

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1590

BY: ROSS

AS INTRODUCED

AN ACT RELATING TO LABOR; AMENDING 40 O.S. 1981,
SECTIONS 74, 75, 76, 77, 78, 79, 80, 83 AND 88,
WHICH RELATE TO EMPLOYMENT OF WOMEN AND CHILDREN;
PROVIDING FOR CERTAIN PROHIBITED EMPLOYMENT;
UPDATING SECTION REFERENCES; MODIFYING LITERACY
REQUIREMENTS FOR EMPLOYMENT OF CHILDREN; CHANGING
MAXIMUM HOURS OF EMPLOYMENT FOR CHILDREN;
RESTRICTING TIME OF DAY CHILDREN MAY WORK; UPDATING
REFERENCES; UPDATING LANGUAGE; CHANGING WHO MAY
APPROVE SCHOOLING CERTIFICATES; MODIFYING
PERMISSIBLE PROOF OF AGE OF CHILD; MODIFYING TO
WHOM SCHOOL ATTENDANCE CERTIFICATES SHALL BE
SUPPLIED; MODIFYING FORM OF CERTIFICATES; REQUIRING
CERTAIN EMPLOYEE CONVENIENCES; INCREASING PENALTIES
FOR VIOLATING ACT; PROVIDING CERTAIN CIVIL
PENALTIES; PROVIDING CERTAIN DUE PROCESS UPON
ASSESSMENT OF CIVIL FINE; REPEALING 40 O.S. 1981,
SECTIONS 72, 73, 81, 82, 84, 86 AND 87, WHICH
RELATE TO EMPLOYMENT OF CHILDREN; PROVIDING FOR
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 72.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

No child under the age of sixteen (16) years of age shall be employed or permitted to work at any of the following occupations:

1. Manufacturing, mining, or processing occupations, including occupations requiring performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

2. Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

3. The operation of motor vehicles or service as helpers on such vehicles;

4. Public messenger service;

5. Occupations declared to be particularly hazardous to the health and well-being of minors under sixteen (16) by federal laws and regulations as declared by the Oklahoma Commissioner of Labor;

6. Occupations, except office work or sales work, in connection with:

- a. transportation of persons or property by rail, highway, air, water, pipeline or other means;
- b. warehousing and storage;
- c. communications and public utilities; and
- d. construction including demolition and repair.

SECTION 2. AMENDATORY 40 O.S. 1981, Section 74, is amended to read as follows:

Section 74. No child under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations specified in Section ~~3728~~ 71 of this title unless such child is able to read and write ~~simple sentences in the English language~~, or shall have

attended some school during the preceding year for the time that attendance is compulsory under the laws.

SECTION 3. AMENDATORY 40 O.S. 1981, Section 75, is amended to read as follows:

Section 75. No child under the age of sixteen (16) years shall be employed or permitted to work in any gainful occupation, except agriculture or domestic service, more than ~~eight (8)~~ three (3) hours in any one day, ~~allowing one (1) hour each day for noon-day meal and rest, or more than forty-eight (48) hours in any one week. During the time that a child is at work at such occupation, the employer must provide suitable seats and permit their use so far as the nature of the work allows~~ or eighteen (18) hours in any one (1) week when school is in session, or more than eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when school is not in session. Children under the age of sixteen (16) years must be permitted a one (1) hour cumulative rest period for each eight (8) consecutive hours worked. However, no such child shall work more than five (5) consecutive hours unless permitted a one-half (1/2) hour cumulative rest period.

SECTION 4. AMENDATORY 40 O.S. 1981, Section 76, is amended to read as follows:

Section 76. No person under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations mentioned in Section 71 of this title between the hours of ~~six~~ seven o'clock p. m. and seven o'clock a. m.; except, ~~children who have reached their fifteenth birthday may work in moving picture theatres as ushers, cashiers and concession stands until 11 p. m.; provided, that this section shall not apply to the employment of children not residents of the State of Oklahoma to perform in any duly licensed theatre, motion picture theatre or other place of public amusement.~~ during the summer (June 1 through Labor Day) when the prohibited

hours will be between the hours of nine o'clock p.m. and seven o'clock a.m.

SECTION 5. AMENDATORY 40 O.S. 1981, Section 77, is amended to read as follows:

Section 77. Before any child under the age of sixteen (16) years shall be employed in any occupation specified in Section ~~7208~~ 71 of this title, it shall be the duty of the parent or guardian of such child to procure and furnish the employer of such child an age and schooling certificate as hereinafter provided in this article. It shall be the duty of every person, firm or corporation owning or operating any of the establishments specified in Section ~~7208~~ 71 of this title, or employers in such occupation, to keep on file for the inspection of ~~factory inspectors~~ the Commissioner or his designee, truant officers, or other persons charged with the administration of this article, such age and schooling certificate, for every child under sixteen (16) years of age employed in such occupation, and to keep on file ~~and to post conspicuously in every room~~ where such children are employed a register with a complete list of children under sixteen (16) years of age so employed, together with the age of each child as set forth in the age and schooling certificate opposite the name of such child, and also to keep on file ~~and to post conspicuously~~ in such place or establishment, in such form as the ~~factory inspector~~ Commissioner or his designee may prescribe, the time of opening and closing of such factory or other establishment, the number of hours of labor required or permitted in such establishment, the hours of commencing and stopping work, and the time allowed for meals, and, if there be two or more shifts in such establishment, the number of hours in each shift during which the employees are required or permitted to work. On termination of the employment of a child so registered, and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent, guardian or custodian; provided

that this section shall not apply to the employment of children who are not residents of the State of Oklahoma, to perform in any duly licensed theatre, motion picture theatre or other place of public amusement.

