

109TH CONGRESS
1ST SESSION

H. R. 2870

To amend the Fair Labor Standards Act of 1938 to reform the provisions relating to child labor, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2005

Mr. LANTOS (for himself, Mr. OWENS, Mr. OBERSTAR, Mr. GUTIERREZ, Mr. GEORGE MILLER of California, Mr. PAYNE, Mr. SANDERS, Mr. GRIJALVA, Mr. MCGOVERN, Ms. WOOLSEY, Mrs. CHRISTENSEN, Mr. STARK, Mrs. MALONEY, Mr. FILNER, Ms. SOLIS, Ms. SCHAKOWSKY, Mr. TIERNEY, Mr. KUCINICH, Mr. BROWN of Ohio, Ms. ROYBAL-ALLARD, Mr. DAVIS of Illinois, Mr. FRANK of Massachusetts, Ms. DELAURO, Mr. DINGELL, Ms. VELÁZQUEZ, and Mr. McDERMOTT) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 to reform the provisions relating to child labor, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Youth Worker Protec-
5 tion Act”.

1 **TITLE I—AMENDMENTS TO FAIR**
2 **LABOR STANDARDS ACT OF 1938**

3 **SEC. 101. AMENDMENTS TO FAIR LABOR STANDARDS ACT**
4 **OF 1938 TO ADD A TITLE RELATING TO EM-**
5 **PLOYMENT OF MINORS.**

6 (a) NEW TITLE.—The Fair Labor Standards Act of
7 1938 (29 U.S.C. 201 et seq.) is amended by adding at
8 the end the following new title:

9 **“TITLE II—EMPLOYMENT OF**
10 **MINORS**

11 **“SEC. 201. REQUIREMENTS FOR EMPLOYMENT OF MINORS.**

12 “An employer may employ a minor only if the fol-
13 lowing requirements are met:

14 “(1) The minor is at least 14 years old or, if
15 younger than 14 years old, is otherwise permitted to
16 work under this Act.

17 “(2) The minor is employed in accordance with
18 this Act and in accordance with any other Federal,
19 State, or local law that provides greater protection
20 to minors.

21 “(3) The minor has a work permit under sec-
22 tion 203.

23 “(4) In the case of a minor who is between the
24 ages of 16 and 18 years, the employment is not in
25 an occupation that is particularly hazardous for the

1 employment of children between those ages or detri-
2 mental to their health or well-being, within the
3 meaning of section 3(1)(2).

4 **“SEC. 202. FEDERAL AND STATE RESPONSIBILITIES.**

5 “(a) FEDERAL RESPONSIBILITIES.—The Secretary
6 shall carry out Federal responsibilities under this title.

7 “(b) DESIGNATED STATE AGENCY.—Each State
8 shall designate a State agency to be the issuing authority
9 for work permits under this title and to carry out other
10 State responsibilities under this title.

11 **“SEC. 203. WORK PERMIT.**

12 “(a) MODEL FORM AND APPLICATION.—The Sec-
13 retary shall prescribe a unified model form that contains
14 both the work permit required by section 201 and the ap-
15 plication for the permit.

16 “(b) CONTENTS.—The model form shall provide for
17 the following information:

18 “(1) Name, date of birth, gender, racial or eth-
19 nic background, and contact information of the
20 minor.

21 “(2) Name, contact information, and consent of
22 a parent of the minor.

23 “(3) In the case of a school-age minor, a certifi-
24 cation by a school official that the official has in-
25 formed the minor of school attendance requirements

1 and has given the minor a written summary of those
2 requirements.

3 “(4) Name, contact information, and type of
4 business of the employer.

5 “(5) Type of work.

6 “(6) Summary of age limitations and other
7 legal requirements for employment of minors.

8 “(7) Name and contact information of the des-
9 ignated State agency.

10 “(c) STATE MODIFICATION.—The designated State
11 agency, in consultation with the Secretary, may modify the
12 model form to improve clarity or information content, or
13 to improve the implementation of this title in conjunction
14 with related provisions of State law.

15 “(d) DURATION OF PERMIT.—A work permit issued
16 under this section shall expire on the earliest of—

17 “(1) the expiration date specified in the permit;

18 “(2) 1 year after the date of issuance of the
19 permit;

20 “(3) the end of the employment for which the
21 permit is issued; or

22 “(4) a change in school districts by the minor.

