pennsylvania
DEPARTMENT OF LABOR & INDUSTRY

Testimony of

Robert V. O'Brien, Executive Deputy Secretary
Pennsylvania Department of Labor & Industry

Comments on HB 19 and HB 2515
Before the House Labor Relations Committee
September 23, 2010

Good morning Chairman Belfanti, Chairman DiGirolamo and members of the House Labor Relations Committee. I am Robert O'Brien, and I am Executive Deputy Secretary of the Department of Labor & Industry. On behalf of Secretary Sandi Vito, thank you for the opportunity to provide comments on HB 19 and HB 2515, both of which would repeal Pennsylvania's current Child Labor Law and replace it with a new Child Labor Act. With me are Deputy Chief Counsel James Holzman and Assistant Counsel Kathryn McDermott Speaks.

While HB 19 includes the department's recommended updates for the legislature's consideration – and we thank Representative Gibbons for introducing it – we also acknowledge and appreciate Representative Murt's concern on the issue as evidenced by his introduction of HB 2515.

Let me state at the outset that enforcement of child labor standards is an important department function. We appreciate the efforts of those involved in drafting these bills, and hope we can work together to create a more comprehensive Child Labor Law that suitably reinforces child labor protections, and clarifies and strengthens the department's ability to enforce its provisions for the benefit of minors and industry in the Commonwealth.

We are excited that the clarification and changes suggested by these bills are being discussed today. To be frank, the current law – which dates from 1915 – is antiquated, confusing, and has not evolved along with Pennsylvania's occupational diversity. Updates are needed because the department's ability to regulate the employment of minors has been constrained by deficiencies with the current law..

The approval process and enforcement tools under the existing law are outdated – not to mention inconsistent with the federal Fair Labor Standards Act. Stricter criminal penalties for violations of the Child Labor Law will help discourage potential violators of its mandates, in all types of employment scenarios. The establishment of administrative prosecution capabilities will also streamline the penalty process and aid the department in prosecuting violations in a more efficient manner.

As the committee will recall, updating the current Child Labor Law has been an ongoing and bipartisan effort for the last two sessions. In 2005, former Representative David Steil introduced legislation to repeal the current law and provide an update in the form of a "Child Labor Act." This bill passed the House only to die in the Senate.

Rep. Steil again introduced legislation last session, HB 2369, on which the House Labor Relations Committee did hold hearings. Indeed, both HB 19 and HB 2515 draw much from last session's HB 2369. Also as a demonstration of bipartisan intent, I also testified at a hearing before the House Republican Policy Committee on the need for updates to the Child Labor Law and expressed the department's willingness to work with all legislators to improve on the current law.

We are, therefore, disappointed that discussions on updates to the current Child Labor Law have become focused on one particular industry. Strengthening the protections for ALL working minors – not just those in the entertainment industry – has been a shared goal of the department and the General Assembly through prior sessions. That goal must be maintained moving forward, because focusing on a single sector unjustly neglects the need for a comprehensive overhaul.

On that point, I would like to note that there are significant problems with HB 2515 that must be corrected. In particular, this bill's definition of "employer" is specifically limited to the entertainment industry. Under the definition of this bill, minors employed in all other industries are not covered by this bill. As it stands under this definition, a retailer employing a minor is not an "employer" under this bill.

HB 2515 also omits relevant language from the definition of "establishment" and "employ" that would allow the Department to prevent the exploitation of minors. HB 2515 states that only minors who receive money can be considered "employed" under the Child Labor Act. There are scenarios where another party – such as a parent or guardian -- is paid for the minor's work. The protections under law must be extended to these working minors.

We believe it is not the intent of the sponsor to be so limiting in scope, but it is one of the many issues surrounding the application, enforcement and coverage the Department has identified in our review of HB 2515.

Improved Clarity and Consistency

In general, both HB 19 and HB 2515 are vast improvements over the present law. Both bills are a big step in helping to alleviate the confusion often created by the current Child Labor Law. The current law is not well-organized and contains language that is often overly-wordy, difficult to follow and contradictory.

Both of these proposed bills are better organized – divided into sections governing the same subjects, have more explicit headings and are more clearly written. On this alone, both bills would allow for improved compliance and enforcement.

Either bill would create greater compliance and understanding of the law, eliminate provisions inconsistent with the federal Fair Labor Standards Act, rewrite poorly-written and antiquated provisions, provide the department reasonable enforcement authority, allow for meaningful administrative sanctions for violations and improved protections for minors involved in the entertainment industry.

The Bureau of Labor Law Compliance office in Harrisburg receives several questions each week concerning Pennsylvania's child labor laws, and I have little doubt that your offices have also been contacted by many constituents with questions on how to comply with both state and federal child labor requirements. Many well-intentioned employers are confused with complying with two different laws. There is no doubt clearer standards and uniformity between federal and state child labor laws will benefit businesses, minor employees, and the Commonwealth.