SECTION 6. AMENDATORY 40 O.S. 1981, Section 78, is amended to read as follows:

Section 78. The ~~inspector of factories~~ Commissioner or his designee, truant officer, or other person charged with the administration of this article, may make demand on an employer in whose factory or establishment a child apparently under the age of sixteen (16) years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, that such employer shall either furnish him, within ten (10) days, evidence satisfactory to him that such child is in fact over sixteen (16) years of age, or shall cease to employ or permit or suffer such child to work in such factory or establishment. Such officer may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer shall fail to produce and deliver to such officer, within ten (10) days after such demand, such evidence of age herein required by him, and shall thereafter continue to employ such child to work in such factory or establishment, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for violation of this provision of this article that such child is under sixteen (16) years of age and is unlawfully employed: Provided, that the ~~factory inspector or deputy inspectors~~ Commissioner or his designee shall have the power to demand a certificate of physical fitness from some licensed physician in good standing in this state in case of children who may appear to him

physically unable to perform the labor at which they may be engaged, and shall have power to prohibit the employment of any minor that cannot obtain such a certificate.

SECTION 7. AMENDATORY 40 O.S. 1981, Section 79, is amended to read as follows:

Section 79. The age and schooling certificate shall be approved only by the ~~county superintendent of public instruction, or other school official designated by him~~ principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending, who shall, for the purpose of this article, be empowered to administer an oath. The ~~county superintendent of public instruction, or other school official designated by him~~ principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending, shall approve such certificate only upon the application in person of the child desiring employment accompanied by its parents, guardian or custodian, and after having received, examined and approved documentary evidence of age, showing that the child is fourteen (14) years of age, or over, which evidence shall consist of one of the following named proofs of age, duly attested, and the proof accepted shall be specified in the certificate issued to the child; the proof specified in subdivision (a) shall be required first, but if this is not available then one of the proofs specified in the succeeding subdivisions shall be required and in the order designated until the age of the child be established, as follows:

(a) A birth certificate or transcript thereof issued by a registrar of vital statistics or other officer charged with the duty of recording births which certificate or transcript thereof shall be prima facie evidence of the age of the child.

(b) A certificate of baptism or transcript thereof, showing the date of birth and place of baptism of the child:

~~(c) A bona fide record of the date and place of the child's birth kept in the Bible in which the records of the births, marriages and deaths in the family of the child are preserved; or a~~
A certificate of confirmation or other church ceremony at least one (1) year old showing the age of the child and date and place of such confirmation or ceremony; or a passport showing the age of the child; or a certificate of arrival in the United States, issued by the United States immigration officer and showing the age of the child; or a life insurance policy at least one (1) year old showing the age of the child; or other credible evidence as may be approved by the Commissioner.

~~(d) A certificate signed by two physicians, at least one of whom shall be a public health officer or public school medical inspector stating that they have separately examined the child and that in their opinion the child is at least fourteen (14) years of age; such certificate shall show the height and weight of the child, the condition of its teeth, and any other facts concerning its physical development revealed by such examination and upon which their opinion as to its age is based.~~

~~The employment certificate shall not be issued until such child has further personally appeared before the officer issuing the same and he is satisfied that such child is physically able to perform the work which he intends to do. In doubtful cases such physical fitness shall be determined by a medical officer of the board or department of health.~~ Every employment certificate shall be signed, in the presence of the officer issuing the same by the child in whose name it is issued.

SECTION 8. AMENDATORY 40 O.S. 1981, Section 80, is amended to read as follows:

Section 80. The age and schooling certificate shall not be approved until the parent or guardian of such child shall present a school attendance certificate as hereinafter prescribed. A

duplicate of such age and schooling certificate shall be filled out and sent by the school officer, before whom the same is made, to the Commissioner of Labor. The blank forms for school attendance certificate and for the age and schooling certificate shall be supplied to the ~~county superintendents of public instruction~~ principal, headmaster, or equivalent administrative officer of the school by the State Superintendent of Public Instruction as hereinafter indicated.

SCHOOL ATTENDANCE CERTIFICATE.

..... (Name of School).
..... (City and County).
..... (Date).

This certifies that (name of child) can read and write ~~simple sentences in the English language~~ and that according to the records of this school and in my belief is now (number of years and months) old, and has attended school during the full school term of the preceding year.