23 “(e) SCHOOL CERTIFICATION FOR WORK PERMIT
24 ISSUED WHILE SCHOOL NOT IN SESSION.—A work permit
25 that is issued when school is not in session shall be subject

1 to certification under subsection (b)(3) not later than 30
 2 days after school resumes. If the minor does not obtain
 3 certification during that period, the permit shall be sus-
 4 pended until the certification is obtained. As used in this
 5 subsection, the term ‘in session’ has the meaning given
 6 that term under the law applicable to the school district
 7 in which the minor involved lives.

8 “(f) REVOCATION OF WORK PERMIT AND APPEAL.—

9 “(1) REVOCATION.—The designated State
 10 agency may, after notice and an opportunity to re-
 11 spond, revoke a work permit, if the agency finds ei-
 12 ther of the following:

13 “(A) The minor is not in compliance with
 14 school attendance requirements.

15 “(B) The minor is adversely affected by
 16 the employment involved.

17 “(2) APPEAL.—A minor (or the parent of a
 18 minor) or an employer may appeal a decision under
 19 paragraph (1), in accordance with applicable law.

20 **“SEC. 204. WORKING-HOUR RESTRICTIONS FOR MINORS.**

21 “(a) SCHOOL-AGE MINORS.—An employer may not
 22 permit a school-age minor to work during school hours.

23 “(b) MINORS 16 OR 17 YEARS OF AGE.—An em-
 24 ployer may not permit a minor who is 16 or 17 years of
 25 age—

1 “(1) to work before 7 a.m. on any day;

2 “(2) to work later than 10 p.m. on a day before
3 a school day or later than 11 p.m. on any other day;

4 “(3) to work more than 4 hours on a school day
5 or more than 8 hours on any other day;

6 “(4) to work more than 20 hours during a week
7 in which school is in session or more than 40 hours
8 during any other week; or

9 “(5) to work on more than 6 consecutive days.

10 “(c) MINORS 14 OR 15 YEARS OF AGE.—An em-
11 ployer may not permit a minor who is 14 or 15 years of
12 age—

13 “(1) to work before 7 a.m. on any day;

14 “(2) to work later than 7 p.m. on any day, ex-
15 cept that during summer vacation periods (or during
16 corresponding vacation periods for year-round
17 schools) the latest hour for work under this para-
18 graph shall be 9 p.m.;

19 “(3) to work more than 3 hours on a school day
20 or more than 6 hours on any other day;

21 “(4) to work more than 15 hours during a week
22 in which school is in session or more than 30 hours
23 during any other week; or

24 “(5) to work on more than 5 consecutive days.

1 “(d) DEFINITIONS.—As used in this section, the
2 terms ‘school hours’, ‘school day’, and ‘in session’, respec-
3 tively, have the meanings given those terms under the law
4 applicable to the school district in which the minor in-
5 volved lives.

6 **“SEC. 205. NOTIFICATION OF SERIOUS WORK-RELATED IN-**
7 **JURIES.**

8 “(a) IN GENERAL.—If a minor sustains a serious
9 work-related injury, each person specified in subsection
10 (b) shall so notify the designated State agency, which shall
11 inform each parent of the minor of the injury.

12 “(b) PERSONS SPECIFIED.—The persons referred to
13 in subsection (a) are:

14 “(1) The employer of the minor.

15 “(2) If medical attention is given to the minor,
16 an appropriate medical professional who is respon-
17 sible for that medical attention.

18 “(3) If the injury is the subject of investigation
19 by a law enforcement agency, an appropriate em-
20 ployee of that agency.

21 “(4) If the minor attends school and is absent
22 for more than 3 days because of the injury, an ap-
23 propriate employee of the school.

1 “(c) DEFINITION.—As used in this section, the term
 2 ‘serious work-related injury’ means, with respect to a
 3 minor, a work-related injury that results in—

4 “(1) the death of the minor;

5 “(2) medical attention for the minor; or

6 “(3) investigation by a law enforcement agency.

7 **“SEC. 206. DATA COMPILATION, RETENTION, AND REPORT-**
 8 **ING BY DESIGNATED STATE AGENCY.**

9 “(a) DATA COMPILATION AND RETENTION.—The
 10 designated State agency shall compile, on a continuing
 11 basis, and retain, for not less than 7 years, the following:

12 “(1) Statistical data derived from the work per-
 13 mits under section 203.

14 “(2) Statistical data relating to injuries for
 15 which notification is required under section 205.