Thus, it is very important both bills adopt the violations listed under the federal Fair Labor Standards Act as hazardous and prohibited occupations under their provisions. This would provide uniformity between federal and state child labor laws and eliminate a significant source of compliance confusion.

Enforcement Powers

Current sanctions in the Child Labor Law are remarkably light -- violations are a criminal summary offense with a fine of $200 to $400 for a first offense. But the department cannot issue administrative penalties or require corrective action under the current Child Labor Law. We must refer these cases to the Magisterial District Justice in the location where the violation occurred for that court to take action.

Where local courts do act, the summary criminal offense provisions under the current do little to deter violators or promote compliance. This means the department must often use extensive resources seeking minimal penalties for violations under the current law.

Each bill provides a remedy to this limitation by granting to the department administrative hearing power – usually held by Commonwealth agencies, and the authority to impose administrative fines. These are significant and much-needed improvements.

Under HB 19, however, L&I would have the additional ability to issue corrective orders with appeals of the department's decisions being heard by Commonwealth Court. This additional provision would help expedite the department's enforcement and prosecution of violations, but still provide for due process rights.

HB 19 also provides for greater criminal penalties for child labor violations. A violation would be a misdemeanor of the third degree with a fine up $2,500, imprisonment for not more than 180 days for a first offense or both. Upgrading these penalties would provide better incentive for employers to follow the law and allow the department to choose criminal prosecution as a viable option against employers who commit more grievous violations such as placing a minor in a perilous position, a situation where a crime is occurring or where an employer exhibits repeatedly violates the child labor law.

HB 19 also provides a mechanism to allow for better investigation of allegations. Specifically, it allows the Department to enter and inspect an establishment to review the working conditions for minors and to examine and inspect information – in any occupation relating to the employment of minors. These provisions, included in the enforcement of other wage and hour laws, are not specifically provided to the department under the current Child Labor Law. I recommend that HB 2515 should also provide that issuing officers of work permits cooperate with the department or other persons relative to enforcement and investigation into alleged violations.

Hours of Employment

The current Child Labor Law establishes maximum hours in non-school periods at eight hours per day and 44 hours per week. HB 19 keeps these same hours as a reasonable limitation on the hours a minor may work.

HB 2515, however, expands the restrictions imposed by the existing Child Labor Law and sets those limits at 10 hours per day and 48 hours per week. HB 2515 also does not set restrictions on the time of day for which minors may be employed – unlike current law and HB 19, which sets specific times when a minor cannot be working. Not setting limitations on the hours during the day when a child may work is a significant shortcoming of this bill.

Additionally, HB 19 provides for a clearer definition of "school vacation", allowing it to be established by the school district where the minor resides. This is beneficial in school years, such as last year, when many districts had snow days and had make up days well into June. HB 2515 maintains the current school vacation standard of June through Labor Day, which we know is inconsistent with many districts around the state

HB 2515 would allow minors who are least 11 years old to be employed in the delivery of newspapers at 5:00 a.m. The Department has concerns that employment this early in the morning is not in a minor's best interest. Accordingly, we recommend that HB 2515 be revised to restrict employment of minors in the delivery newspaper to between the hours 6:00 a.m. to 8:00 p.m.

Entertainment/Performance provisions

The Department regularly confronts difficulties concerning interpretation of provisions in the current law regarding the entertainment industry. Entertainment Industry, by the way, includes more than just the relatively new genre of "reality" television. It also includes movies, scripted television series, commercials, theatre, modeling and more recent media forms such as the Internet and podcasts. Thus, any changes regarding employment of minors in the entertainment industry must be made with the understanding that these changes will affect ALL forms of media, not just the selected format of "reality" television.

To that end, HB 19 provides comprehensive coverage for current and future entertainment technology. HB 2515, in addressing reality television, provides a less expansive definition of

the full range of entertainment mediums that Pennsylvania children are now, and will later, encounter.

Furthermore, HB 2515's description of reality television "as documenting actual events" and "usually featuring ordinary people" is vague and may cause problems with enforcement and legal proceedings. In fact, HB 2515 may require permits and regulation for a story on the evening news.

HB 19, on the other hand, allows the department to impose restrictions on permits that are necessary for the health, safety and welfare of minors, and to specifically address individual situations that may not be typical. HB19 would also allow the department to revoke a permit if the law is being violated; if the permit application contained false, misleading and substantially incorrect information; the permits conditions are violated; or there is danger to the minor's well-being.

To address certain exploitative activities against minors, HB 19 prohibits employment that constitutes a violation of the criminal statutes relating to obscene and other sexual materials and performances or relating to sexual abuse of children. It also prohibits minors from engaging in "boxing, sparring or wrestling matches or in an acrobatic act that is hazardous to the minor's safety or well-being."

