

SENATE BILL NO. 223

INTRODUCED BY BARTLETT, J. RICE, WATERMAN,
VAUGHN, TOWE, CHRISTIAENS, LYNCH, SIMON,
T. NELSON, SQUIRES
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 10, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 11, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 12, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 32; NOES, 18.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 12, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 69; NOES, 29.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 5, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senott* BILL NO. *223*
 2 INTRODUCED BY *Castell* *Roe* *Waterman* *Vaughn* *Thur*
 3 *Christensen* BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY *Simon* *Sam* *Nelson* *Anderson*
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 LAWS RELATING TO CHILD LABOR; AND REPEALING SECTIONS
 7 41-2-101, 41-2-111, 41-2-113, 41-2-114, AND 41-2-121, MCA."
 8

9 STATEMENT OF INTENT

10 A statement of intent is required for this bill because
 11 [section 13] requires the department of labor and industry
 12 to adopt rules to define terms, to implement the purposes of
 13 the child labor laws, and to prevent the circumvention or
 14 evasion of the child labor laws.
 15

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

17 NEW SECTION. Section 1. Short title. [Sections 1
 18 through 14] may be cited as the "Child Labor Standards Act".

19 NEW SECTION. Section 2. Definitions. As used in
 20 [sections 1 through 14], the following definitions apply:

- 21 (1) "Agriculture" means:
 22 (a) all aspects of farming, including the cultivation
 23 and tillage of the soil;
 24 (b) (i) dairying; and
 25 (ii) the production, cultivation, growing, and

1 harvesting of any agricultural or horticultural commodities,
 2 including commodities defined as agricultural commodities in
 3 the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

4 (c) the raising of livestock, bees, fur-bearing
 5 animals, or poultry; and

6 (d) any practices, including forestry or lumbering
 7 operations, performed by a farmer or on a farm as an
 8 incident to or in conjunction with farming operations,
 9 including preparation for market or delivery to storage, to
 10 market, or to carriers for transportation to market.

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

13 (3) "Domestic service" means an occasional, irregular,
 14 or incidental nonhazardous occupational activity related to
 15 and conducted in or around a private residence, including
 16 but not limited to babysitting, pet sitting or similar
 17 household chore, and manual yard work. Domestic service
 18 specifically excludes industrial homework.

19 (4) (a) "Employed" or "employment" means an occupation
 20 engaged in, permitted, or suffered, with or without
 21 compensation in money or other valuable consideration,
 22 whether paid to the minor or to some other person, including
 23 but not limited to occupations as servant, agent, subagent,
 24 or independent contractor.

25 (b) The term does not include casual, community

1 service, nonrevenue raising, uncompensated activities.

2 (5) "Employer" includes an individual, partnership,
3 association, corporation, business trust, person, or group
4 of persons acting directly or indirectly in the interest of
5 an employer in relation to an employee.

6 (6) "Minor" means an individual under 18 years of age,
7 except for an individual who:

8 (a) has received a high school diploma or has received
9 a passing score on the general education development
10 examination; or

11 (b) is 16 years of age or older and is enrolled in a
12 registered state or federal apprenticeship program.

13 (7) "Occupation" means:

14 (a) an occupation, service, trade, business, or
15 industry in which employees are employed;

16 (b) any branch or group of industries in which
17 employees are employed; or

18 (c) any employment or class of employment in which
19 employees are employed.

20 NEW SECTION. Section 3. Exemptions. The provisions of
21 [sections 1 through 14] do not apply to a minor who is
22 employed:

23 (1) in an agricultural occupation not otherwise
24 prohibited by [sections 1 through 14] and who has received
25 written consent from the minor's parents or a person

1 standing in place of the parent who works on a farm or ranch
2 where the parent or person is also employed;

3 (2) in domestic service or an agricultural pursuit
4 performed outside school hours in connection with a home or
5 a farm owned or operated by the minor's parent or by a
6 person standing in place of the parent;

7 (3) by the parent or a person standing in place of the
8 parent;

9 (4) during periods of school vacations on a campsite of
10 a nonprofit corporation engaged in citizenship training and
11 character building;

12 (5) as an actor, model, or performer;

13 (6) outside school hours by a homeowner in casual work
14 usual to the home of the homeowner and not in connection
15 with the homeowner's business, trade, or profession;

16 (7) by the legislature as a legislative aide or page;
17 or

18 (8) in the distribution or sale of or in the collection
19 for newspapers, periodicals, or circulars.

20 NEW SECTION. Section 4. Prohibited employment of
21 minors under fourteen years of age. Except as provided in
22 [section 3], a minor who is under 14 years of age may not be
23 employed in or in connection with an occupation.

24 NEW SECTION. Section 5. Prohibited employment of
25 minors who are fourteen and fifteen years old. Unless

1 otherwise exempted, a minor 14 or 15 years of age may not be
2 employed in the prohibited occupations in [section 6] or in:

3 (1) a manufacturing occupation;

4 (2) a processing occupation, including but not limited
5 to filleting fish, dressing poultry, cracking nuts, or
6 laundering and drycleaning;

7 (3) an occupation that requires the performance of
8 duties in a workroom or workplace where goods are
9 manufactured, mined, or processed;

10 (4) the operation or tending of a hoisting apparatus or
11 of power-driven machinery;

12 (5) an occupation in connection with:

13 (a) transporting persons or property by rail, highway,
14 air, water, pipeline, or other means;

15 (b) warehousing and storage;

16 (c) communication and public utilities; or

17 (d) construction or repair;

18 (6) an occupation in a retail, food service, or
19 gasoline establishment, including:

20 (a) work performed in or around a boiler or an engine
21 room;

22 (b) work in connection with the maintenance or the
23 repair of an establishment, machine, or equipment;

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

1 scaffolds, or their substitutes at a height of more than 20
2 feet;

3 (d) an occupation that involves operating, assembling,
4 adjusting, cleaning, oiling, or repairing power-driven food
5 slicers and grinders, food choppers and cutters, or
6 bakery-type mixers;

7 (e) work in freezers and meat coolers and all work
8 preparing meat for sale, except wrapping, scaling, labeling,
9 weighing, pricing, and stacking when performed in other
10 areas;

11 (f) loading or unloading goods to and from a truck,
12 railroad car, or conveyor; or

13 (g) an occupation in a warehouse, except for office or
14 clerical work;

15 (7) the following agricultural occupations, unless
16 otherwise exempt or working as a student-learner pursuant to
17 [section 8]:

18 (a) felling, bucking, skidding, loading, or unloading
19 timber with a butt diameter of more than 9 inches;

20 (b) repairing a building from a ladder or scaffold at a
21 height of more than 20 feet;

22 (c) working inside:

23 (i) a fruit, forage, or grain storage structure
24 designed to retain an oxygen-deficient or toxic atmosphere;
25 or

(ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(d) handling or using agricultural chemicals classified as poisonous;

(e) handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or

(f) transporting, transferring, or applying anhydrous ammonia.