16 “(b) ANNUAL REPORTS.—The designated State
 17 agency shall report annually to the Secretary of Labor,
 18 at such time and in such manner as the Secretary may
 19 require—

20 “(1) statistical data referred to in subsection
 21 (a); and

22 “(2) information relating to the activities and
 23 number of work-hours devoted by State and local
 24 government employees (including contractors) to the

1 administration and enforcement of child labor laws
2 in the State.

3 **“SEC. 207. PROHIBITION OF YOUTH PEDDLING.**

4 “No employer may employ a minor in youth peddling.

5 **“SEC. 208. ENFORCEMENT.**

6 “(a) CIVIL ACTION FOR BODILY INJURY, ILLNESS,
7 OR DEATH.—

8 “(1) IN GENERAL.—A minor who suffers bodily
9 injury, illness, or death as a result of a violation of
10 this title may bring a civil action against the viola-
11 tor. The civil action may be brought in an appro-
12 priate Federal court (without regard to the amount
13 in controversy) or in an appropriate State court.

14 “(2) RELIEF.—In a civil action under this sub-
15 section, the court—

16 “(A) may grant appropriate legal or equi-
17 table relief; and

18 “(B) shall order the defendant to pay to a
19 prevailing plaintiff appropriate amounts for at-
20 torney fees and costs.

21 “(3) RELATION TO STATE WORKERS’ COM-
22 PENSATION.—In awarding relief under this sub-
23 section, the court may take into consideration any
24 payment for the bodily injury, illness, or death under
25 State workers’ compensation law. If so provided by

1 State law, any amount awarded under this sub-
2 section may be offset against State workers' com-
3 pensation payments for the bodily injury, illness, or
4 death.

5 “(b) PUBLIC DISCLOSURE OF VIOLATIONS.—In the
6 case of any final determination that a violation of this title
7 has occurred, the Secretary shall, not later than 30 days
8 after the date of the determination, publish in the Federal
9 Register and on the web page of the Department of Labor
10 the following:

11 “(1) The name of the violator, including any
12 business name and any other name by which the vio-
13 lator is known publicly.

14 “(2) The address of the location at which the
15 violation occurred.

16 “(3) A description of the facts underlying the
17 violation.

18 “(4) A statement of the penalty imposed.

19 “(c) CIVIL PENALTIES.—Any person who violates
20 this title, or any regulation under this title, shall be sub-
21 ject to a civil penalty of not less than \$500 and not more
22 than \$15,000 for each employee who is the subject of the
23 violation, except that—

1 “(1) in the case of a violation that results in se-
2 rious injury or death, the civil penalty shall be not
3 less than \$15,000 and not more than \$50,000; and

4 “(2) in the case of a willful or repeat violation,
5 the civil penalty shall be not less than \$15,000 and
6 not more than \$100,000.

7 “(d) CRIMINAL PENALTIES.—Whoever violates this
8 title shall be imprisoned not more than 3 years or fined
9 under title 18, United States Code, or both, except that
10 in the case of a second or subsequent offence, the penalty
11 shall be imprisonment of not less than 3 years and not
12 more than 5 years and a fine under title 18, United States
13 Code, or both.

14 **“SEC. 209. DEFINITIONS.**

15 “As used in this title:

16 “(1) The term ‘designated State agency’ means
17 an agency designated under section 202(b).

18 “(2) The term ‘minor’ means an individual who
19 is under the age of 18 years.

20 “(3) The term ‘parent’ includes, with respect to
21 a minor, a legal guardian and any person standing
22 in loco parentis.

23 “(4) The term ‘school-age minor’ means a
24 minor who, as determined under the law applicable
25 to the school district in which the minor lives, has

1 not earned a high school diploma or other document
 2 of equivalent or greater status.”.

3 (b) CLERICAL AMENDMENT.—The Fair Labor
 4 Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended
 5 by inserting before section 2 the following new title head-
 6 ing:

7 **“TITLE I—FAIR LABOR**
 8 **STANDARDS”.**

9 **SEC. 102. AMENDMENT TO FAIR LABOR STANDARDS ACT OF**
 10 **1938 TO PROVIDE MINIMUM AGE PARITY FOR**
 11 **CHILD LABOR IN AGRICULTURAL AND NON-**
 12 **AGRICULTURAL EMPLOYMENT.**

13 Section 13(c) of the Fair Labor Standards Act of
 14 1938 (29 U.S.C. 213(c)) is amended—

15 (1) in paragraph (1)(A)—

16 (A) by striking “twelve years of age and
 17 (i)” and inserting “fourteen years of age and”;
 18 and

19 (B) by striking “(ii) ” and all that follows
 20 through “section 6(a)(5),”;

21 (2) by striking subparagraph (B); and

22 (3) by redesignating subparagraph (C) as sub-
 23 paragraph (B).

