
Testimony of
Sandi Vito, Acting Secretary
Pennsylvania Department of Labor & Industry
Comments on HB 2369
Before the House Labor Relations Committee
May 20, 2008

Good morning Chairman Belfanti, Chairman DiGirolamo and members of the Labor Relations Committee. My name is Sandi Vito, Acting Secretary of the Department of Labor & Industry. Thank you for the opportunity to provide comments on HB 2369, which would repeal Pennsylvania's current Child Labor Law and replace it with a new Child Labor Act.

The proposed bill addresses many of the much needed updates to the Child Labor Law and provides consistency with federal standards. In general, this legislation is a vast improvement over the present law. It would allow for greater compliance, eliminate inconsistent, poorly-written and antiquated provisions, and reconcile Pennsylvania law with the federal Fair Labor Standards Act.

Enforcement of child labor standards is an important function of the Department and we truly appreciate the efforts of Representative Dave Steil in drafting the legislation. We commend him for his continued interest over the past several sessions to enact an up-to-date statute to govern the employment practices of children under 18 years of age.

However, there are a few provisions in the bill that are problematic for the Department. I will be discussing both the benefits and concerns with the bill in my testimony today.

Increases Consistency and Eliminates Confusion

The existence of federal *and* state child labor laws has historically created a great deal of confusion concerning child labor standards in Pennsylvania. Many employers, while in compliance with the provisions of the Fair Labor Standards Act, have not complied with the Child Labor Law, and *vice versa*. This bill would provide more uniformity between federal and state child labor laws, and would also provide clearer standards.

HB 2369 attempts to reconcile the state and federal laws by allowing minors under Pennsylvania law to be employed as permitted under the Fair Labor Standards Act. It also adopts the occupations that are hazardous and prohibited under the Fair Labor Standards Act as violations under the Pennsylvania Child Labor Act.

However, while the hazardous and prohibited occupations under the federal act are quite similar to those established in the current Child Labor Law -- they are not identical. We believe the hazardous and prohibited occupations enumerated currently in the Child Labor Law should be included in the proposed version of the Child Labor Act if not specifically identified in the Fair Labor Standards Act.

Or, as an alternative, the Department could add occupations through the regulatory process as the bill allows for the promulgation of state regulations that are consistent as possible with Fair Labor Standards Act. While the phrase "consistent as possible" is a bit ambiguous, we believe the intent is to provide the Department with latitude to adopt more stringent regulations for compelling reasons. We believe the adoption of previously recognized hazardous occupations would meet the compelling reason test.

This bill corrects inconsistencies that exist throughout the current Child Labor Law, such as the seemingly incongruent provisions regarding newspaper and periodical material carriers. It also provides more uniform standards for minors engaged in motion picture and television production. Currently, the standards for these two industries differ and cause confusion for production companies and the Department.

Also, as drafted the bill provides for a necessary reduction in the required number of work permits issued by school districts applicable to the work of minors from 3 to 1, which will prevent duplicity and confusion. It also greatly decreases the burden placed on school district officials associated with issuing multiple permits. We've heard from many business leaders and youth programs that the requirement for multiple permits is complicating and can be a deterrent to summer youth employment, so this change will provide a significant benefit to young people and businesses in the Commonwealth.

Increases Standards for Child Labor

In addition to creating consistency with federal standards, this legislation sets standards for employment of minors in motels, clubs and restaurants, camps, and volunteer emergency service organizations. It also sets certain requirements for employers including record retention and acknowledgment that minors are employed and requires employers to post requirements of the new Act in a conspicuous place.

An extremely important provision of the bill is that it places more stringent requirements on the hours of work and times for work for minors under 16 years of age and makes them compatible with current Fair Labor Standards Act requirements.

This bill adopts several previously proposed Labor and Industry amendments concerning exclusions for sports attendants, independent contractor newspaper sales and the use of verifications instead of affidavits. The exclusion for sports attendants is based on the Fair Labor Standard Act regulations, which allow minors to engage in "Sports Attending Services."

It also contains an exclusion for minors working in a continuing-care retirement community, ski resort, bowling alley, golf course or amusement park where alcoholic beverages are served if the minor is not permitted to handle or serve the beverages and is not employed in a room where the beverages are stored or served. This is consistent with existing provisions and a recent amendment to the Liquor Code.

Improves Enforcement Powers

It will be easier for the Department to enforce provisions of the newly proposed Child Labor Act because the new act would compel access to records and it would provide investigative subpoena power to the Department.

Also, it would allow the Department to administratively prosecute for violations of the Child Labor Act. Currently, the Child Labor Law only allows for summary criminal prosecutions in magisterial district justice courts throughout the Commonwealth.

The Department's authority to obtain record access, utilize investigative subpoenas and to impose civil penalties will lead to more effective and less costly enforcement and to better compliance. The ability to impose administrative monetary penalties will allow for greater enforcement of the law in a non-criminal setting.

The bill will also allow the Department to provide better administration and information because it eliminates many of the conflicting provisions of the present Child Labor Law. Deletion of these confusing provisions will allow greater compliance.

