



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1548

PRINTERS NO. 4148

PRIME SPONSOR: Murt

COST / (SAVINGS)

FUND	FY 2012/13	FY 2013/14
General Fund	\$0	See Fiscal Impact

SUMMARY: Repeals the Child Labor Law (Act 177 of 1915) and creates the Child Labor Act. This legislation would take effect in 90 days.

ANALYSIS: This legislation would repeal the Child Labor Law (Act 177 of 1915) and replace it with an updated Act known as the "Child Labor Act."

General Limitations on Employment of Minors: The legislation would establish general limitations on employment of minors as follows:

- Prohibits a minor from being employed for more than five hours continuously without a minimum 30-minute rest (lunch) break;
- Prohibits minors from working more than six days consecutively, except that minors employed delivering newspapers may work seven days consecutively per week.
- Prohibits minors under 14 from being employed, except that minors under 14 can be employed as caddies if they are at least 12 (and limited to carrying one bag at a time), and may be employed in the delivery of newspapers if they are at least 11 (with the limitation that they cannot work before 5 a.m. or past 8 p.m.).
- Establishes hours of permitted employment for 14/15-year-olds as follows: 1) they may not be employed before 7:00 a.m. or after 7:00 p.m., except that, during the school vacation period from June to Labor Day, a minor may be permitted to be employed until 9:00 p.m.; 2) they may not work for more than three hours on a school day nor more than eight hours on a day when there is no school; 3) they may not be employed for more than 18 hours during a regular school week; and 4) they may not be employed for more than 40 hours when school is not in session.
- Individuals who are at least 14 years of age or older may be employed until 10:00 p.m. on a poultry farm; individuals who are at least 11 years of age may be employed in the delivery and street sale of newspapers after 5:00 a.m. and before 8:00 p.m./9:00 p.m. (depending on time of year).

- Establishes hours of permitted employment for 16/17-year-olds are as follows when school is in session: 1) they may not be employed for more than 28 hours during a regular school week; 2) they may not be employed more than eight hours in a single day; and 3) they may not be employed before 6:00 a.m. or after midnight except until 1:00 a.m. on Fridays and Saturdays, or on days preceding a vacation during a school year. During a school vacation period, 16/17-year-olds: 1) may not be employed for more than ten hours in a single day; 2) may not be employed more than 48 hours in a single week when school is not in session, provided that the minor must voluntarily agree to hours worked in excess of 44. A 16/17 year old who is employed as a counselor or junior counselor at a summer resident camp or retreat operated by religious/scout organization must receive 24 consecutive hours of rest during every seven-day period. The legislation eliminates any hourly work limitations for high school graduates and other individuals not legally enrolled in school.

Permitted Employment Where Alcohol Sold: The legislation would prohibit employment of minors in establishments where alcoholic beverages are produced or sold, except as follows:

- If the minor is receiving instruction in a performing art and is not compensated, and is properly supervised.
- Minors who are under 16 years of age may be employed at a continuing-care retirement community/ski resort/bowling alley/golf course/amusement park where alcoholic beverages are served, as long as the individual is not permitted to handle or serve the beverages.
- Minors who are 16/17 may be employed in a hotel/club/restaurant where alcoholic beverages are served if they are serving food, clearing tables and related duties, provided that the establishment has a valid permit for Sunday sales issued by LCB.

Types of Prohibited Employment: The legislation would adopt standards of federal law by referencing "occupations designated as hazardous and otherwise prohibited under the Fair Labor Standards Act and its regulations." In addition, the legislation restates some specific prohibitions that are in current law, which prohibit minors from working: 1) as a pilot, firemen, engineer on a vessel; 2) on a railroad as a track repairman, gate-tender, switch-tender, brakeman, firemen, engineer, motorman, conductor; 3) in the manufacture of paints/colors/white lead/dangerous leads/acids; and 4) if the minor is under 16, working in the sorting of stripping or sorting of tobacco, on scaffolding, or in a tunnel.

The legislation states that youth peddling may not be conducted by minors under 16. The activity of youth peddling is described in the legislation as the selling of goods/services by minors to customers at residences, places of business or public places, including street corners, roadway medians, sports and performing arts facilities and public transportation stations. In addition, other youth peddling activity that is prohibited for such minors under 16 is holding/wearing/waving of signs/merchandise/costumes/placards in order to attract potential customers, except when performed directly in front of the employer's establishment. The activity of youth peddling does not include persons who sell products, goods or services as volunteers without compensation on behalf of qualifying nonprofit organizations.

The legislation permits the department to establish other prohibited occupations through regulation. Lastly, the legislation requires that the department promulgate a list of prohibited occupations in the PA Bulletin.

