

House Bill 78

In The House

January 6, 1981	Introduced and referred to Committee on Business and Industry.
January 9, 1981	Referred to Committee on Labor.
April 23, 1981	Died in Committee.

1                    HOUSE      BILL NO. 78  
 2    INTRODUCED BY HARPER  
 3                    BY REQUEST OF THE DEPARTMENT OF LABOR

4  
 5    A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL  
 6    REVISION OF THE LAWS RELATING TO CHILD LABOR; REPEALING  
 7    SECTIONS 41-2-101 THROUGH 41-2-121, MCA."

8  
 9    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10            Section 1. Short title. [This act] may be cited as the  
 11    "Child Labor Standards Act".

12            Section 2. Definitions. Unless the context requires  
 13    otherwise, in [this act] the following definitions apply:

14            (1) "Department" means the department of labor and  
 15    industry provided for in 2-15-1701.

16            (2) "Employed" includes permitted or suffered to work.

17            (3) "Employer" includes any individual, partnership,  
 18    association, corporation, business trust, or person or group  
 19    of persons acting directly or indirectly in the interest of  
 20    an employer in relation to an employee.

21            (4) "Minor" means any person under 18 years of age.

22            (5) "Occupation" means any occupation, service, trade,  
 23    business, industry, or branch or group of industries or  
 24    employment or class of employment in which employees are  
 25    employed.

1            (6) "Agriculture" includes farming in all its branches  
 2    and among other things includes the cultivation and tillage  
 3    of the soil, dairying, the production, cultivation, growing,  
 4    and harvesting of any agricultural or horticultural  
 5    commodities (including commodities defined as agricultural  
 6    commodities in section 15(j) of the Federal Agricultural  
 7    Marketing Act, as amended), the raising of livestock, bees,  
 8    fur-bearing animals, or poultry and any practices including  
 9    any forestry or lumbering operations performed by a farmer  
 10    or on a farm as an incident to or in conjunction with  
 11    farming operations, including preparation for market or  
 12    delivery to storage or to market or to carriers for  
 13    transportation to market.

14            Section 3. Exemptions. The provisions of [this act] do  
 15    not apply to:

16            (1) a minor engaged in domestic service or  
 17    agricultural pursuits performed outside school hours in  
 18    connection with the minor's own home or farm owned or  
 19    operated by his parent or by a person standing in place of  
 20    his parent and who is employed directly by the parent or  
 21    person;

22            (2) a minor employed on a campsite of a nonprofit  
 23    corporation engaged in citizenship training and character  
 24    building during periods of school vacations;

25            (3) a minor employed as an actor, model, or performer;

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1 (4) a minor employed outside school hours by a  
 2 householder in casual work usual to the home of the  
 3 householder and not in connection with the householder's  
 4 business, trade, or profession and not in occupations  
 5 otherwise specifically prohibited by [this act].

6 Section 4. Employment of minors under fourteen. (1) A  
 7 minor under 14 years of age may not be employed in or in  
 8 connection with any occupation, except as otherwise provided  
 9 in this section.

10 (2) Nothing in this section prohibits the employment  
 11 outside school hours of a minor 12 or 13 years old;

12 (a) in the delivery of newspapers to the consumer;

13 (b) in agriculture or in occupations not otherwise  
 14 prohibited by [this act], with written consent of the  
 15 minor's parent or person standing in place of his parent, or  
 16 on a farm where the parent or person is also employed.

17 Section 5. Employment of minors under sixteen. (1) A  
 18 minor under 16 years of age may not be employed in any  
 19 occupation during school hours.

20 (2) A minor 14 or 15 years of age may be employed  
 21 outside school hours in the street trades occupations of  
 22 bootblacking and the distribution or sale of newspapers,  
 23 magazines, periodicals, or circulars or similar occupations.

24 (3) A minor 14 or 15 years of age may be employed  
 25 outside school hours in the following occupations in retail,

1 food service, and gasoline service establishments:

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

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

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

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

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

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

15 (g) 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 such work,  
 18 such as but not limited to dishwashers, toasters,  
 19 dumbwaiters, popcorn poppers, milkshake blenders, and coffee  
 20 grinders;

21 (h) work in connection with cars and trucks if  
 22 confined to dispensing gasoline and oil; courtesy services;  
 23 car cleaning, washing, and polishing; other occupations  
 24 permitted by subsection (3); but not including work  
 25 involving the use of pits, racks, or lifting apparatus or

1 involving the inflation of any tire mounted on a rim  
2 equipped with a removable ring;

3 (i) cleaning vegetables and fruits and wrapping,  
4 sealing, labeling, weighing, pricing, and stocking goods  
5 when performed in areas physically separate from areas  
6 prohibited by this section.