NEW SECTION. Section 6. Prohibited employment of minors who are sixteen and seventeen years old. Unless working as an apprentice or student-learner under the provisions of [section 9], a minor 16 or 17 years of age may not be employed in or in connection with any of the following occupations:

(1) manufacturing or storing explosives or articles containing explosive components;

(2) logging and the operation of a sawmill, lath mill, or shingle mill;

(3) the operation of power-driven woodworking machines;

(4) an occupation involving exposure to a radioactive substance or ionizing radiation;

(5) the operation of a freight elevator and other power-driven hoisting apparatus;

(6) the operation of a power-driven metal forming, punching, and shearing machine;

(7) a mining occupation;

(8) slaughtering, meatpacking, processing, or rendering;

(9) the operation of a power-driven bakery machine;

(10) the operation of a power-driven paper products machine;

(11) the manufacture of brick, tile, or similar products;

(12) the operation of a circular saw, bandsaw, or guillotine shears;

(13) a wrecking or demolition operation;

(14) an excavation operation;

(15) a roofing operation;

(16) the operation of a motor vehicle or acting as an outside helper; and

(17) a coal mining operation.

NEW SECTION. Section 7. Employment of minors who are fourteen and fifteen years old. (1) Unless enrolled in and employed pursuant to a school supervised and school administered work experience or career exploration program pursuant to [section 10(2)], a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed

outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

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

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if

confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

NEW SECTION. **Section 8. Exemptions from prohibited occupations in agriculture.** (1) The prohibitions from employment in agricultural operations provided for in [section 5(7)] do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

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

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

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

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in [section 5(7)] do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

NEW SECTION. Section 9. Exemptions from prohibited employment of minors who are sixteen or seventeen years old.

(1) The prohibitions in [section 6] do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

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

(ii) the student-learner is employed under a written agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and

1 correlated by the employer with on-the-job training; and

2 (D) a schedule of organized and progressive work
3 processes to be performed on the job has been prepared;

4 (iii) the written agreement contains the name of the
5 student-learner and is signed by the employer and the school
6 coordinator or principal; and

7 (iv) copies of each agreement are kept on file both by
8 the educational authority or school and by the employer.

9 (2) This exemption for the employment of
10 student-learners may be revoked by the department in any
11 situation if the department finds that reasonable
12 precautions have not been observed for the safety of minors
13 employed under the exemption.

14 (3) A high school graduate who is 16 or 17 years of age
15 may be employed in an occupation in which the graduate has
16 completed training as a student-learner as provided in this
17 section.

18 NEW SECTION. Section 10. Working hours. (1) Unless
19 otherwise exempt or as provided in subsection (2), a minor
20 who is 14 or 15 years of age:

21 (a) may not be employed before 7 a.m. or after 7 p.m.,
22 except that the minor may be employed until 9 p.m. during
23 periods outside the school year (June 1 through Labor Day,
24 depending on local standards); or

25 (b) may not be employed more than:

1 (i) 3 hours on a school day;

2 (ii) 18 hours in a school week;

3 (iii) 8 hours on a nonschool day; or

4 (iv) 40 hours in a week in a nonschool week.

5 (2) A minor who is 14 or 15 years of age and who is
6 enrolled in and employed pursuant to a school-supervised and
7 school-administered work experience or career exploration
8 program approved by the department or the office of public
9 instruction may be employed up to 23 hours in 1 week when
10 the program is in session, any portion of which may be
11 during school hours.

12 NEW SECTION. Section 11. Employment certificate.
13 Before a minor is employed in any occupation except in
14 domestic service in a private home or in an agricultural
15 occupation, the employer of the minor shall obtain and keep
16 on file, accessible to any officer charged with enforcement
17 of [sections 1 through 14], an employment certificate issued
18 by a superintendent of schools or the department, attesting
19 to the age of the minor. A superintendent of schools who
20 issues a certificate under this section shall send a copy of
21 the certificate to the department, and the department shall
22 retain a copy of each certificate issued by it.

23 NEW SECTION. Section 12. Enforcement -- right to enter
24 and inspect premises and records -- subpoena power. The
25 department shall enforce the provisions of [sections 1

through 14] and file a complaint against a person who violates the provisions of [sections 1 through 14]. The department may at any time enter and inspect any place or establishment governed by the provisions of [sections 1 through 14] and have access to employment or age certificates kept on file by the employer and other records that may aid in the enforcement of [sections 1 through 14]. The department may subpoena documentary evidence relating to an investigation under [sections 1 through 14].

NEW SECTION. Section 13. Power to adopt rules. The department shall adopt rules, including definitions of terms, to carry out the purposes of [sections 1 through 14] and to prevent the circumvention or evasion of [sections 1 through 14].

NEW SECTION. Section 14. Penalties. An employer who violates any of the provisions of [sections 1 through 14] is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of [sections 1 through 14] continues constitutes a separate offense, and the employment of a minor in violation of [sections 1 through 14] constitutes, with respect to each minor employed, a separate offense.

NEW SECTION. Section 15. Repealer. Sections 41-2-101, 41-2-111, 41-2-113, 41-2-114, and 41-2-121, MCA, are repealed.

NEW SECTION. Section 16. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 41, chapter 2, part 1, and the provisions of Title 41, chapter 2, part 1, apply to [sections 1 through 14].

NEW SECTION. Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0223, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to child labor.