General Prohibitions/Permit Requirements - Employment of Minors in Performance: This legislation would provide a general rule that a minor is engaged in performance if the minor: 1) renders artistic or creative services in theater, radio, television, movies, Internet, publications, or a medium that may be transmitted to an audience, and any person receives remuneration for the performance or rehearsal; or 2) participates in a reality/documentary program that expressly depends on the minor's participation which is substantial, and for which any person receives remuneration. Remunerations do not include reimbursement for expenses incurred by the minor or minor's family, or any prize received in conjunction with the program of a value of less than \$2,500.

No minor can be employed in a performance without an entertainment permit issued by the department. Minors can engage in a performance if they: 1) have a valid permit from the department; 2) do not exceed permissible work hours; 3) for live productions, do not appear in more than three performances in a single day or ten performances in a calendar week; 4) are not involved in an act that constitutes sexual abuse/boxing/wrestling/, or activities having a high level of inherent danger, or an acrobatic act that is hazardous, or an act that involves the use of dangerous weapons/pyrotechnics, or other hazardous performances as defined by the department. The department must publish a list of prohibited hazardous performances in the PA Bulletin, and the department must, with three years, promulgate a regulation establishing prohibited performances.

The department shall issue a permit for employment of a minor in a performance which shall be valid for six months from its issuance, and may assess a fee for such permit. An application for a permit shall contain information on the school attended, and a verification statement signed by the principal that the performances will not interfere with school work; for infants under age of one month, an application shall also contain written certification from a physician that the infant is capable of handling performance requirements. If the minor is to be tutored, the application shall have specific information on the person who is tutoring. The department may require a permit for employers, as well.

Working Hours - Employment of Minors in Performance: This legislation would establish separate working hour requirements for child performers which limit work during a 24-hour period as follows:

- Infants under six months old can remain at the place of employment for a maximum of two hours, and minors between six months and two years old may be at the place of employment for a maximum of four hours and work no more than two hours.
- Minors who are at least two years old, but less than six years old, may be at the place of employment for a maximum of six hours, and may work no more than three hours.
- Minors who are six years old, but less than nine years old, may be at the place of employment for eight hours and may work no more than four hours.
- Minors who are nine years old, but less than 16 years old, may be at the place of employment for nine hours and may work no more than five hours.

- Minors who are 16 years old, but less than 18 years old, may be at the place of employment for ten hours and may work no more than six hours.
- A minor between 14 and 18 years of age may work up to eight hours in a 24-hour period if the minor receives permission from school to work during school hours for a period not to exceed two consecutive days.

The legislation states that a minor performer's workday cannot begin before 5:00 a.m. and cannot go beyond 10:00 p.m. on evenings preceding a school day (or 12:30 a.m. on evenings preceding non-school day). A rest period of 12 hours must elapse between the minor's time of dismissal and time of call the next day; provided further, that, if the minor's regular school starts less than 12 hours after his/her dismissal time, the minor must be schooled the next day at the employer's place of business. In addition, if a minor is working at his/her place of residence, there will be no limit on the number of hours the minor can be present, but the actual hourly work limitation would still apply.

Child Performer Trust Accounts: The legislation would require that an irrevocable child performer trust account or a qualified tuition program be established if the minor is entitled to receive residuals anticipated to exceed \$2,500 for a production or if the minor already earned in excess of \$2,500 in prior employment in performance. The following criteria govern the establishment of the trust account:

- The parent or legal guardian shall establish the account.
- The parent or legal guardian shall provide to the employer information necessary to ensure payment into the trust account
- The employer must transfer to the trust account not less than 15% of total compensation (prior to taxes and other deductions).
- In cases of employment of 30 days or less, the employer must transfer the required amount within 30 days of final work day, and in cases where employment is more than 30 days, the employer must transfer the required amount in accordance with Title 20 Ch. 53 and every pay period.
- The parent or legal guardian may serve as trust fund custodian. If the account reaches \$150,000 or higher amount established by departmental regulation, a trust company or independent custodian must be appointed.
- The proceeds in a trust account must remain in trust until the minor reaches 18 years of age. Proceeds may be distributed to the minor before 18 for legitimate health and educational needs, and proceeds may remain in trust for distribution after 18 if the parent/guardian determines that it would serve the interests of the minor.

If the employer has not been notified of the existence of a trust account within 15 days of beginning of employment, or no trust account exists, then the employer is required to transfer such monies to the State Treasurer into an account for the benefit of the minor. The employer's obligation ends when the minor reaches 18 years of age.

Education Requirements-Minor Performers: The legislation would require that, if a minor is employed for three or more consecutive days, the employer must provide a properly certified tutor (in accordance with the School Code) or a teacher with comparable certificate from the minor's home state. The instructional services must be provided beginning on the first day of

work and continue on each day thereafter that the school at minor's place of residence is in session; this requirement only applies for the days the applicable school is in session. If a minor is not guaranteed three or more days of work, the teacher/private tutor must be supplied on the third day, and beyond, of missed educational opportunity. When there is a production hiatus, the employer must provide the instructional services to the minor while school is in session (unless the minor is actually attending the applicable school).

