



# in our own backyard

THE HIDDEN PROBLEM OF  
CHILD FARMWORKERS IN AMERICA  
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## Part III: What Can Be Done?

### **H.R. 2870: Youth Worker Protection Act**

This bill was introduced in the House of Representatives in 2005, but never went to a vote. It would have set the same minimum age for children in both agricultural and non-agricultural employment, a uniform minimum age for all hazardous occupations, new requirements for notification of work-related injuries and other changes to the Fair Labor Standards Act.

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<http://thomas.loc.gov>*



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. VELAZQUEZ, and Mr. MCDERMOTT) introduced the following bill; which was referred to the Committee on Education and the Workforce

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A BILL

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Youth Worker Protection Act'.

**TITLE I--AMENDMENTS TO FAIR LABOR STANDARDS ACT OF 1938**

**SEC. 101. AMENDMENTS TO FAIR LABOR STANDARDS ACT OF 1938 TO ADD A TITLE RELATING TO EMPLOYMENT OF MINORS.**

(a) New Title- The Fair Labor Standards Act of 1938 ([29 U.S.C. 201](#) et seq.) is amended by adding at the end the following new title:

**'TITLE II--EMPLOYMENT OF MINORS**

**'SEC. 201. REQUIREMENTS FOR EMPLOYMENT OF MINORS.**

'An employer may employ a minor only if the following requirements are met:

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

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

`(3) The minor has a work permit under section 203.

`(4) In the case of a minor who is between the ages of 16 and 18 years, the employment is not in an occupation that is particularly hazardous for the employment of children between those ages or detrimental to their health or well-being, within the meaning of section 3(1)(2).

## **`SEC. 202. FEDERAL AND STATE RESPONSIBILITIES.**

`(a) Federal Responsibilities- The Secretary shall carry out Federal responsibilities under this title.

`(b) Designated State Agency- Each State shall designate a State agency to be the issuing authority for work permits under this title and to carry out other State responsibilities under this title.

## **`SEC. 203. WORK PERMIT.**

`(a) Model Form and Application- The Secretary shall prescribe a unified model form that contains both the work permit required by section 201 and the application for the permit.

`(b) Contents- The model form shall provide for the following information:

`(1) Name, date of birth, gender, racial or ethnic background, and contact information of the minor.

`(2) Name, contact information, and consent of a parent of the minor.

`(3) In the case of a school-age minor, a certification by a school official that the official has informed the minor of school attendance requirements and has given the minor a written summary of those requirements.

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

`(5) Type of work.

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

`(7) Name and contact information of the designated State agency.

`(c) State Modification- The designated State agency, in consultation with the Secretary, may modify the model form to improve clarity or information content, or to improve the implementation of this title in conjunction with related provisions of State law.

`(d) Duration of Permit- A work permit issued under this section shall expire on the earliest of--

- `(1) the expiration date specified in the permit;
- `(2) 1 year after the date of issuance of the permit;
- `(3) the end of the employment for which the permit is issued; or
- `(4) a change in school districts by the minor.

`(e) School Certification for Work Permit Issued While School not in Session- A work permit that is issued when school is not in session shall be subject to certification under subsection (b)(3) not later than 30 days after school resumes. If the minor does not obtain certification during that period, the permit shall be suspended until the certification is obtained. As used in this subsection, the term `in session' has the meaning given that term under the law applicable to the school district in which the minor involved lives.

`(f) Revocation of Work Permit and Appeal-

`(1) REVOCATION- The designated State agency may, after notice and an opportunity to respond, revoke a work permit, if the agency finds either of the following:

- `(A) The minor is not in compliance with school attendance requirements.
- `(B) The minor is adversely affected by the employment involved.

`(2) APPEAL- A minor (or the parent of a minor) or an employer may appeal a decision under paragraph (1), in accordance with applicable law.

## **`SEC. 204. WORKING-HOUR RESTRICTIONS FOR MINORS.**

`(a) School-Age Minors- An employer may not permit a school-age minor to work during school hours.

`(b) Minors 16 or 17 Years of Age- An employer may not permit a minor who is 16 or 17 years of age--

- `(1) to work before 7 a.m. on any day;
- `(2) to work later than 10 p.m. on a day before a school day or later than 11 p.m. on any other day;
- `(3) to work more than 4 hours on a school day or more than 8 hours on any other day;

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

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

`(c) Minors 14 or 15 Years of Age- An employer may not permit a minor who is 14 or 15 years of age--

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

`(2) to work later than 7 p.m. on any day, except that during summer vacation periods (or during corresponding vacation periods for year-round schools) the latest hour for work under this paragraph shall be 9 p.m.;

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

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

`(5) to work on more than 5 consecutive days.