7 (4) A minor 14 or 15 years of age may not be employed  
8 in any of the following occupations in retail, food service,  
9 and gasoline service establishments:

10 (a) work performed in or about boiler or engine rooms;

11 (b) work in connection with maintenance or repair of  
12 the establishment, machines, or equipment;

13 (c) outside window washing that involves working from  
14 windowsills and all work requiring the use of ladders,  
15 scaffolds, or their substitutes;

16 (d) cooking, except at soda fountains, lunch counters,  
17 snack bars, or cafeteria serving counters, and baking;

18 (e) occupations which involve operating, setting up,  
19 adjusting, cleaning, oiling, or repairing power-driven food  
20 slicers and grinders, food choppers and cutters, and  
21 bakery-type mixers;

22 (f) work in freezers and meat coolers and all work in  
23 preparation of meats for sale except as permitted in  
24 subsection (3)(i) of this section;

25 (g) loading and unloading goods to and from trucks,

1 railroad cars, or conveyors;

2 (h) all occupations in warehouses except office and  
3 clerical work;

4 (i) all occupations otherwise prohibited by [this  
5 act].

6 (5) Except as provided for in subsection (3) of this  
7 section, a minor under 16 years of age may not be employed  
8 in:

9 (a) any manufacturing occupation;

10 (b) any mining occupation;

11 (c) processing occupations such as filleting fish,  
12 dressing poultry, cracking nuts, or laundering and  
13 drycleaning;

14 (d) occupations requiring the performance of any  
15 duties in workrooms or workplaces where goods are  
16 manufactured, mined, or otherwise processed;

17 (e) the operation or tending of hoisting apparatus or  
18 of any power-driven machinery;

19 (f) the operating of motor vehicles or service as  
20 helpers on such vehicles;

21 (g) public messenger service;

22 (h) occupations in connection with transportation of  
23 persons or property by rail, highway, air, on water,  
24 pipeline, or other means, with warehousing and storage, with  
25 communications and public utilities, and with construction

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1 or repair;

2 (i) any of the following occupations in agriculture:

3 (i) operating a tractor of over 20 PTO horsepower or

4 connecting or disconnecting an implement or any of its parts

5 to or from such a tractor or any machinery used in

6 agriculture that is driven by any motor. The term

7 "operating" as used in this subsection (5)(i)(i) includes

8 operating and assisting in operating the various machines

9 including starting, stopping, adjusting, feeding, or any

10 other activity involving physical contact associated with

11 the operations of machinery;

12 (ii) working with livestock used for breeding purposes

13 or with livestock with young offspring;

14 (iii) felling, bucking, skidding, loading, or unloading

15 timber with butt diameter of more than 6 inches;

16 (iv) picking or pruning or repairing a building from a

17 ladder or scaffold at a height of over 20 feet;

18 (v) driving a bus, truck, or automobile when

19 transporting passengers or riding on a tractor as a

20 passenger or helper;

21 (vi) working inside a fruit, forage, or grain storage

22 structure designed to retain an oxygen deficient or toxic

23 atmosphere, an upright silo within 2 weeks after silage has

24 been added or when a top unloading device is in operating

25 position, a manure pit, or a horizontal silo while operating;

1 a tractor for packing purposes;

2 (vii) handling agricultural chemicals classified as

3 poison;

4 (viii) handling or using a blasting agent, including

5 but not limited to dynamite, black powder, sensitized

6 ammonium nitrate, blasting caps, and primer cord;

7 (ix) transporting, transferring, or applying anhydrous

8 ammonia.