ASSUMPTIONS:

1. The Employment Relations Division (ERD) will be able to absorb additional workload created for existing compliance specialists created by this proposed legislation. ERD will need, however, 1.00 FTE compliance technician grade 10 to establish and manage the issuance and maintenance of employment certificates, and coordinate with the U.S. Department of Labor. The compliance technician will also: work with the Legal Services Division to promulgate rules defining terms and establishing certification procedures; establish and maintain a database of certificates; coordinate the use of that database with other agencies; issue employment certificates; answer phone calls about the law; send out blank certificates and other related forms; prepare and distribute posters and interpretive pamphlets explaining the law; and interpret relatively complex questions that arise concerning certification.
2. In addition to establishing the employment certificates system, the department will promulgate administrative rules as a substructure to the system, requiring 10 pages at approximately \$35 per page (= \$350). ERD assumes that the Legal Services Division (LSD) will allocate staff time necessary to meet this rule-making activity. LSD will also have additional workload in enforcing child labor laws through the conduct of court cases.
3. Because of national interest and greater activity in the enforcement of child labor laws, as evidenced by the national investigation of major youth employers by the U.S. Department of Labor in the period 1990-1992, ERD will require travel and related funding for some on-site investigations of complaints. ERD will also need to travel to conduct educational programs to inform citizens of their rights and responsibilities under the new law. This educational outreach effort will be conducted by the compliance technician and existing compliance specialists.
4. To properly inform Montana employers, ERD will compile a brief pamphlet explaining the new law, have the pamphlet printed and make this information available through Job Service Offices, direct mailings, workshops and other appropriate mechanisms.


FISCAL IMPACT:**Expenditures:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	0	22,662	22,662	0	23,142	23,142
Operating Expenses	0	14,929	14,929	0	14,929	14,929
Capital Outlay	0	6,050	6,050	0	0	0
Total UI Administrative Tax	0	43,641	43,641	0	38,071	38,071

Revenues:

UI Administrative Tax	43,641	43,641	38,071	38,071
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(Continued)

 2-4-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2/5/93
 SUE BARTLETT, PRIMARY SPONSOR DATE

Fiscal Note for SB0223, as introduced

SB223

(continued)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: There will be additional administrative duties for county superintendents of schools in some counties. To the extent superintendents can issue employment certificates (Section 11) with existing resources, there would be no local impact.

Form BD-15

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to child labor.

1. The Employment Relations Division (ERD) will be able to absorb additional workload for existing compliance specialists created by this proposed legislation. ERD will need, however, one half-time grade 10 compliance technician to work with the Legal Services Division (LSD), employer and employee groups and the U.S. Department of Labor to promulgate rules to define terms and administer the law; monitor complaints that might arise; answer phone calls and correspondence about the law; prepare and distribute posters and interpretive pamphlets explaining the law; and interpret relatively complex question that arise concerning the law and its application; keep abreast of national trends in the area of child labor law and its application.
2. The department will promulgate administrative rules as a substructure to the system, requiring 10 pages at approximately \$35 per page (= \$350). ERD assumes that LSD will allocate staff time necessary to meet this rule-making activity.
3. Because of national interest and greater activity in the enforcement of child labor laws, as evidenced by the national investigation of major youth employers by the U.S. Department of Labor in the period 1990-1992, ERD will require travel and related funding for some on-site investigations of complaints. ERD will also need to travel to conduct educational programs to inform citizens of their rights and responsibilities under the new law. This educational outreach effort will be conducted by the compliance technician and existing compliance specialists.
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<u>Expenditures:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	0	11,331	11,331	0	11,571	11,571
Operating Expenses	0	11,256	11,256	0	9,356	9,356
Capital Outlay	<u>0</u>	<u>4,500</u>	<u>4,500</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	27,087	27,087	0	20,927	20,927

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: There will be additional administrative duties for county superintendents of schools in some counties. To the extent superintendents can issue employment certificates (Section 11) with existing resources, there would be no local impact.

Sue Bartlett 2/19/93
SUE BARTLETT, PRIMARY SPONSOR DATE

Fiscal Note for SB0223, third reading

SB 223 - #2

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 223

INTRODUCED BY BARTLETT, J. RICE, WATERMAN,

VAUGHN, TOWE, CHRISTIAENS, LYNCH, SIMON,

T. NELSON, SQUIRES

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD LABOR; AND REPEALING SECTIONS 41-2-101, 41-2-111, 41-2-113, 41-2-114, AND 41-2-121, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 13 12] requires the department of labor and industry to adopt rules to define terms, to implement the purposes of the child labor laws, and to prevent the circumvention or evasion of the child labor laws.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 14 13] may be cited as the "Child Labor Standards Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 14 13], the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation

and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

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

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including

1 but not limited to occupations as servant, agent, subagent,
2 or independent contractor.

3 (b) The term does not include casual, community
4 service, nonrevenue raising, uncompensated activities.

5 (5) "Employer" includes an individual, partnership,
6 association, corporation, business trust, person, or group
7 of persons acting directly or indirectly in the interest of
8 an employer in relation to an employee.

9 (6) "Minor" means an individual under 18 years of age,
10 except for an individual who:

11 (a) has received a high school diploma or has received
12 a passing score on the general education development
13 examination; or

14 (b) is 16 years of age or older and is enrolled in a
15 registered state or federal apprenticeship program.

16 (7) "Occupation" means:

17 (a) an occupation, service, trade, business, or
18 industry in which employees are employed;

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2 prohibited by [sections 1 through 14 13] and who has
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4 person standing in place of the parent who works on a farm
5 or ranch where the parent or person is also employed;

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7 performed outside school hours in connection with a home or
8 a farm owned or operated by the minor's parent or by a
9 person standing in place of the parent;

10 (3) by the parent or a person standing in place of the
11 parent;

12 (4) during periods of school vacations on a campsite of
13 a nonprofit corporation engaged in citizenship training and
14 character building;

15 (5) as an actor, model, or performer;

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17 usual to the home of the homeowner and not in connection
18 with the homeowner's business, trade, or profession;

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- 10 (3) an occupation that requires the performance of
11 duties in a workroom or workplace where goods are
12 manufactured, mined, or processed;
- 13 (4) the operation or tending of a hoisting apparatus or
14 of power-driven machinery;
- 15 (5) an occupation in connection with:
 - 16 (a) transporting persons or property by rail, highway,
17 air, water, pipeline, or other means;
 - 18 (b) warehousing and storage;
 - 19 (c) communication and public utilities; or
 - 20 (d) construction or repair;
 - 21 (6) an occupation in a retail, food service, or
22 gasoline establishment, including:
 - 23 (a) work performed in or around a boiler or an engine
24 room;
 - 25 (b) work in connection with the maintenance or the