`(d) Definitions- As used in this section, the terms `school hours', `school day', and `in session', respectively, have the meanings given those terms under the law applicable to the school district in which the minor involved lives.

## **`SEC. 205. NOTIFICATION OF SERIOUS WORK-RELATED INJURIES.**

`(a) In General- If a minor sustains a serious work-related injury, each person specified in subsection (b) shall so notify the designated State agency, which shall inform each parent of the minor of the injury.

`(b) Persons Specified- The persons referred to in subsection (a) are:

`(1) The employer of the minor.

`(2) If medical attention is given to the minor, an appropriate medical professional who is responsible for that medical attention.

`(3) If the injury is the subject of investigation by a law enforcement agency, an appropriate employee of that agency.

`(4) If the minor attends school and is absent for more than 3 days because of the injury, an appropriate employee of the school.

`(c) Definition- As used in this section, the term `serious work-related injury' means, with respect to a minor, a work-related injury that results in--

`(1) the death of the minor;

`(2) medical attention for the minor; or

`(3) investigation by a law enforcement agency.

**`SEC. 206. DATA COMPILATION, RETENTION, AND REPORTING BY DESIGNATED STATE AGENCY.**

`(a) Data Compilation and Retention- The designated State agency shall compile, on a continuing basis, and retain, for not less than 7 years, the following:

`(1) Statistical data derived from the work permits under section 203.

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

`(b) Annual Reports- The designated State agency shall report annually to the Secretary of Labor, at such time and in such manner as the Secretary may require--

`(1) statistical data referred to in subsection (a); and

`(2) information relating to the activities and number of work-hours devoted by State and local government employees (including contractors) to the administration and enforcement of child labor laws in the State.

**`SEC. 207. PROHIBITION OF YOUTH PEDDLING.**

`No employer may employ a minor in youth peddling.

**`SEC. 208. ENFORCEMENT.**

`(a) Civil Action for Bodily Injury, Illness, or Death-

`(1) IN GENERAL- A minor who suffers bodily injury, illness, or death as a result of a violation of this title may bring a civil action against the violator. The civil action may be brought in an appropriate Federal court (without regard to the amount in controversy) or in an appropriate State court.

`(2) RELIEF- In a civil action under this subsection, the court--

`(A) may grant appropriate legal or equitable relief; and

`(B) shall order the defendant to pay to a prevailing plaintiff appropriate amounts for attorney fees and costs.

`(3) RELATION TO STATE WORKERS' COMPENSATION- In awarding relief under this subsection, the court may take into consideration any payment for the bodily injury, illness, or death under State workers' compensation law. If so provided by State law, any amount awarded under this subsection

may be offset against State workers' compensation payments for the bodily injury, illness, or death.

`(b) Public Disclosure of Violations- In the case of any final determination that a violation of this title has occurred, the Secretary shall, not later than 30 days after the date of the determination, publish in the Federal Register and on the web page of the Department of Labor the following:

`(1) The name of the violator, including any business name and any other name by which the violator is known publicly.

`(2) The address of the location at which the violation occurred.

`(3) A description of the facts underlying the violation.

`(4) A statement of the penalty imposed.

`(c) Civil Penalties- Any person who violates this title, or any regulation under this title, shall be subject to a civil penalty of not less than \$500 and not more than \$15,000 for each employee who is the subject of the violation, except that--

`(1) in the case of a violation that results in serious injury or death, the civil penalty shall be not less than \$15,000 and not more than \$50,000; and

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

`(d) Criminal Penalties- Whoever violates this title shall be imprisoned not more than 3 years or fined under title 18, United States Code, or both, except that in the case of a second or subsequent offence, the penalty shall be imprisonment of not less than 3 years and not more than 5 years and a fine under title 18, United States Code, or both.

## **`SEC. 209. DEFINITIONS.**

`As used in this title:

`(1) The term `designated State agency' means an agency designated under section 202(b).

`(2) The term `minor' means an individual who is under the age of 18 years.

`(3) The term `parent' includes, with respect to a minor, a legal guardian and any person standing in loco parentis.

`(4) The term `school-age minor' means a minor who, as determined under the law applicable to the school district in which the minor lives, has not earned a high school diploma or other document of equivalent or greater status.'