9 Section 6. Exemptions from prohibited occupations in

10 agriculture. (1) The prohibition in subsection (5)(i) of

11 [section 5] does not apply to the employment of a

12 student-learner 14 or 15 years of age in the occupations

13 enumerated in subsections (5)(i)(i), (5)(i)(ii),

14 (5)(i)(iii), or (5)(i)(iv) of [section 5] when each of the

15 following requirements are met:

16 (a) the student-learner is enrolled in a vocational

17 education training program in agriculture under a recognized

18 state or local educational authority or in a substantially

19 similar program conducted by a private school;

20 (b) the student-learner is employed under a written

21 agreement which provides that the work is incidental to his

22 training; that such work must be intermittent, for short

23 periods of time, and under the direct and close supervision

24 of a qualified and experienced person; that safety

25 instruction must be given by the school and correlated by

1 the employer with on-the-job training; and that a schedule  
2 of organized and progressive work processes to be performed  
3 on the job has been prepared;

4 (c) the written agreement contains the name of the  
5 student-learner and is signed by the employer and by a  
6 person authorized to represent the educational authority or  
7 school; and

8 (d) copies of each such agreement are kept on file by  
9 both the educational authority or school and by the  
10 employer.

11 (2) The prohibitions in subsection (5)(i) of [section  
12 5] do not apply to the employment of a minor 14 or 15 years  
13 of age in those occupations in which he has successfully  
14 completed a work training program, including safety  
15 instruction and training in the use of machinery, under the  
16 4-H federal extension service or the United States office of  
17 education or a similar program if such safety program has  
18 been approved by the department and if the minor is employed  
19 outside school hours on the equipment for which he has been  
20 trained.

21 Section 7. Prohibited employment of minors under  
22 eighteen. Except as provided for in [section 8], a minor  
23 under 18 years of age may not be employed in or in  
24 connection with any of the following occupations:

25 (1) plants or establishments manufacturing or storing

1 explosives or articles containing explosive components;

2 (2) motor vehicle driver and outside helper;

3 (3) coal mining;

4 (4) logging and the operation of any sawmill, lath  
5 mill, shingle mill, or cooperage-stock mill;

6 (5) the operation of power-driven woodworking  
7 machines;

8 (6) exposure to radioactive substances and to ionizing  
9 radiations;

10 (7) the operation of elevators and other power-driven  
11 hoisting apparatus;

12 (8) the operation of power-driven metal forming,  
13 punching, and shearing machines;

14 (9) occupations in connection with mining, other than  
15 coal;

16 (10) slaughtering, meatpacking, processing, or  
17 rendering;

18 (11) the operation of power-driven bakery machines;

19 (12) the operation of power-driven paper products  
20 machines;

21 (13) the manufacture of brick, tile, and kindred  
22 products;

23 (14) the operation of circular saws, bandsaws, and  
24 quillotine shears;

25 (15) wrecking, demolition, and shipbreaking operations;

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- 1 (16) roofing operations; and  
 2 (17) excavation operations.

3 Section 8. Exemptions from prohibited employment of  
 4 minors under eighteen. The prohibitions in subsections (5),  
 5 (8), (10), (12), (14), (16), and (17) of [section 7] do not  
 6 apply to the employment of apprentices and student-learners  
 7 of 16 or 17 years of age, if they are employed under the  
 8 following conditions:

9 (1) for apprentices, if:

10 (a) the apprentice is employed in a craft recognized  
 11 as an apprenticeable trade;

12 (b) the work of the apprentice is incidental to his  
 13 training;

14 (c) the work is intermittent and for short periods of  
 15 time and is under the direct and close supervision of a  
 16 journeyman as a necessary part of the apprentice training;  
 17 and

18 (d) the apprentice is registered by the bureau of  
 19 apprenticeship and training of the U.S. department of labor  
 20 as employed in accordance with the standards established by  
 21 that bureau or is registered by the department as employed  
 22 in accordance with the standards of the department;

23 (2) for student-learners, if:

24 (a) the student-learner is enrolled in a course of  
 25 study and training in a cooperative vocational training

1 program under a recognized state or local educational  
 2 authority or in a course of study in a substantially similar  
 3 program conducted by a private school; and

4 (b) the student-learner is employed under a written  
 5 agreement which provides:

6 (i) that the work of the student-learner must be  
 7 incidental to his training;

8 (ii) that the work must be intermittent and for short  
 9 periods of time and under the direct and close supervision  
 10 of qualified and experienced persons;

11 (iii) that safety instructions must be given by the  
 12 school and correlated by the employer with on-the-job  
 13 training; and

14 (iv) that a schedule of organized and progressive work  
 15 processes to be performed on the job must have been  
 16 prepared;

17 (c) the student-learner agreement contains the name of  
 18 the student-learner and is signed by the employer and the  
 19 school coordinator or principal. Copies of each agreement  
 20 must be kept on file by both the school and the employer.