1 repair of an establishment, machine, or equipment;

2 (c) outside window washing that involves working from
3 windowsills and all work requiring the use of ladders,
4 scaffolds, or their substitutes at a height of more than 20
5 feet;

6 (d) an occupation that involves operating, assembling,
7 adjusting, cleaning, oiling, or repairing power-driven food
8 slicers and grinders, food choppers and cutters, or
9 bakery-type mixers;

10 (e) work in freezers and meat coolers and all work
11 preparing meat for sale, except wrapping, scaling, labeling,
12 weighing, pricing, and stacking when performed in other
13 areas;

14 (f) loading or unloading goods to and from a truck,
15 railroad car, or conveyor; or

16 (g) an occupation in a warehouse, except for office or
17 clerical work;

18 (7) the following agricultural occupations, unless
19 otherwise exempt or working as a student-learner pursuant to
20 [section 8]:

21 (a) felling, bucking, skidding, loading, or unloading
22 timber with a butt diameter of more than 9 inches;

23 (b) repairing a building from a ladder or scaffold at a
24 height of more than 20 feet;

25 (c) working inside:

- 1 (i) a fruit, forage, or grain storage structure
 2 designed to retain an oxygen-deficient or toxic atmosphere;
 3 or
 4 (ii) an upright silo within 2 weeks after silage has
 5 been added or when a top unloading device is in operating
 6 position;
 7 (d) handling or using agricultural chemicals classified
 8 as poisonous;
 9 (e) handling or using a blasting agent, including but
 10 not limited to dynamite, black powder, sensitised ammonium
 11 nitrate, blasting caps, or primer cord; or
 12 (f) transporting, transferring, or applying anhydrous
 13 ammonia.

14 NEW SECTION. Section 6. Prohibited employment of
 15 minors who are sixteen and seventeen years old. Unless
 16 working as an apprentice or student-learner under the
 17 provisions of [section 9], a minor 16 or 17 years of age may
 18 not be employed in or in connection with any of the
 19 following occupations:

- 20 (1) manufacturing or storing explosives or articles
 21 containing explosive components;
 22 (2) logging and the operation of a sawmill, lath mill,
 23 or shingle mill;
 24 (3) the operation of power-driven woodworking machines;
 25 (4) an occupation involving exposure to a radioactive

1 substance or ionizing radiation;

2 (5) the operation of a freight--elevator--and--other
 3 power-driven hoisting apparatus, EXCEPT FOR A FREIGHT
 4 ELEVATOR PERMITTED FOR USE UNDER THE CHILD LABOR PROVISIONS
 5 OF THE FEDERAL FAIR LABOR STANDARDS ACT OF 1938;

6 (6) the operation of a power-driven metal forming,
 7 punching, and shearing machine;

8 (7) a mining occupation;

9 (8) slaughtering, meatpacking, processing, or
 10 rendering;

11 (9) the operation of a power-driven bakery machine;

12 (10) the operation of a power-driven paper products
 13 machine;

14 (11) the manufacture of brick, tile, or similar
 15 products;

16 (12) the operation of a circular saw, bandsaw, or
 17 guillotine shears;

18 (13) a wrecking or demolition operation;

19 (14) an excavation operation;

20 (15) a roofing operation;

21 (16) the--operation--of--a--motor-vehicle-or-acting-as-an
 22 outside-helper RIDING OUTSIDE A MOTOR VEHICLE TO ASSIST IN
 23 TRANSPORTING OR DELIVERING GOODS; and

24 (17) a coal mining operation.

25 NEW SECTION. Section 7. Employment of minors who are

fourteen and fifteen years old. (1) Unless enrolled in and employed pursuant to a school supervised and school administered work experience or career exploration program pursuant to [section 10(2)], a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

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

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing

and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

NEW SECTION. Section 8. Exemptions from prohibited occupations in agriculture. (1) The prohibitions from employment in agricultural operations provided for in [section 5(7)] do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of

time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

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

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in [section 5(7)] do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

NEW SECTION. Section 9. Exemptions from prohibited employment of minors who are sixteen or seventeen years old.

(1) The prohibitions in [section 6] do not apply to the

employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

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

(ii) the student-learner is employed under a written agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job has been prepared;

(iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and

(iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

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

NEW SECTION. Section 10. Working hours. (1) Unless otherwise exempt or as provided in subsection (2), a minor

who is 14 or 15 years of age:

(a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or

(b) may not be employed more than:

(i) 3 hours on a school day;

(ii) 18 hours in a school week;

(iii) 8 hours on a nonschool day; or

(iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

~~NEW SECTION. Section 11. Employment-----certificate---~~

~~Before a minor is employed in any occupation except in domestic service in a private home or in an agricultural occupation, the employer of the minor shall obtain and keep on file accessible to any officer charged with enforcement of {sections 1 through 14}, an employment certificate issued by a superintendent of schools or the department, attesting to the age of the minor. A superintendent of schools who~~

~~issues a certificate under this section shall send a copy of the certificate to the department, and the department shall retain a copy of each certificate issued by it.~~

NEW SECTION. Section 11. Enforcement -- right to enter and inspect premises and records -- subpoena power. The department shall enforce the provisions of [sections 1 through ~~14~~ 13] and file a complaint against a person who violates the provisions of [sections 1 through ~~14~~ 13]. The department may at any time enter and inspect any place or establishment governed by the provisions of [sections 1 through ~~14~~ 13] and have access to employment or--age certificates RECORDS kept on file by the employer and other records that may aid in the enforcement of [sections 1 through ~~14~~ 13]. The department may subpoena documentary evidence relating to an investigation under [sections 1 through ~~14~~ 13].

NEW SECTION. Section 12. Power to adopt rules. The department shall adopt rules, including definitions of terms, to carry out the purposes of [sections 1 through ~~14~~ 13] and to prevent the circumvention or evasion of [sections 1 through ~~14~~ 13].

NEW SECTION. Section 13. Penalties. An employer who violates any of the provisions of [sections 1 through ~~14~~ 13] is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of [sections 1

through ~~14~~ 13] continues constitutes a separate offense, and the employment of a minor in violation of [sections 1 through ~~14~~ 13] constitutes, with respect to each minor employed, a separate offense.

NEW SECTION. Section 14. Repealer. Sections 41-2-101, 41-2-111, 41-2-113, 41-2-114, and 41-2-121, MCA, are repealed.