When an employer is required to provide a teacher, the employer must provide a ratio of at least one teacher/tutor for every ten minors, unless the minors are within two grade levels, in which case the employer must provide a ratio of at least one teacher for every 20 minors. School districts may develop alternative methods for education requirements to be met, although these standards could not be more restrictive.

In the case of a foreign national, temporarily in the U.S., and not residing in the Commonwealth for more than 35 days in a year, the trust fund and education requirements do not apply, provided the employer certifies that the minor has satisfied the educational requirements of the minor's country or is being offered access to age-appropriate instruction and his/her earnings are being paid to the minor, or third party, that ensures conservation of earnings.

Departmental Waiver of Minor Performance Restrictions/Revocation: The legislation would give the department the power to waive one or more minor performance restrictions if: 1) it determines that the waiver is necessary to preserve the artistic integrity of the performance; 2) the waiver will not impair the educational instruction, health or safety of the minor; and 3) written permission for the waiver is obtained from the parents or guardian. A waiver request must be submitted in writing at least 48 hours in advance of time needed for waiver.

An entertainment permit could be revoked if there is a violation of the act, the permit application contained false/misleading information, the condition of issuance is not being met, or if there is danger to the minor's health/safety/welfare. The department could revoke a permit without a prior hearing. A revocation could be appealed to the Secretary, who would have to conduct a hearing pursuant to standard state administrative law (Title 2 Ch. 5 Subch. A, relating to Judicial Review of Commonwealth Agency Action).

Sports-Attendant Services: The legislation would establish recognition of minors who are employed in "sports-attendant services" and provides for exceptions from normal employment restrictions. For 14/15-year-olds, the only hourly work limit that will apply is the limitation on working no more than 40 hours/week (the 7:00 a.m.-7:00 p.m. limitation is waived, the three hours per school day and eight hours on other days limitation is waived, and the 18-hour per school week limitation is waived). For 16/17-year-olds, the hourly work limitations with respect to school weeks are waived (the 28-hour per school week limitation, the eight-hour per day limitation, and the ten-hour limitation for Saturdays/Sundays are waived).

The term sports-attendant services are defined as being employed to perform the following duties at a baseball/basketball/football/soccer/tennis/other similar event: 1) pregame and postgame set up of balls and equipment; 2) supplying and retrieving balls and equipment during sports event; 3) clearing the field or court of debris; 4) providing ice, drinks, and towels

to players during play; 5) running errands for trainers, managers, coaches, and players; and 6) returning or storing balls or equipment.

Minors Serving in Volunteer Emergency Service Organizations: The legislation would specify types of emergency service organizations that minors are able to serve. Minors who are 14 years old or older may be a member of a volunteer emergency service organization, but may not: 1) operate a truck, ambulance, or other official vehicle; 2) operate an aerial ladder or hydraulic jack; 3) use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets or acetylene cutting units; 4) operate the pump of a fire vehicle while at the scene of a fire; 5) enter a burning structure; 6) engage in firefighting activities, unless they are 16/17 years of age and have successfully completed a course of training equal to the standards for basic firefighting established by the Department of Education and the Department of Environmental Resources, and provided that such minors are under the direct supervision and control of the fire chief, an experienced line officer or a designated forest fire warden.

The activities of minors 14/15 years of age shall be limited to: 1) training; 2) first aid; 3) clean-up service at the scene of a fire, outside the structure; 4) assist a coffee wagon and food services. Such minors may not: 1) operate high pressure hose lines, except during training activities; 2) ascend ladders, except during training activities; or 3) enter a burning structure. Such minors could perform training or firefighting activities until 10:00 p.m. before a school day if they have parent's written consent. A minor 16 years old and over may continue to serve in answer to a fire call until excused by the individual acting as fire chief.

Duties of Employer: The legislation would require that, before a minor can work, the minor must have a work permit, and a written statement from the minor's parent/guardian acknowledging an understanding of the duties and hours of employment and granting permission for such employment. Before employing a minor, an employer will have to verify the work permit and the parent's consent statement. Minors over 16 years of age employed in the distribution and sale of newspapers shall not be required to obtain a work permit if they can demonstrate that they are working independently of the newspaper publisher.