However, as I stated previously, the Department is concerned that certain provisions of the bill -- in its current form -- would actually weaken some standards that should in fact be upheld. For that reason, the Department recommends and encourages several specific changes to the current language.

Hours of Employment

Under HB 2369, hours of work for minors 16 and 17 years of age has been expanded from the restrictions imposed by the existing Child Labor Law. The proposed law provides for the allowance of more hours of work per day and per week, and does not set hours of day time limit on the minors unlike current law.

For 16 and 17 year olds, the current Child Labor Law establishes maximum hours in non-school periods at 8 hours per day and 44 hours per week. As drafted, HB 2369 sets those limits at 10 hours per day and 48 hours per week. We believe the more restrictive hours of 8 per day and 44 per week should be retained.

Additionally, in the current proposal, limits on hours per week and day are not applicable to 16 and 17 year olds who have dropped out of school. The Department believes this may encourage the minors not to finish their education if they have the ability to enter fulltime employment immediately.

We have a responsibility, instead, to encourage completion of high school education prior to fulltime employment, and we believe this legislation needs to reflect that responsibility.

Newspaper delivery

The provision that would allow minors who are least 11 years old to be employed in the delivery of newspapers after 5:00 am. is troublesome and the Department has reservations as to its reasonableness. Accordingly, this section should be revised to restrict employment of minors in the delivery newspaper between the hours 6:00 am to 8:00 pm

Volunteer firefighters

Beginning with the 2003-04 school year, a change to the School Code allowed a school district to offer firefighter training as a Firefighter I based upon the National Board on Fire Service Professional Qualifications.

The National Board qualifications allow for a minor to enter a burning structure in the training activities for vocational education even though the current Child Labor Law does not allow this activity. To protect minors from injury during volunteer firefighter training, the language in this bill should specifically prohibit this type of training.

And the bill should specifically reflect the need for employment certificates for minors who perform volunteer firefighter and emergency services, and for the hours of work and time requirements to apply. The newly proposed Child Labor Act should specifically enumerate this requirement, like the existing law, to prevent confusion.

Deficiencies in Enforcement Capabilities

Although the proposed bill does make it easier for the Department to enforce the penalty provisions of the act, the criminal penalties should be further increased to afford the Department the opportunity to prosecute the more egregious violations criminally with appropriate penalties for those violations.

Currently, under the proposed bill, a criminal violation constitutes a mere summary offense. This is grossly inadequate if a minor is placed in a position of peril, a situation where a crime is occurring, or where there are repeated violations of the act. In these situations, a court should have the ability to impose sanctions as a misdemeanor of the third degree with an appropriate sentence.

Also, the current proposal omits necessary language from the definition of "establishment" and "employ" that would allow for the Department to prevent the exploitation of minors. As written, only minors who receive money can be considered "employed" for purposes of the Child Labor Act.

As there are scenarios where another party is paid for the work of a minor, we believe we have a responsibility to protect those minors who are performing work but are not paid. Therefore, we believe these definitions need to be modified to give us that ability.

Entertainment permits

In the past, the Department was confronted with difficulties concerning approval of performers engaged in televisions and movie productions which makes the Commonwealth less competitive. The existing act has different requirements for the two industries and does not adequately address current business conditions. The Department believes it is also necessary to spell out start time restrictions for any entertainment performances.

With respect to such performances, we believe that it is necessary to allow Labor and Industry to impose restrictions that are necessary for the health, safety and welfare of the minor and allow for the revocation of a permit if the act is being violated.

As enumerated in the present Child Labor Law, the following activities should be prohibited as entertainment which include minors: "boxing, sparring, or wrestling matches or in an acrobatic act that is dangerous to the minor's safety or well-being." This provision is consistent with the current Child labor Law and is timely considering the recent extreme fighting exhibitions and fights portrayed on internet sites.

In addition, a prohibition must be added that prohibits employment of minors where it relates to obscene and other sexually explicit materials and performances. While there are criminal statutes involving these activities, employment in these endeavors should be specially prohibited in any rewrite of the Child Labor Law.

Effective Date

As currently drafted, once passed, the bill would take effect immediately. The current effective date unduly jeopardizes enforcement by Labor and Industry, school districts and law enforcement; makes compliance almost impossible; and precludes all interested parties from receiving information and training.

It is recommended that this section be amended to allow for a reasonable education and implementation period. At a minimum, the Act should become effective no sooner than 180 days. This would allow the Department, school districts, employers, parents and the regulated community adequate time to become educated on the new requirements and prepare for the implementation of the new Act.

Summary

As I acknowledged in my opening statement, HB 2369 greatly increases efficiency and the ability for employers to comply with and the Department to enforce the law. For these and all the previous reasons, the Department recognizes the need for this legislation and supports the general concept contained in the bill.

We look forward to working with Representative Steil and the committee to address the concerns I have enumerated and would be happy to provide a draft amendment addressing our specific language changes.

Thank you again for the opportunity to appear before you and address HB 2369 and at this time I would entertain any question the committee members may have.