(b) Clerical Amendment- The Fair Labor Standards Act of 1938 ([29 U.S.C. 201](#) et seq.) is amended by inserting before section 2 the following new title heading:

**‘TITLE I--FAIR LABOR STANDARDS’.**

**SEC. 102. AMENDMENT TO FAIR LABOR STANDARDS ACT OF 1938 TO PROVIDE MINIMUM AGE PARITY FOR CHILD LABOR IN AGRICULTURAL AND NONAGRICULTURAL EMPLOYMENT.**

Section 13(c) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 213](#)(c)) is amended-

(1) in paragraph (1)(A)--

(A) by striking ‘twelve years of age and (i)’ and inserting ‘fourteen years of age and’; and

(B) by striking ‘(ii)’ and all that follows through ‘section 6(a)(5),’;

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

**SEC. 103. AMENDMENT TO FAIR LABOR STANDARDS ACT OF 1938 TO IMPOSE A UNIFORM MINIMUM AGE FOR EMPLOYMENT IN ALL HAZARDOUS OCCUPATIONS.**

Section 13(c) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 213](#)(c)) is amended-

(1) by striking paragraph (2); and

(2) in the matter before subparagraph (A) of paragraph (1), by striking ‘(2) or’.

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

Section 13(c) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 213](#)(c)) is amended by striking paragraph (4).

**SEC. 105. AMENDMENT TO FAIR LABOR STANDARDS ACT OF 1938 TO ELIMINATE A CHILD LABOR EXCEPTION FOR SCRAP PAPER BALERS AND PAPER BOX COMPACTORS.**

The Fair Labor Standards Act of 1938 ([29 U.S.C. 201](#) et seq.) is amended--

(1) by striking paragraph (5) of section 13(c) ([29 U.S.C. 213](#)(c)(5)); and

(2) in the first sentence of section 16(e) ([29 U.S.C. 216\(e\)](#)), by striking `or section 13(c)(5)' each place it appears.

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

(a) Finding- The second sentence of section 2(a) of the Fair Labor Standards Act of 1938 ([29 U.S.C. 202](#)(a)) is amended by striking `affects' and inserting the following: `and the employment of persons under the age of 18 years in youth peddling affect'.

(b) Definitions- Section 3 of the Fair Labor Standards Act of 1938 ([29 U.S.C. 203](#)) is amended by adding at the end the following new subsections:

`(z) `Youth peddling' means sale of goods or services by a minor in a public place (including any street corner, roadway median, sports facility, performing arts facility, or public transportation station), at the residence of the customer, at the place of business of the customer, or from a vehicle, except that such term does not include--

`(1) newspaper delivery to a customer at the residence of the customer or at the place of business of the customer;

`(2) sale of goods or services at a fixed retail location; or

`(3) sale of goods or services on behalf of an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code, if the minor is a volunteer and does not receive compensation for the sale.

`(aa) `Minor' means an individual who is under the age of 18 years.'.

## **TITLE II--MISCELLANEOUS PROVISIONS**

### **SEC. 201. HAZARDOUS OCCUPATIONS RULE BASED ON NIOSH REPORT.**

(a) In General- Not later than 24 months after the date of the enactment of this section, the Secretary of Labor shall promulgate a rule, under section 553 of title 5, United States Code, to carry out this section.

(b) Scope of Rule- The rule referred to in subsection (a) shall provide that, in the application and enforcement of the child labor provisions of the Fair Labor Standards Act of 1938 ([29 U.S.C. 201](#) et seq.), any occupation specified in subsection (c) is particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being, within the meaning of section 3(l)(2) of that Act ([29 U.S.C. 203](#)(l)(2)).

(c) Occupations Specified- The occupations referred to in subsection (b) are--

(1) the occupations that are the subjects of recommendations pertaining to current hazardous orders, as stated in part IV of the report entitled 'National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders', dated May 3, 2002; and

(2) the occupations that are the subjects of recommendations for new hazardous orders, as stated in part V of that report.

(d) Rule Consistency With NIOSH Recommendations- With respect to each occupation, the rule shall impose requirements that are consistent with the parts IV and V recommendations in the NIOSH report, except that--

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

(2) the rule may not allow for the operation of counter-top models of power-driven bakery machines, as proposed in the part IV recommendation HO 11 for Non-Agricultural Occupations; and

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

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

(a) In General- At appropriate intervals, but in no case less than once during each five-year period, the Secretary of Labor shall conduct a comprehensive review of Restricted Occupation Orders and Hazardous Occupation Orders to assure that such Orders are current and effective in light of changes in science and technology, data on occupational injuries, and other relevant factors.

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

(c) Timing- The first five-year period referred to in subsection (a) is the five-year period beginning with the year in which this section is enacted.

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

(a) In General- Not later than 24 months after the date of the enactment of this section, the Secretary of Labor shall promulgate a rule, under section 553 of title 5, United States Code, to prohibit employment of minors in the following activities:

(1) Seafood processing.

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

(b) Definition- As used in this section, the term `minor' means an individual who is under the age of 18 years.

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