1 **SEC. 103. AMENDMENT TO FAIR LABOR STANDARDS ACT OF**
2 **1938 TO IMPOSE A UNIFORM MINIMUM AGE**
3 **FOR EMPLOYMENT IN ALL HAZARDOUS OC-**
4 **CUPATIONS.**

5 Section 13(c) of the Fair Labor Standards Act of
6 1938 (29 U.S.C. 213(c)) is amended—

7 (1) by striking paragraph (2); and

8 (2) in the matter before subparagraph (A) of
9 paragraph (1), by striking “(2) or”.

10 **SEC. 104. AMENDMENT TO FAIR LABOR STANDARDS ACT OF**
11 **1938 TO ELIMINATE SECRETARIAL WAIVER**
12 **AUTHORITY FOR CERTAIN HAND HARVEST**
13 **LABOR BY CHILDREN.**

14 Section 13(c) of the Fair Labor Standards Act of
15 1938 (29 U.S.C. 213(c)) is amended by striking para-
16 graph (4).

17 **SEC. 105. AMENDMENT TO FAIR LABOR STANDARDS ACT OF**
18 **1938 TO ELIMINATE A CHILD LABOR EXCEP-**
19 **TION FOR SCRAP PAPER BALERS AND PAPER**
20 **BOX COMPACTORS.**

21 The Fair Labor Standards Act of 1938 (29 U.S.C.
22 201 et seq.) is amended—

23 (1) by striking paragraph (5) of section 13(c)
24 (29 U.S.C. 213(c)(5)); and

1 (2) in the first sentence of section 16(e) (29
2 U.S.C. 216(e)), by striking “or section 13(c)(5)”
3 each place it appears.

4 **SEC. 106. AMENDMENT TO FAIR LABOR STANDARDS ACT OF**
5 **1938 TO INCLUDE YOUTH PEDDLING.**

6 (a) FINDING.—The second sentence of section 2(a)
7 of the Fair Labor Standards Act of 1938 (29 U.S.C.
8 202(a)) is amended by striking “affects” and inserting the
9 following: “and the employment of persons under the age
10 of 18 years in youth peddling affect”.

11 (b) DEFINITIONS.—Section 3 of the Fair Labor
12 Standards Act of 1938 (29 U.S.C. 203) is amended by
13 adding at the end the following new subsections:

14 “(z) ‘Youth peddling’ means sale of goods or services
15 by a minor in a public place (including any street corner,
16 roadway median, sports facility, performing arts facility,
17 or public transportation station), at the residence of the
18 customer, at the place of business of the customer, or from
19 a vehicle, except that such term does not include—

20 “(1) newspaper delivery to a customer at the
21 residence of the customer or at the place of business
22 of the customer;

23 “(2) sale of goods or services at a fixed retail
24 location; or

1 “(3) sale of goods or services on behalf of an
2 organization that is described in section 501(c) of
3 the Internal Revenue Code of 1986 and is exempt
4 from taxation under section 501(a) of such Code, if
5 the minor is a volunteer and does not receive com-
6 pensation for the sale.

7 “(aa) ‘Minor’ means an individual who is under the
8 age of 18 years.”.

9 **TITLE II—MISCELLANEOUS** 10 **PROVISIONS**

11 **SEC. 201. HAZARDOUS OCCUPATIONS RULE BASED ON** 12 **NIOSH REPORT.**

13 (a) IN GENERAL.—Not later than 24 months after
14 the date of the enactment of this section, the Secretary
15 of Labor shall promulgate a rule, under section 553 of
16 title 5, United States Code, to carry out this section.

17 (b) SCOPE OF RULE.—The rule referred to in sub-
18 section (a) shall provide that, in the application and en-
19 forcement of the child labor provisions of the Fair Labor
20 Standards Act of 1938 (29 U.S.C. 201 et seq.), any occu-
21 pation specified in subsection (c) is particularly hazardous
22 for the employment of children between the ages of 16
23 and 18 years or detrimental to their health or well-being,
24 within the meaning of section 3(l)(2) of that Act (29
25 U.S.C. 203(l)(2)).