NEW SECTION. Section 15. Codification instruction. [Sections 1 through ~~14~~ 13] are intended to be codified as an integral part of Title 41, chapter 2, part 1, and the provisions of Title 41, chapter 2, part 1, apply to [sections 1 through ~~14~~ 13].

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

SENATE BILL NO. 223

INTRODUCED BY BARTLETT, J. RICE, WATERMAN,

VAUGHN, TOWE, CHRISTIAENS, LYNCH, SIMON,

T. NELSON, SQUIRES

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD LABOR; AND REPEALING SECTIONS 41-2-101, 41-2-111, 41-2-113, 41-2-114, AND 41-2-121, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 12] requires the department of labor and industry to adopt rules to define terms, to implement the purposes of the child labor laws, and to prevent the circumvention or evasion of the child labor laws.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 13] may be cited as the "Child Labor Standards Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 13], the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation

and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

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

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including

1 but not limited to occupations as servant, agent, subagent,
2 or independent contractor.

3 (b) The term does not include casual, community
4 service, nonrevenue raising, uncompensated activities.

5 (5) "Employer" includes an individual, partnership,
6 association, corporation, business trust, person, or group
7 of persons acting directly or indirectly in the interest of
8 an employer in relation to an employee.

9 (6) "Minor" means an individual under 18 years of age,
10 except for an individual who:

11 (a) has received a high school diploma or has received
12 a passing score on the general education development
13 examination; or

14 (b) is 16 years of age or older and is enrolled in a
15 registered state or federal apprenticeship program.

16 (7) "Occupation" means:

17 (a) an occupation, service, trade, business, or
18 industry in which employees are employed;

19 (b) any branch or group of industries in which
20 employees are employed; or

21 (c) any employment or class of employment in which
22 employees are employed.

23 **NEW SECTION. Section 3. Exemptions.** The provisions of
24 [sections 1 through 14 13] do not apply to a minor who is
25 employed:

1 (1) in an agricultural occupation not otherwise
2 prohibited by [sections 1 through 14 13] and who has
3 received written consent from the minor's parents or a
4 person standing in place of the parent who works on a farm
5 or ranch where the parent or person is also employed;

6 (2) in domestic service or an agricultural pursuit
7 performed outside school hours in connection with a home or
8 a farm owned or operated by the minor's parent or by a
9 person standing in place of the parent;

10 (3) by the parent or a person standing in place of the
11 parent;

12 (4) during periods of school vacations on a campsite of
13 a nonprofit corporation engaged in citizenship training and
14 character building;

15 (5) as an actor, model, or performer;

16 (6) outside school hours by a homeowner in casual work
17 usual to the home of the homeowner and not in connection
18 with the homeowner's business, trade, or profession;

19 (7) by the legislature as a legislative aide or page;
20 or

21 (8) in the distribution or sale of or in the collection
22 for newspapers, periodicals, or circulars.

23 **NEW SECTION. Section 4. Prohibited employment of**
24 **minors under fourteen years of age.** Except as provided in
25 [section 3], a minor who is under 14 years of age may not be

1 employed in or in connection with an occupation.

2 NEW SECTION. Section 5. Prohibited employment of
3 minors who are fourteen and fifteen years old. Unless
4 otherwise exempted, a minor 14 or 15 years of age may not be
5 employed in the prohibited occupations in [section 6] or in:

6 (1) a manufacturing occupation;

7 (2) a processing occupation, including but not limited
8 to filleting fish, dressing poultry, cracking nuts, or
9 laundering and drycleaning;

10 (3) an occupation that requires the performance of
11 duties in a workroom or workplace where goods are
12 manufactured, mined, or processed;

13 (4) the operation or tending of a hoisting apparatus or
14 of power-driven machinery;

15 (5) an occupation in connection with:

16 (a) transporting persons or property by rail, highway,
17 air, water, pipeline, or other means;

18 (b) warehousing and storage;

19 (c) communication and public utilities; or

20 (d) construction or repair;

21 (6) an occupation in a retail, food service, or
22 gasoline establishment, including:

23 (a) work performed in or around a boiler or an engine
24 room;

25 (b) work in connection with the maintenance or the

1 repair of an establishment, machine, or equipment;

2 (c) outside window washing that involves working from
3 windowsills and all work requiring the use of ladders,
4 scaffolds, or their substitutes at a height of more than 20
5 feet;

6 (d) an occupation that involves operating, assembling,
7 adjusting, cleaning, oiling, or repairing power-driven food
8 slicers and grinders, food choppers and cutters, or
9 bakery-type mixers;

10 (e) work in freezers and meat coolers and all work
11 preparing meat for sale, except wrapping, scaling, labeling,
12 weighing, pricing, and stacking when performed in other
13 areas;

14 (f) loading or unloading goods to and from a truck,
15 railroad car, or conveyor; or

16 (g) an occupation in a warehouse, except for office or
17 clerical work;

18 (7) the following agricultural occupations, unless
19 otherwise exempt or working as a student-learner pursuant to
20 [section 8]:

21 (a) felling, bucking, skidding, loading, or unloading
22 timber with a butt diameter of more than 9 inches;

23 (b) repairing a building from a ladder or scaffold at a
24 height of more than 20 feet;

25 (c) working inside:

1 (i) a fruit, forage, or grain storage structure
2 designed to retain an oxygen-deficient or toxic atmosphere;
3 or

4 (ii) an upright silo within 2 weeks after silage has
5 been added or when a top unloading device is in operating
6 position;

7 (d) handling or using agricultural chemicals classified
8 as poisonous;

9 (e) handling or using a blasting agent, including but
10 not limited to dynamite, black powder, sensitized ammonium
11 nitrate, blasting caps, or primer cord; or

12 (f) transporting, transferring, or applying anhydrous
13 ammonia.

