



# in our own backyard

THE HIDDEN PROBLEM OF  
CHILD FARMWORKERS IN AMERICA

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## Part III: What Can Be Done?

### **H.R. 3564: Children's Act for Responsible Employment (CARE Act)**

This bill was introduced to the 111<sup>th</sup> Congress in 2009, by Rep. Roybal-Allard. It would repeal most exemptions for agricultural youth workers, raise the age for legal hazardous agricultural occupations from 16 to 18 and make several other changes to the Fair Labor Standards Act to make laws governing agricultural child workers as protective as for non-agricultural workers. It has not yet been voted on.

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



111TH CONGRESS  
1ST SESSION

**H. R. 3564**

To amend the Fair Labor Standards Act of 1938 to strengthen the provisions relating to child labor.

**IN THE HOUSE OF REPRESENTATIVES**

SEPTEMBER 15, 2009

Ms. ROYBAL-ALLARD (for herself, Mr. HINOJOSA, and Mr. CONNOLLY of Virginia) introduced the following bill; which was referred to the Committee on Education and Labor

**A BILL**

To amend the Fair Labor Standards Act of 1938 to strengthen the provisions relating to child labor.

*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 “Children’s Act for Responsible Employment of 2009” or the “CARE Act of 2009”.

**SEC. 2. REVISED AGE REQUIREMENT FOR CHILD AGRICULTURAL EMPLOYMENT; REPEAL OF WAIVER PROVISION FOR HAND HARVEST LABORERS.**

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

(1) by striking paragraph (1) and inserting the following: “(1) The provisions of section 12 relating to child labor shall apply to any employee under 18 years of age employed in agriculture unless the employee is employed by a parent of the employee or by a person standing in the place of the parent, on a farm owned or operated by the parent or person.”; and

(2) by striking paragraph (2).

(b) REPEAL OF WAIVER PROVISION.—Section 13(c) of such Act (29 U.S.C. 213(c)) is further amended by striking paragraph (4).

**SEC. 3. INCREASED CIVIL PENALTIES FOR CHILD LABOR VIOLATIONS.**

Paragraph (1) of section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking “not to exceed” and inserting “of”; and

(B) by amending clauses (i) and (ii) to read as follows: “(i) not less than \$500 and not more than \$15,000 for each employee who was the subject of such a violation; or “(ii) not less than \$15,000 and not more than \$50,000 with regard to each such violation that causes the serious injury, serious illness, or death of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.”; and

(2) in subparagraph (B) by striking “the term ‘serious injury’ means” and inserting “the terms ‘serious injury’ and ‘serious illness’ mean”.

#### **SEC. 4. SPECIAL CRIMINAL PENALTIES FOR CERTAIN AGGRAVATED CHILD LABOR VIOLATIONS.**

Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(1) in subsection (a), by striking “Any person” and inserting “Except as provided in subsection (f), any person”; and

(2) by adding at the end the following: “(f) Any person who repeatedly or willfully violates any of the provisions of section 12, and such violations result in or contribute to the death or permanent disability of an employee under 18 years of age at the time of such violation, shall be subject to imprisonment for not more than five years or a fine under title 18, United States Code, or both.”.

#### **SEC. 5. REPORT TO CONGRESS ON WORK-RELATED INJURIES TO CHILDREN AND RELATED MATTERS.**

The Fair Labor Standards Act of 1938 is amended by inserting after section 12 (29 U.S.C. 212) the following new section:

##### **“SEC. 12A. DATA ON WORK-RELATED INJURIES TO CHILDREN AND RELATED MATTERS.**

“(a) DATA ANALYSIS.—Using the sources specified in subsection (b), the Secretary shall analyze data concerning children under the age of 18 who are employed in agriculture, and with respect to such children, each work-related injury, illness, or death.

“(b) SOURCES SPECIFIED.—The sources referred to in subsection (a) are the following:

“(1) Sources within the Department of Labor, including the Wage and Hour Division, the Bureau of Labor Statistics, and the Occupational Safety and Health Administration.