The employer shall notify the issuing official within five days of the normal duties and hours of employment of a minor. Within five days after termination of employment, the employer shall notify the issuing official of such termination. Employers will have to post, in a conspicuous place, information on the Child Labor Act and information on the work hours of all minors working in an establishment. Employers will be required to maintain in their records a copy of the minor's work permit, the written permission statement from a parent, and a copy of the letter sent to the issuing official announcing the beginning of employment. The employer will also be required to maintain records for employed minors in compliance with the PA Minimum Wage Act, and will have to provide access to an enforcement officer of all required records.

Work Permit: The legislation would establish one basic work permit, as opposed to three different types under current law. It will be a wallet-sized form containing information on name, sex, date of birth, place of residence, color of hair/eyes, and distinguishing characteristics. The permit will certify that the holder personally appeared before issuing officer, that all papers required by law have been examined and approved, and that all

requirements for issuance have been fulfilled. The permit must be signed by the holder in the presence of the issuing official.

The legislation requires that an applicant's parents or legal guardian sign an application for work permit, or the applicant can sign the application before a notary public attesting to accuracy of facts in application. Issuing officers cannot issue a work permit until they have examined and verified the following papers which verify age: 1) an official document of Commonwealth; 2) if not an official Commonwealth document, an attested transcript of a birth certificate, a certified baptismal certificate, a passport, a certified documentary record, or the signed statement of a physician stating that after examination they believe the minor to be of proper age. In addition, a permit cannot be issued until the applicant has appeared before the issuing officer (unless he/she can demonstrate official proof of high school graduation).

The legislation requires issuing officials to issue a work permit unless it is their judgment that the applicant cannot maintain adequate academic achievement if permitted to work during school year. An issuing officer may revoke a permit if it is his judgment that the minor is not able to maintain adequate academic performance during the school year.

Administration: The legislation would require the department to promulgate the forms necessary to implement the act, and to promulgate state regulations which are as consistent as possible with federal regulations. The bill permits the department to establish, through regulation, a process for employers to be subject to a 10:00 p.m. time limitation, if they can demonstrate they are not subject to the Fair Labor Standards Act. The legislation gives the Secretary of Labor and Industry, or a designee, investigatory subpoena power and the duty to issue a subpoena upon application of an attorney of the Office of General Counsel.

The Department of Education will be required to distribute to school districts all forms necessary for enforcement of the act. School districts will be required to administer applications, issue permits, and initiate enforcement actions.

An enforcement officer, who believes a minor is working without a permit, or that the minor is working in violation of age restrictions of law, may demand from an employer proof of age of the minor, or require that the employer cease employing the individual.

Penalties: The legislation would make the following a crime: 1) an intentional violation of the act; 2) interfering with functions of enforcement officers; 3) compelling a minor to violate the act; 4) failure to produce records; and 5) falsifying records. Violators commit a summary offense and are subject to a fine of \$500 for each offense. A second offense is subject to a fine of \$1,500, or to imprisonment for not more than ten days. The legislation establishes a new administrative penalty – a fine of not more than \$5,000 for each violation. The legislation also states that an administrative penalty may not be imposed if a criminal penalty was already imposed; and a person may not be penalized by the state if such person was already penalized under the Fair Labor Standards Act.

Employment of Minors in Student-Learner and Apprenticeship Programs: The legislation would permit a minor to be employed in career exploration, apprenticeship and school-to-work programs to the extent permitted by federal law.

Employment Exemptions: The legislation provides for certain employment of a minor exemptions including in domestic service in or about the private home of a parent or guardian, to babysitting and to performance of "minor chores" in or about the private home of an employer. The term "minor chores" shall include lawn care, snow shoveling, and residential chores performed by minors on a casual or infrequent basis. The term "minor chores" shall not include activities otherwise prohibited by the department in regulation, or as hazardous by federal regulations. The legislation exempts agricultural employment which is exempt from coverage under the Fair Labor Standards Act.

Newspaper Carriers: The legislation would permit minors engaged in newspaper delivery to be employed for seven consecutive days in a week. Minors who are at least 11 years of age may be employed in the delivery and street sale of newspapers after 5:00 a.m. and before 8:00 p.m., except that, during a school vacation period such minors may be employed until 9:00 p.m. Minors who are 16 years of age and who are employed in the distribution/sale of any newspaper, or any minors working independently of the newspaper publisher, shall not be required to obtain work permits.

FISCAL IMPACT: This legislation would have no adverse fiscal impact on Commonwealth funds. According to the Department of Labor & Industry, the legislation would allow the Department, through regulation, to charge entertainment permit fees which could generate as much as \$843,750 annually assuming that the permits issued are consistent with that of 2011 (2,700 entertainment permits). The Department indicates that they will charge \$350 for initial registration and \$200 for annual renewals and assumes that 75% of all permits issued will be initial permits. The Department states that the regulations will not go into effect for about 12 months following the effective date of the act and therefore the realization of such revenue from the permit fees would not occur until FY 2013-14 and then annually thereafter.

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.