1 (c) OCCUPATIONS SPECIFIED.—The occupations re-
2 ferred to in subsection (b) are—

3 (1) the occupations that are the subjects of rec-
4 ommendations pertaining to current hazardous or-
5 ders, as stated in part IV of the report entitled “Na-
6 tional Institute for Occupational Safety and Health
7 (NIOSH) Recommendations to the U.S. Department
8 of Labor for Changes to Hazardous Orders”, dated
9 May 3, 2002; and

10 (2) the occupations that are the subjects of rec-
11 ommendations for new hazardous orders, as stated
12 in part V of that report.

13 (d) RULE CONSISTENCY WITH NIOSH REC-
14 OMMENDATIONS.—With respect to each occupation, the
15 rule shall impose requirements that are consistent with the
16 parts IV and V recommendations in the NIOSH report,
17 except that—

18 (1) in the case of the part IV recommendation
19 HO 10 for Non-Agricultural Occupations, the rule
20 may not provide for employment of children between
21 the ages of 16 and 18 years in the operation of
22 power-driven meat and food slicers in the wholesale,
23 retail, or services industry;

24 (2) the rule may not allow for the operation of
25 counter-top models of power-driven bakery machines,

1 as proposed in the part IV recommendation HO 11
2 for Non-Agricultural Occupations; and

3 (3) in the case of the part IV recommendation
4 HO 1 for Agricultural Occupations, the rule may not
5 provide for employment of children between the ages
6 of 14 and 15 years as tractor operators.

7 **SEC. 202. PERIODIC REVIEW OF RESTRICTED OCCUPATION**
8 **AND HAZARDOUS OCCUPATION ORDERS.**

9 (a) IN GENERAL.—At appropriate intervals, but in
10 no case less than once during each five-year period, the
11 Secretary of Labor shall conduct a comprehensive review
12 of Restricted Occupation Orders and Hazardous Occupa-
13 tion Orders to assure that such Orders are current and
14 effective in light of changes in science and technology,
15 data on occupational injuries, and other relevant factors.

16 (b) RULES.—At the end of each review referred to
17 in subsection (a), the Secretary shall promulgate rules,
18 under section 553 of title 5, United States Code, to effect
19 necessary changes in Restricted Occupation Orders and
20 Hazardous Occupation Orders.

21 (c) TIMING.—The first five-year period referred to in
22 subsection (a) is the five-year period beginning with the
23 year in which this section is enacted.

1 **SEC. 203. RULE TO PROHIBIT EMPLOYMENT OF MINORS IN**
2 **CERTAIN ACTIVITIES.**

3 (a) IN GENERAL.—Not later than 24 months after
4 the date of the enactment of this section, the Secretary
5 of Labor shall promulgate a rule, under section 553 of
6 title 5, United States Code, to prohibit employment of mi-
7 nors in the following activities:

8 (1) Seafood processing.

9 (2) Employment requiring a minor to handle or
10 dispose of oil or other liquids from fryers.

11 (b) DEFINITION.—As used in this section, the term
12 “minor” means an individual who is under the age of 18
13 years.

14 **SEC. 204. REVIEW OF HEALTH AND SAFETY DATA; RULES.**

15 (a) REVIEW.—Not later than 36 months after the
16 date of the enactment of this section, the Secretary of
17 Labor shall complete a review of health and safety data
18 on the employment of minors in the following activities:

19 (1) Repetitive bending, stooping, twisting, and
20 squatting.

21 (2) Lifting of heavy objects and unwieldy ob-
22 jects.

23 (3) Working alone or late at night in retail es-
24 tablishments where there is direct contact with the
25 public and cash is handled.

1 (4) Work in the entertainment industry that is
 2 detrimental to the health, safety, education, or well-
 3 being of minors.

4 (b) RULES.—Upon completion of the review under
 5 subsection (a), the Secretary shall submit to the Congress
 6 a report of the review, together with appropriate rules
 7 under section 553 of title 5, United States Code. The ef-
 8 fective date of the rules shall be not earlier than 12
 9 months after the date on which congressional review be-
 10 gins under section 801 of title 5, United States Code.

11 (c) DEFINITION.—As used in this section, the term
 12 “minor” means means an individual who is under the age
 13 of 18 years.

14 **TITLE III—EFFECTIVE DATES**

15 **SEC. 301. EFFECTIVE DATE.**

16 The provisions of this Act shall take effect on the
 17 date of the enactment of this Act, except that section 101
 18 of this Act shall take effect on the first day of the 12th
 19 month after the month in which this Act is enacted.

○