14 NEW SECTION. Section 6. Prohibited employment of
15 minors who are sixteen and seventeen years old. Unless
16 working as an apprentice or student-learner under the
17 provisions of [section 9], a minor 16 or 17 years of age may
18 not be employed in or in connection with any of the
19 following occupations:

20 (1) manufacturing or storing explosives or articles
21 containing explosive components;

22 (2) logging and the operation of a sawmill, lath mill,
23 or shingle mill;

24 (3) the operation of power-driven woodworking machines;

25 (4) an occupation involving exposure to a radioactive

1 substance or ionizing radiation;

2 (5) the operation of a freight--elevator--and--other
3 power-driven hoisting apparatus, EXCEPT FOR A FREIGHT
4 ELEVATOR PERMITTED FOR USE UNDER THE CHILD LABOR PROVISIONS
5 OF THE FEDERAL FAIR LABOR STANDARDS ACT OF 1938;

6 (6) the operation of a power-driven metal forming,
7 punching, and shearing machine;

8 (7) a mining occupation;

9 (8) slaughtering, meatpacking, processing, or
10 rendering;

11 (9) the operation of a power-driven bakery machine;

12 (10) the operation of a power-driven paper products
13 machine;

14 (11) the manufacture of brick, tile, or similar
15 products;

16 (12) the operation of a circular saw, bandsaw, or
17 guillotine shears;

18 (13) a wrecking or demolition operation;

19 (14) an excavation operation;

20 (15) a roofing operation;

21 (16) the--operation--of--a--motor-vehicle--or--acting--as--an
22 outside-helper RIDING OUTSIDE A MOTOR VEHICLE TO ASSIST IN
23 TRANSPORTING OR DELIVERING GOODS; and

24 (17) a coal mining operation.

25 NEW SECTION. Section 7. Employment of minors who are

fourteen and fifteen years old. (1) Unless enrolled in and employed pursuant to a school supervised and school administered work experience or career exploration program pursuant to [section 10(2)], a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

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

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing

and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

NEW SECTION. Section 8. Exemptions from prohibited occupations in agriculture. (1) The prohibitions from employment in agricultural operations provided for in [section 5(7)] do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of

1 time, and under the direct and close supervision of a
2 qualified and experienced person;

3 (iii) safety instruction is given by the school and
4 correlated by the employer with on-the-job training; and

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

7 (c) The written agreement contains the name of the
8 student-learner and is signed by the employer and by a
9 person authorized to represent the educational authority or
10 school.

11 (d) Copies of each agreement are kept on file both by
12 the educational authority or school and by the employer.

13 (2) The prohibitions in [section 5(7)] do not apply to
14 the employment of a minor who is 14 or 15 years of age in
15 those occupations in which the minor has successfully
16 completed a work training program, including safety
17 instruction and training in the use of machinery, under the
18 4-H program of the federal extension service, a program of
19 the United States department of education, or a similar
20 program if the safety program has been approved by the
21 department and if the minor is employed outside school hours
22 on the equipment for which the minor has been trained.

23 NEW SECTION. Section 9. Exemptions from prohibited
24 employment of minors who are sixteen or seventeen years old.

25 (1) The prohibitions in [section 6] do not apply to the

1 employment of an apprentice or student-learner who is 16 or
2 17 years of age if the minor is employed under the following
3 conditions:

4 (a) for an apprentice, if:

5 (i) the minor is employed in a craft recognized as an
6 apprenticeable trade;

7 (ii) the work is incidental to the minor's training;

8 (iii) the work is intermittent, for short periods of
9 time, and under the direct and close supervision of a
10 journeyman as a necessary part of the apprentice training;
11 and

12 (iv) the minor is registered by the bureau of
13 apprenticeship and training of the United States department
14 of labor as employed in accordance with the standards
15 established by that bureau or is registered by the
16 department as employed in accordance with the standards of
17 the department;

18 (b) for a student-learner, if:

19 (i) 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 substantially similar
23 program conducted by a private school;

24 (ii) the student-learner is employed under a written
25 agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job has been prepared;

(iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and

(iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

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

NEW SECTION. Section 10. Working hours. (1) Unless otherwise exempt or as provided in subsection (2), a minor

who is 14 or 15 years of age:

(a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or

(b) may not be employed more than:

(i) 3 hours on a school day;

(ii) 18 hours in a school week;

(iii) 8 hours on a nonschool day; or

(iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

~~NEW SECTION. Section 11. Employment-----certificate. Before a minor is employed in any occupation except in domestic service in a private home or in an agricultural occupation, the employer of the minor shall obtain and keep on file, accessible to any officer charged with enforcement of {sections 1 through 14}, an employment certificate issued by a superintendent of schools or the department, attesting to the age of the minor. A superintendent of schools who~~

~~issues a certificate under this section shall send a copy of the certificate to the department, and the department shall retain a copy of each certificate issued by it.~~

NEW SECTION. Section 11. Enforcement -- right to enter and inspect premises and records -- subpoena power. The department shall enforce the provisions of [sections 1 through 14 13] and file a complaint against a person who violates the provisions of [sections 1 through 14 13]. The department may at any time enter and inspect any place or establishment governed by the provisions of [sections 1 through 14 13] and have access to employment or--age certificates RECORDS kept on file by the employer and other records that may aid in the enforcement of [sections 1 through 14 13]. The department may subpoena documentary evidence relating to an investigation under [sections 1 through 14 13].

NEW SECTION. Section 12. Power to adopt rules. The department shall adopt rules, including definitions of terms, to carry out the purposes of [sections 1 through 14 13] and to prevent the circumvention or evasion of [sections 1 through 14 13].

NEW SECTION. Section 13. Penalties. An employer who violates any of the provisions of [sections 1 through 14 13] is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of [sections 1

through 14 13] continues constitutes a separate offense, and the employment of a minor in violation of [sections 1 through 14 13] constitutes, with respect to each minor employed, a separate offense.

NEW SECTION. Section 14. Repealer. Sections 41-2-101, 41-2-111, 41-2-113, 41-2-114, and 41-2-121, MCA, are repealed.

NEW SECTION. Section 15. Codification instruction. [Sections 1 through 14 13] are intended to be codified as an integral part of Title 41, chapter 2, part 1, and the provisions of Title 41, chapter 2, part 1, apply to [sections 1 through 14 13].

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.


-End-

HOUSE STANDING COMMITTEE REPORT

March 12, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 223 (third reading copy -- blue) be concurred in as amended .

Signed: 

Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. J. Rice

1. Page 8, line 3.

Strike: "power-driven hoisting apparatus"

Insert: "freight elevator"

2. Page 8, line 5.

Following: "1938"

Insert: ", or other power-driven hoisting apparatus"

3. Page 8, line 9.

Following: "meatpacking,"

Insert: "meat"

SB 223

Committee Vote:
Yes 10, No 0.