“(2) State employment security agencies and other relevant State agencies.

“(3) The National Institute for Occupational Safety and Health.

“(c) REPORT.—The Secretary shall submit an annual report to Congress which shall include—

“(1) a summary of the data collected by the Secretary under this section and section 12B;

“(2) an evaluation, based on such data, that reflects the status of child labor and related safety and health hazards; and

“(3) any information, based on such data, that leads the Secretary to believe that children under 18 years of age may have been employed in violation of section 12. The Secretary shall publish each such report in the Federal Register and shall ensure that such reports are posted on the Department of Labor website.”.

#### **SEC. 6. EMPLOYER REPORTING REQUIREMENTS.**

The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by inserting after section 12A, as added by section 5, the following new section:

##### **“SEC. 12B EMPLOYER REPORTING REQUIREMENTS.**

“(a) REPORT.—Not later than 5 days after an event specified under subsection (b), the employer involved in the event shall submit a report to the Secretary in accordance with subsection (c).

“(b) EVENTS SPECIFIED.—An event referred to in subsection (a) is—

“(1) a work-related serious injury to an employee under 18 years of age employed in agriculture;

“(2) the discovery of a work-related serious illness of an employee under 18 years of age employed in agriculture; or

“(3) the work-related death of an employee under 18 years of age employed in agriculture.

“(c) CONTENTS OF REPORT.—The report required by subsection (a) shall include—

“(1) the name and address of the employer;

“(2) the name, address, and age of the employee;

“(3) details relevant to the incident, to include environmental hazards, such as chemicals or pesticide exposure; use of machinery or tools at time of incident; work tasks performed at time of incident; and other details relating to the incident; and

“(4) such other information as the Secretary of Labor may by regulation prescribe.

“(d) PENALTY FOR FAILURE TO REPORT.—The Secretary may assess a civil penalty on any employer who fails to file a report as required by this section in an amount not less than \$500 and not more than \$7,000 per violation.

“(e) DEFINITION.—As used in this section, the terms ‘serious injury’ and ‘serious illness’ have the meanings given such terms in section 16(e)(1)(B).”.

#### **SEC. 7. PESTICIDE-RELATED WORKER PROTECTION STANDARD.**

Congress finds and declares that the employment of children under the age of 18 in any occupation or under any circumstances inconsistent with the worker protection standard for workers exposed to pesticides in part 170 of title 40, Code of Federal Regulations, is particularly hazardous to such children and detrimental to their health and well-being. The Secretary of Labor shall, not later than 180 days after the date of enactment of this Act, revise part 570 of title 29, Code of Federal Regulations, to prohibit the employment of a child under the age of 18 in any occupation or under any circumstances not permitted by part 170 of title 40, Code of Federal Regulations.

#### **SEC. 8. APPLICATION OF FAIR LABOR STANDARDS AMENDMENTS.**

(a) RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor shall issue final rules to implement the amendments made by sections 2 through 6 and the revision required by section 7. The rules issued under this subsection shall take effect not later than 30 days after the date on which the final rules are published in the Federal Register.

(b) VIOLATIONS.—The amendments made by sections 2, 3, 4, and 6 and the revision required by section 7 shall apply to violations of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) that occur after the date on which the rules issued under subsection (a) take effect.

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by section 2, 3, 4, or 6 or in the revision required by section 7 shall be construed to preempt any State law that provides protections or remedies for employees that are greater than the protections or remedies provided under such amendments or such revision.

(d) EMPLOYER REPORTING REQUIREMENTS.—The employer reporting requirements of section 12B of the Fair Labor Standards Act of 1938, as added by section 6, shall take effect on the date on which the final rules issued under subsection (a) take effect.

#### **SEC. 9. EFFECTIVE DATE.**

This Act (other than section 8) and the amendments made by this Act shall take effect on the date that is 30 days after the regulations required under section 8 are published in the Federal Register.