This is consistent with the current Child Labor Law and takes into consideration examples of more recent exploitation of minors in extreme fighting exhibitions and fights portrayed on internet sites such as YouTube.

HB 2515 notably does not contain similar provisions expressly protecting children from these exploitative situations or provide the department the flexibility and options available in HB 19.

Studio Teachers

HB 2515 contains new requirements for "*Studio Teachers*" to act as an advocate for minor employees and provide for the education and well-being of minors in a performance. While this proposal is worth examination, the current provisions present certain issues.

As proposed in HB 2515, studio teachers would be necessary for all entertainment forms -- not just for reality television, scripted television and movies. And, Studio teachers would be required for performances that last only a few short hours. Performances or rehearsals such as advertising for local businesses, semi-professional or community theatrical performances, radio voiceovers and appearances on weekends would require a studio teacher for the minor employee. This is not a practical requirement for short-term productions occurring after school or when school is not in session – particularly where a parent or guardian is present to watch their child personally.

One important issue with the studio teacher model of HB 2515 is that it does not require teachers to report information on alleged child labor violations to the department. If studio

teachers are utilized, there should be clearly stated penalties for an employer who prevents a studio teacher from performing their duties or complying with the teacher's directions.

Another concern for employers hiring in performances in Pennsylvania is productions may be delayed, especially in the period after the bill takes effect, because of unavailability of studio teachers. Studio teachers from other states would not be able to perform this job in Pennsylvania because they would not be certified to teach school in Pennsylvania. This may have an unintended effect on the entertainment industry in the commonwealth, and may hinder the industry even where a minor may have only a small part in a production.

Also worth noting is that HB 2515 does not grant the department the ability to revoke the certification of studio teachers, and it does not address workers' compensation or liability for these teachers' actions. HB 19, while it does not include studio teachers, requires proof of workers' compensation insurance in the entertainment industry if the Workers' Compensation Act requires coverage.

Additional Performance Permit Requirements/Distinctions

While both HB 2515 and HB 19 require conservation of at least 15 percent of a minor's earning from performances in a trust account, HB 19 requires conservation of earnings in an *irrevocable* trust account and contains requirements for the trust. This additional requirement provides an additional layer of security for the minor employee's earnings until they are able to manage their own affairs.

Interesting given the recent discussion about the ability to issue permits for minors under seven in current law, is that HB 2515 is ambiguous on whether the department may issue entertainment permits to these children. As written, Section 8 of HB 2515 allows the department to issue permits to *minors* in performances, including reality television, without stating any ages. Section 8(c) then discusses limitation of hours for seven to 11 year-old minors at all times.

It is possible for these provisions to be interpreted that that permits cannot be issued to minors under seven years of age ***or*** there does not need to be restrictions for minors under seven because they may be too young for school.

If the intent of HB 2515 is to allow minors under seven to work, it should clearly indicate that to be the case and place specific restrictions on the allowable hours of work for these young children.

Background Checks

Both bills contain requirements on obtaining background checks on the individuals required to work with minors in performances. HB 2515 does not prohibit crew or cast members from working on the set if they are convicted for certain crimes, but requires the employer to provide information on criminal background checks required under the child protective

services law. It should be noted that the statute cited in HB 2515 relates to child care service providers and cannot be used unless it is expressly incorporated into this law.

We believe HB 19 does more to assure that minors are not working in unsafe conditions by enumerating the crimes prohibiting employment in the crew or cast. This gives the department the authority to prosecute an employer who has not taking proactive steps to assure that these minors are in safe hands. Also, HB 19 makes it grounds for denial of a permit if this information on criminal background checks is not provided to the department upon request.

Effective Date

HB 2515, once passed, would take effect in 90 days. This needs to be extended to allow for a reasonable education and implementation period. At a minimum, the bill should become effective no sooner than 180 days, as in HB 19.

This timeframe would afford the department, school districts, employers, parents and the regulated community adequate time to become educated on the new law's requirements and prepare for its implementation. The additional time would also enable the department more opportunity to distribute materials and meet with employers and other interested parties to prepare for the new law, as we did with the Prohibition of Excessive Overtime in Health Care Act (Act 102 of 2008) and the Minimum Wage Act amendments from 2006.

Summary

As I have indicated, the current Child Labor Law is simply inadequate and hinders our ability to protect Pennsylvania's minors.

Of the two bills being discussed, HB 19 is clearly more comprehensive than HB 2515 and provides superior protection of both minors and industry in Pennsylvania. But, to advance a bipartisan effort to improve the current law, we are not opposed to taking the best concepts from both bills to incorporate into a workable bill for the legislature's consideration.

Thank you again for the opportunity to appear before you and address HB 2515 and HB 19.

At this time I would entertain any questions the committee members may have.