HOUSE

SENATE BILL NO. 223

INTRODUCED BY BARTLETT, J. RICE, WATERMAN,

VAUGHN, TOWE, CHRISTIAENS, LYNCH, SIMON,

T. NELSON, SQUIRES

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD LABOR; AND REPEALING SECTIONS 41-2-101, 41-2-111, 41-2-113, 41-2-114, AND 41-2-121, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 13 12] requires the department of labor and industry to adopt rules to define terms, to implement the purposes of the child labor laws, and to prevent the circumvention or evasion of the child labor laws.

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 13] may be cited as the "Child Labor Standards Act".

NEW SECTION. **Section 2.** Definitions. As used in [sections 1 through 13], the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation

and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

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

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including

but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

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

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general education development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.

NEW SECTION. Section 3. Exemptions. The provisions of [sections 1 through 14 13] do not apply to a minor who is employed:

(1) in an agricultural occupation not otherwise prohibited by [sections 1 through 14 13] and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;

(2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

(3) by the parent or a person standing in place of the parent;

(4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;

(5) as an actor, model, or performer;

(6) outside school hours by a homeowner in casual work usual to the home of the homeowner and not in connection with the homeowner's business, trade, or profession;

(7) by the legislature as a legislative aide or page; or

(8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars.

NEW SECTION. Section 4. Prohibited employment of minors under fourteen years of age. Except as provided in [section 3], a minor who is under 14 years of age may not be

1 employed in or in connection with an occupation.

2 **NEW SECTION. Section 5. Prohibited employment of**
3 **minors who are fourteen and fifteen years old.** Unless
4 otherwise exempted, a minor 14 or 15 years of age may not be
5 employed in the prohibited occupations in [section 6] or in:

- 6 (1) a manufacturing occupation;
- 7 (2) a processing occupation, including but not limited
8 to filleting fish, dressing poultry, cracking nuts, or
9 laundering and drycleaning;
- 10 (3) an occupation that requires the performance of
11 duties in a workroom or workplace where goods are
12 manufactured, mined, or processed;
- 13 (4) the operation or tending of a hoisting apparatus or
14 of power-driven machinery;
- 15 (5) an occupation in connection with:
 - 16 (a) transporting persons or property by rail, highway,
17 air, water, pipeline, or other means;
 - 18 (b) warehousing and storage;
 - 19 (c) communication and public utilities; or
 - 20 (d) construction or repair;
- 21 (6) an occupation in a retail, food service, or
22 gasoline establishment, including:
 - 23 (a) work performed in or around a boiler or an engine
24 room;
 - 25 (b) work in connection with the maintenance or the

1 repair of an establishment, machine, or equipment;

2 (c) outside window washing that involves working from
3 windowsills and all work requiring the use of ladders,
4 scaffolds, or their substitutes at a height of more than 20
5 feet;

6 (d) an occupation that involves operating, assembling,
7 adjusting, cleaning, oiling, or repairing power-driven food
8 slicers and grinders, food choppers and cutters, or
9 bakery-type mixers;

10 (e) work in freezers and meat coolers and all work
11 preparing meat for sale, except wrapping, scaling, labeling,
12 weighing, pricing, and stacking when performed in other
13 areas;

14 (f) loading or unloading goods to and from a truck,
15 railroad car, or conveyor; or

16 (g) an occupation in a warehouse, except for office or
17 clerical work;

18 (7) the following agricultural occupations, unless
19 otherwise exempt or working as a student-learner pursuant to
20 [section 8]:

21 (a) felling, bucking, skidding, loading, or unloading
22 timber with a butt diameter of more than 9 inches;

23 (b) repairing a building from a ladder or scaffold at a
24 height of more than 20 feet;

25 (c) working inside:

1 (i) a fruit, forage, or grain storage structure
2 designed to retain an oxygen-deficient or toxic atmosphere;
3 or

4 (ii) an upright silo within 2 weeks after silage has
5 been added or when a top unloading device is in operating
6 position;

7 (d) handling or using agricultural chemicals classified
8 as poisonous;

9 (e) handling or using a blasting agent, including but
10 not limited to dynamite, black powder, sensitized ammonium
11 nitrate, blasting caps, or primer cord; or

12 (f) transporting, transferring, or applying anhydrous
13 ammonia.

14 NEW SECTION. Section 6. Prohibited employment of
15 minors who are sixteen and seventeen years old. Unless
16 working as an apprentice or student-learner under the
17 provisions of [section 9], a minor 16 or 17 years of age may
18 not be employed in or in connection with any of the
19 following occupations:

20 (1) manufacturing or storing explosives or articles
21 containing explosive components;

22 (2) logging and the operation of a sawmill, lath mill,
23 or shingle mill;

24 (3) the operation of power-driven woodworking machines;

25 (4) an occupation involving exposure to a radioactive

1 substance or ionizing radiation;

2 (5) the operation of a freight--elevator--and--other
3 power-driven-hoisting-apparatus FREIGHT ELEVATOR, EXCEPT FOR
4 A FREIGHT ELEVATOR PERMITTED FOR USE UNDER THE CHILD LABOR
5 PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT OF 1938,
6 OR OTHER POWER-DRIVEN HOISTING APPARATUS;

7 (6) the operation of a power-driven metal forming,
8 punching, and shearing machine;

9 (7) a mining occupation;

10 (8) slaughtering, meatpacking, MEAT processing, or
11 rendering;

12 (9) the operation of a power-driven bakery machine;

13 (10) the operation of a power-driven paper products
14 machine;

15 (11) the manufacture of brick, tile, or similar
16 products;

17 (12) the operation of a circular saw, bandsaw, or
18 guillotine shears;

19 (13) a wrecking or demolition operation;

20 (14) an excavation operation;

21 (15) a roofing operation;

22 (16) the--operation--of--a-motor-vehicle-or-acting-as-an
23 outside-helper RIDING OUTSIDE A MOTOR VEHICLE TO ASSIST IN
24 TRANSPORTING OR DELIVERING GOODS; and

25 (17) a coal mining operation.

