
2 or any person relative to a violation of [this act] and must
3 keep the commissioner advised in writing of each step in any
4 proceeding taken thereunder.

5 (6) Upon the filing of a complaint, a summons shall be
6 issued and a copy of the complaint and summons shall be
7 served upon the employer, who has 10 days after service to
8 appear. All proceedings on the complaint must be promptly
9 prosecuted.

10 Section 23. Powers of commissioner. (1) The
11 commissioner is empowered to enter and inspect such places,
12 question such employees, and investigate such facts,
13 conditions or matters as he considers appropriate to
14 determine whether any person has violated [this act] or any
15 rule issued hereunder or to aid in the enforcement of [this
16 act].

17 (2) The commissioner may administer oaths and examine
18 witnesses under oath, issue subpoenas, compel the attendance
19 of witnesses and the production of papers, books, accounts,
20 records, payrolls, documents, and testimony, and take
21 depositions and affidavits in any proceeding before him.

22 Section 24. Administration by commissioner -- rules.
23 (1) The commissioner shall administer the provisions of
24 [this act].

25 (2) The commissioner may adopt rules in accordance

1 with the Montana Administrative Procedure Act for
2 implementing the provisions of [this act].

3 Section 25. Penalty. (1) A person, firm, company,
4 association, partnership, or corporation convicted of
5 violating [this act] is guilty of a misdemeanor and shall be
6 punished by a fine of not less than \$100 or more than \$500
7 or by imprisonment in the county jail for a term of not less
8 than 30 days, or both.

9 (2) A second or subsequent conviction shall be
10 punished by a fine of not less than \$200 or more than \$1,000
11 or by imprisonment in the county jail for a term of not less
12 than 60 days or more than 1 year, or both.

13 Section 26. Effect on other laws. No provisions of
14 [this act] may justify or be construed to permit
15 noncompliance with state laws requiring maximum hours and
16 minimum wages or with any federal law, Montana statute, or
17 municipal ordinance establishing higher standards than those
18 established under [this act].

19 Section 27. Saving clause. This act does not affect
20 rights and duties that matured, penalties that were
21 incurred, or proceedings that were begun before the
22 effective date of this act.

23 Section 28. Severability. If a part of this act is
24 invalid, all valid parts that are severable from the invalid
25 part remain in effect. If a part of this act is invalid in

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1 one or more of its applications, the part remains in effect
2 in all valid applications that are severable from the
3 invalid applications.

4 Section 29. Repealer. Sections 41-2-101, 41-2-111
5 through 41-2-114, and 41-2-121, MCA, are repealed.

-End-