..... (Name of parent or guardian).
..... (Residence).
..... (Signature of teacher).

AGE AND SCHOOLING CERTIFICATE.

This certifies that I am (father, mother or guardian) of (name of child) s.s.#, and that he (or she) was born at (town or city), (county), (state or country), on the (day, month and year of birth), and is now (number of years and months old).

.....
(Signature of parent or guardian).
..... (Date).
..... (City or town or county).

Personally appeared before me the above-mentioned
(name of person signing), and made oath that the foregoing
certificate is true to the best of his (or her) knowledge and
belief.

I hereby approve the foregoing certificate of
(name of child), height (feet and inches), weight
..... (pounds), complexion (fair or dark), hair
..... (color), eyes (color), having no
sufficient reason to doubt that he (or she) is of the age therein
certified.

OWNER OF CERTIFICATE.

This certificate belongs to (name of child), and
is to be surrendered to him (or her) whenever he (or she) leaves the
service of the employer holding the same, but if not claimed by said
child within thirty days after leaving said service, shall be sent
to the Commissioner of Labor.

..... ,
(Signature of officer, with name of city,
town or county, and date.)

SECTION 9. AMENDATORY 40 O.S. 1981, Section 83, is
amended to read as follows:

Section 83. Every employer ~~in any manufacturing, mechanical, or
mercantile establishment, or workshop, laundry, printing office,
dressmaking or millinery establishment, hotel, restaurant, or
theatre or telegraph or telephone establishment and office, or any
other establishment employing females, shall provide adequate and
suitable toilet facilities for such employees and shall provide
suitable seats for all female employees and permit them to the use
of such seats when not engaged in the active performance of the
duties of their employment and shall provide adequate and suitable
toilet facilities for employees.~~

SECTION 10. AMENDATORY 40 O.S. 1981, Section 88, is amended to read as follows:

Section 88. Any person violating any of the provisions of this article, shall be punished by a fine of not less than ~~Ten Dollars (\$10.00)~~ One Hundred Dollars (\$100.00) nor more than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), or imprisonment for not less than ten (10) nor more than thirty (30) days, or both such fine and imprisonment. It shall be the duty of the Commissioner of Labor to see that the provisions of this article, are enforced with the exception of Section ~~3739~~ 85 of this title, which shall be enforced by the Mine Inspector or under his direction.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 89 of Title 40, unless there is created a duplication in numbering, reads as follows:

In addition to any other penalty prescribed by law, any employer who violates the provisions of this act shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or his designee as provided in the table below:

<u>VIOLATION</u>	<u>PENALTY</u>
1. a. Invalid employment certificate	1. 1st violation - \$ 0 - \$100
b. Maximum or prohibited hours	2nd violation - \$100 - \$250
less than one-half hour beyond limit on any day, occasional, no pattern.	3rd violation - \$250 - \$500
2. a. No employment certificate	2. 1st violation - \$100 - \$250
	2nd violation - \$250 - \$500

3rd violation - \$400 -

\$500

b. Maximum or prohibited hours

- (1) less than one-half hour
beyond limit on regular basis,
- (2) more than one-half hour
beyond limit either occasional
or on a regular basis.

3. Prohibited Occupations

3. 1st violation - \$300 -

\$500

Hazardous Employment

2nd violation - \$400 -

\$500

3rd violation - \$400 -

\$500

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 90 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of determining if a civil fine should be assessed, a summary hearing shall be conducted by a hearing officer designated by the Commissioner of Labor based on an investigation by the Department which finds that a violation occurred under Section 89 of Title 40 of the Oklahoma Statutes. The hearing officer shall determine from all of the evidence submitted by the Department of Labor and the employer a fair and equitable resolution of the violation, taking into consideration any mitigating circumstances. The hearing officer shall assess, upon the examination of the evidentiary record, a penalty commensurate with the violation so adjudged. Provided, the employer may provide additional mitigating circumstances or evidence to the hearing officer within ten (10) days of the assessment and a reevaluation of the penalty shall be conducted. Unless a formal hearing is requested pursuant to the provisions of subsection B of this section, the penalty shall become

final within thirty (30) days of assessment. Upon becoming final, the penalty shall be regarded as any other money judgment and may be pursued for collection as prescribed by law for any other such remedy.

B. An employer may appeal the decision of the hearing officer to the Commissioner of Labor by filing, within thirty (30) days of the date of assessment, a written request for a formal hearing. The hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, Sections 301 et. seq. of Title 75 of the Oklahoma Statutes. A final order from said hearing may be appealed to the district court in the county in which the business of the employer is located pursuant to the provisions of the Administrative Procedures Act. Subject to approval of the Attorney General, the Commissioner may engage in any proceeding of appeal in district court.

SECTION 13. REPEALER 40 O.S. 1981, Sections 72, 73, 81, 82, 84, 85, 86 and 87 are hereby repealed.

SECTION 14. This act shall become effective September 1, 1991.

43-1-5836 MMS