1 **NEW SECTION. Section 7. Employment of minors who are**
 2 fourteen and fifteen years old. (1) Unless enrolled in and
 3 employed pursuant to a school supervised and school
 4 administered work experience or career exploration program
 5 pursuant to [section 10(2)], a minor 14 or 15 years of age
 6 may not be employed in any occupation during school hours.
 7 (2) A minor 14 or 15 years of age may be employed
 8 outside school hours in:
 9 (a) the distribution or sale of or in the collection
 10 for newspapers, magazines, periodicals, or circulars; and
 11 (b) the following occupations in retail, food service,
 12 and gasoline service establishments:
 13 (i) office and clerical work, including the operation
 14 of an office machine;
 15 (ii) cashiering, selling, modeling, art work, work in an
 16 advertising department, window trimming, and comparative
 17 shopping;
 18 (iii) price marking and tagging by hand or by machine,
 19 assembling orders, packing, and shelving;
 20 (iv) bagging and carrying out a customer's order;
 21 (v) errand and delivery work by foot, bicycle, or
 22 public transportation;
 23 (vi) cleanup work, including the use of a vacuum cleaner
 24 and a floor waxer, and maintenance of grounds, but not
 25 including the use of a power-driven mower or cutter;

1 (vii) kitchen work and other work involved in preparing
 2 and serving food and beverages, including the operation of
 3 machines and devices used in the performance of the work,
 4 which may include but are not limited to a dishwasher,
 5 toaster, dumbwaiter, popcorn popper, milkshake blender, and
 6 coffee grinder; or
 7 (viii) work in connection with cars and trucks if
 8 confined to dispensing gasoline and oil; courtesy service;
 9 car cleaning, washing, and polishing; but not including work
 10 involving the use of a pit, a rack, or a lifting apparatus
 11 or involving the inflation of a tire mounted on a rim
 12 equipped with a removable ring.

13 **NEW SECTION. Section 8. Exemptions from prohibited**
 14 occupations in agriculture. (1) The prohibitions from
 15 employment in agricultural operations provided for in
 16 [section 5(7)] do not apply to the employment of a
 17 student-learner who is 14 or 15 years of age if all of the
 18 following requirements are met:

19 (a) The student-learner is enrolled in a vocational
 20 education training program in agriculture under a recognized
 21 state or local educational authority or in a substantially
 22 similar program conducted by a private school.

23 (b) The student-learner is employed under a written
 24 agreement, providing that:

25 (i) the work is incidental to training;

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

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

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

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in [section 5(7)] do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

NEW SECTION. Section 9. Exemptions from prohibited employment of minors who are sixteen or seventeen years old.

(1) The prohibitions in [section 6] do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

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

(ii) the student-learner is employed under a written

1 agreement, providing that:

2 (A) the work of the student-learner is incidental to
3 the student-learner's training;

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

7 (C) safety instruction is given by the school and
8 correlated by the employer with on-the-job training; and

9 (D) a schedule of organized and progressive work
10 processes to be performed on the job has been prepared;

11 (iii) the written agreement contains the name of the
12 student-learner and is signed by the employer and the school
13 coordinator or principal; and

14 (iv) copies of each agreement are kept on file both by
15 the educational authority or school and by the employer.

16 (2) This exemption for the employment of
17 student-learners may be revoked by the department in any
18 situation if the department finds that reasonable
19 precautions have not been observed for the safety of minors
20 employed under the exemption.

21 (3) A high school graduate who is 16 or 17 years of age
22 may be employed in an occupation in which the graduate has
23 completed training as a student-learner as provided in this
24 section.

25 NEW SECTION. **Section 10.** Working hours. (1) Unless

1 otherwise exempt or as provided in subsection (2), a minor
2 who is 14 or 15 years of age:

3 (a) may not be employed before 7 a.m. or after 7 p.m.,
4 except that the minor may be employed until 9 p.m. during
5 periods outside the school year (June 1 through Labor Day,
6 depending on local standards); or

7 (b) may not be employed more than:

8 (i) 3 hours on a school day;

9 (ii) 18 hours in a school week;

10 (iii) 8 hours on a nonschool day; or

11 (iv) 40 hours in a week in a nonschool week.

12 (2) A minor who is 14 or 15 years of age and who is
13 enrolled in and employed pursuant to a school-supervised and
14 school-administered work experience or career exploration
15 program approved by the department or the office of public
16 instruction may be employed up to 23 hours in 1 week when
17 the program is in session, any portion of which may be
18 during school hours.

19 NEW-SECTION:--Section 11.--Employment-----certificate--
20 Before-a-minor-is--employed--in--any--occupation--except--in
21 domestic--service--in--a--private-home-or-in-an-agricultural
22 occupation, the employer of the minor shall obtain and keep
23 on--file, accessible to any officer charged with enforcement
24 of {sections 1 through 14}, an employment certificate issued
25 by a superintendent of schools or the department, attesting

~~to--the--age--of--the--minor--A--superintendent--of--schools--who
issues--a--certificate--under--this--section--shall--send--a--copy--of
the--certificate--to--the--department--and--the--department--shall
retain--a--copy--of--each--certificate--issued--by--it.~~

NEW SECTION. **Section 11.** Enforcement -- right to enter and inspect premises and records -- subpoena power. The department shall enforce the provisions of [sections 1 through 14 13] and file a complaint against a person who violates the provisions of [sections 1 through 14 13]. The department may at any time enter and inspect any place or establishment governed by the provisions of [sections 1 through 14 13] and have access to employment ~~or--age~~ certificates RECORDS kept on file by the employer and other records that may aid in the enforcement of [sections 1 through 14 13]. The department may subpoena documentary evidence relating to an investigation under [sections 1 through 14 13].

NEW SECTION. **Section 12.** Power to adopt rules. The department shall adopt rules, including definitions of terms, to carry out the purposes of [sections 1 through 14 13] and to prevent the circumvention or evasion of [sections 1 through 14 13].

NEW SECTION. **Section 13.** Penalties. An employer who violates any of the provisions of [sections 1 through 14 13] is guilty of a misdemeanor and is punishable as provided in

46-18-212. Each day during which a violation of [sections 1 through 14 13] continues constitutes a separate offense, and the employment of a minor in violation of [sections 1 through 14 13] constitutes, with respect to each minor employed, a separate offense.

NEW SECTION. **Section 14.** Repealer. Sections 41-2-101, 41-2-111, 41-2-113, 41-2-114, and 41-2-121, MCA, are repealed.

NEW SECTION. **Section 15.** Codification instruction. [Sections 1 through 14 13] are intended to be codified as an integral part of Title 41, chapter 2, part 1, and the provisions of Title 41, chapter 2, part 1, apply to [sections 1 through 14 13].

NEW SECTION. **Section 16.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-