

SHORT TITLE: Labor; relating to hours of employment for certain school children and to penalties for violating child labor laws; providing for additional hours of work and for administrative fine; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 518

By: Gustafson

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 1991, Sections 75, as amended by Section 1, Chapter 137, O.S.L. 1993, and 88 (40 O.S. Supp. 1996, Section 75), which relate to hours of employment and penalties for violating child labor laws; clarifying language; providing for additional hours of work when school attendance is not compulsory; modifying criminal penalty; requiring willful violation; deleting minimum penalty; deleting certain enforcement authority and obsolete language; making enforcement of laws duty of Commissioner of Labor; providing for administrative fine; authorizing deposit of fines in certain revolving fund; providing for in lieu warning for first offense; authorizing issuance of cease and desist order under certain circumstances; providing for mitigation of fine; providing for hearing to determine if fine should be assessed and for appeal of decision; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 75, as amended by Section 1, Chapter 137, O.S.L. 1993 (40 O.S. Supp. 1996, Section 75), is amended to read as follows:

Section 75. A. No child under the age of sixteen (16) years shall be employed or permitted to work in any gainful occupation, other than agriculture or domestic service, for more than three:

1. Three (3) hours in any one (1) school day, ~~or more than eight~~ except that if the employer is not covered by the Fair Labor Standards Act, a child may also work eight (8) hours or less on a school day which precedes a nonschool day;

2. Eight (8) hours on a nonschool day ~~or, if the employer is not covered by the Fair Labor Standards Act, on a school day which precedes a nonschool day, or eighteen;~~

3. Eighteen (18) hours in any one (1) week when school is in session,; or ~~forty~~

4. Forty (40) hours in any one (1) week when school is not in session. ~~"In,~~ except that, if the employer is not covered by the Fair Labor Standards Act, a child may also work forty (40) hours in any one (1) week when school is in session if attendance is not compulsory.

B. As used in this section, "in session" means the period beginning on the first Tuesday after Labor Day through May 31 of the following year.

C. 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 2. AMENDATORY 40 O.S. 1991, Section 88, is amended to read as follows:

Section 88. Any person ~~violating~~ who is in willful violation of any of the provisions of this article, Section 71 et seq. of this

~~title shall, upon conviction, be punished by guilty of a misdemeanor and, for each offense, shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for not less than ten (10) nor more than thirty (30) days, or to 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 85 of this title, which shall be enforced by the Mine Inspector or under his direction.~~

SECTION 3. 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:

A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes shall be liable for an administrative fine, to be assessed by the Commissioner of Labor, of not more than Five Hundred Dollars (\$500.00) for each offense. The maximum administrative fine shall not exceed Ten Thousand Dollars (\$10,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving Fund, created pursuant to Section 141.19 of Title 40 of the Oklahoma Statutes.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes. The warning shall cite the violation committed by the person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining if an administrative fine should be assessed, a hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.

SECTION 4. This act shall become effective November 1, 1997.

46-1-0422

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