21 (3) This exemption for the employment of  
 22 student-learners may be revoked by the department in any  
 23 individual situation where it is found that reasonable  
 24 precautions have not been observed for the safety of minors  
 25 employed thereunder.

1 (4) A high school graduate of 16 or 17 years of age  
2 may be employed in an occupation in which he has completed  
3 training as provided in this section as a student-learner.

4 Section 9. Working hours. (1) A minor under 16 years  
5 of age may not be employed:

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

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

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

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

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

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

16 (2) Notwithstanding the provisions of subsection (1)  
17 of this section and subsection (1) of [section 5], a minor  
18 14 or 15 years of age who is enrolled in and employed  
19 pursuant to a school-supervised and school-administered work  
20 experience or career exploration program, approved by the  
21 department, when such program is in session, may be employed  
22 up to 23 hours in any one week, any portion of which may be  
23 during school hours.

24 (3) Notwithstanding the provisions of subsection (1)  
25 of this section, a minor between 12 and 16 years of age

1 engaged in delivering newspapers to the consumer may be so  
2 engaged starting at 6 a.m., but not more than 4 hours on any  
3 school day or more than 28 hours in any one week when school  
4 is in session or more than 5 hours on any day when school is  
5 not in session and not later in the evening than is  
6 prescribed in subsection (1)(f) of this section.

7 (4) A minor 16 or 17 years of age enrolled in school  
8 may not be employed:

9 (a) more than 4 hours on any school day;

10 (b) more than 28 hours in any week when school is in  
11 session;

12 (c) more than 8 hours in any day when school is not in  
13 session;

14 (d) more than 48 hours in any week when school is not  
15 in session;

16 (e) more than 6 days a week;

17 (f) in two or more establishments.

18 (5) A minor may not be permitted to work more than 5  
19 hours continuously without an interval of at least 30  
20 minutes for a lunch period, and no period of less than 30  
21 minutes may be considered to interrupt a continuous period  
22 of work.

23 Section 10. Employment certificate. (1) Before a minor  
24 is employed in any occupation, except in domestic service in  
25 a private home, the employer of the minor shall obtain and

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1 keep on file, accessible to any officer charged with  
 2 enforcement of [this act], an employment certificate issued  
 3 by a superintendent of schools or the department attesting  
 4 as to the age of the minor. A superintendent of schools who  
 5 issues a certificate under this section shall refer a copy  
 6 of this certificate to the department, and the department  
 7 shall retain a copy of all certificates issued by it.

8 Section 11. Enforcement -- right to enter and inspect  
 9 premises and records -- subpoena power. The department shall  
 10 enforce the provisions of [this act] and make complaints  
 11 against persons violating its provisions. The department may  
 12 enter and inspect at any time any place or establishment  
 13 covered by [this act] and have access to employment or age  
 14 certificates kept on file by the employer and such other  
 15 records as may aid in the enforcement of [this act]. The  
 16 department may subpoena the production of all documentary  
 17 evidence relating to its investigation under [this act].

18 Section 12. Power to adopt rules. The department shall  
 19 adopt rules, including definitions of terms, to carry out  
 20 the purposes of [this act] and to prevent the circumvention  
 21 or evasion thereof.

22 Section 13. Penalties. An employer who violates any of  
 23 the provisions of [this act] is guilty of a misdemeanor and  
 24 is punishable as provided in 46-18-212. Each day during  
 25 which any violation of [this act] continues constitutes a

1 separate and distinct offense, and the employment of any  
 2 minor in violation of [this act] constitutes, with respect  
 3 to each minor so employed, a separate and distinct offense.

4 Section 14. Severability. If a part of this act is  
 5 invalid, all valid parts that are severable from the invalid  
 6 part remain in effect. If a part of this act is invalid in  
 7 one or more of its applications, the part remains in effect  
 8 in all valid applications that are severable from the  
 9 invalid applications.

10 Section 15. Repealer. Sections 41-2-101 through  
 11 41-2-121, MCA, are repealed.

-End-