

SECOND REGULAR SESSION

SENATE BILL NO. 1139

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Read 1st time February 12, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4660S.011

AN ACT

To repeal sections 294.011, 294.024, 294.030, 294.043, 294.060, 294.090, 294.121 and 294.141, RSMo, and to enact in lieu thereof eight new sections relating to restrictions on child labor.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 294.011, 294.024, 294.030, 294.043, 294.060, 294.090, 294.121 and 294.141, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 294.011, 294.024, 294.030, 294.043, 294.060, 294.090, 294.121 and 294.141, to read as follows:

294.011. As used in this chapter, the following terms mean:

- (1) "Child", an individual under sixteen years of age;
- (2) "Commission", the labor and industrial relations commission;
- (3) "Department", the department of labor and industrial relations;
- (4) "Department director", the director of the department of labor and industrial relations;
- (5) "Director", the director of the division of labor standards;
- (6) "Division", the division of labor standards;
- (7) "Employ", engage a child in gainful employment for wages or other remuneration except where the child is working under the direct control of the parent, legal custodian or guardian of the child. The term employ shall not include the performance of the following services by a child twelve years of age

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

or older:

(a) The delivery or sales of newspapers[, magazines or periodicals];

(b) Child care;

(c) [Occasional] Yard or farm work performed by a child with the knowledge and consent of his or her parent, legal custodian or guardian **and work defined as agriculture in subdivision (1) of section 290.500, RSMo, not specifically prohibited pursuant to section 294.040.** Such work shall include the use of lawn and garden machinery in domestic service at [or around] a private residence[, provided that, there shall be an agreement between an occupant of the private residence and the child, and by no other person, firm or corporation, other than a parent, legal custodian or guardian of the child, for the performance of such work]; **or**

(d) Participating in a youth sporting event as a referee, coach or other position necessary to the sporting event; except that, this paragraph shall not include working at a concession stand. For purposes of this paragraph, "youth sporting event" means an event where all players are under the age of eighteen and the event is sponsored and supervised by a public body or a not-for-profit entity]; or

(e) Any other part-time employment performed by a child with the knowledge and consent of his or her parent, legal custodian or guardian not specifically prohibited by section 294.040].

294.024. A child who has passed the child's fourteenth birthday but is under sixteen years of age may be employed in any occupation other than the occupations prohibited by this chapter, except that the child may not be employed during the regular school term unless the child has been issued a work certificate[.] **or** a work permit issued pursuant to the provisions of this chapter [or an exemption issued by the director].

294.030. 1. A child under sixteen years of age shall not be employed, permitted or suffered to work at any gainful employment for more than three hours per day in any school day, more than eight hours in any nonschool day, more than six days or forty hours in any week. Normal work hours shall not begin before seven o'clock in the morning nor extend to after 9:00 p.m., except as provided in subsection 2 of this section. The provisions of this subsection may be waived by the director, in full or in part, depending upon the nature of the employment. Such waiver shall be provided in writing to the employer by the

director. **The waiver shall only exempt employment described in section 294.022.**

2. On all evenings from Labor Day to June first, a child under sixteen years of age shall not be employed, permitted or suffered to work at any gainful employment after 7:00 p.m. nor after 9:00 p.m. from June first to Labor Day; except that a child who has passed his or her fourteenth birthday but is under sixteen years of age may be employed at a regional fair from June first to Labor Day, if such child does not work after 10:30 p.m., is supervised by an adult, parental consent is given and the provisions of this subsection are complied with. The [provisions of this subsection] **regional fair exception** shall not apply to those entities covered by the Fair Labor Standards Act. The provisions of this subsection do not apply to children who have been permanently excused from school pursuant to the provisions of chapter 167, RSMo. The provisions of this subsection may be waived by the director, in full or in part, depending upon the nature of the employment. Such waiver shall be provided in writing to the employer by the director. The waiver shall only exempt employment described in section 294.022.

294.043. No child under [sixteen] **eighteen** years of age shall be employed or permitted to work in any street occupation connected with peddling, begging, door-to-door selling or any activity pursued on or about any public street or public place [until the employer has received written permission from the director of the division of labor standards]. This prohibition does not apply to any public school or church or charitable fund-raising activity.

294.060. 1. Whenever a child under sixteen years of age is granted a work certificate or work permit, the certificate or work permit shall be transmitted by the issuing officer to the employer of the child and a copy shall be [mailed] **transmitted** to the division. The employer shall keep the work certificate or work permit on file and shall post in a conspicuous place in the employer's place of business a list of all children who are employed and under the age of sixteen.

2. On termination of the employment of the child, the child's work certificate or work permit shall be sent immediately by the employer to the officer who issued it.

3. A new certificate or work permit may be issued for a child whose certificate or work permit has been returned by the employer to the issuing officer.

4. A copy of each work certificate or work permit issued and notice of its cancellation shall be retained by the issuing officer and a copy shall be [mailed] **transmitted** by the issuing officer to the division.

294.090. 1. The director is charged with the enforcement of the provisions of this chapter and all other laws regulating the employment of children. The director is vested with the power and jurisdiction to exercise such supervision over every employment as may be necessary to adequately enforce and administer the provisions of this chapter, including the right to enter any place where children are employed and to inspect the premises and to [call for and inspect] **require the production of** work certificates or work permits and any other necessary documents specifically requested that involve the employment of children.

2. **Every employer subject to any provision of sections 294.005 to 294.150 or any regulation issued pursuant to sections 294.005 to 294.150 shall make and keep for a period of not less than two years, on the premises where any child is employed, the work certificate, a record of the name, address, and age of the child, and times and hours worked by the child each day.**

3. **All records and information obtained by the division pertaining to minors are confidential and shall be disclosed only on order of a court of competent jurisdiction.**

4. If it appears that a work certificate or work permit has been improperly granted or illegally used, or the child is being injured, or is likely to be injured by the employment, this fact shall be reported to the issuing officer who shall cancel the work certificate or work permit. Notice in writing of the cancellation, with reasons therefor, shall be mailed immediately to the child and to the person employing the child, and thereafter it shall be unlawful for any such person to continue to employ the child.

294.121. 1. Any person, firm or corporation who violates any provision of this chapter shall in addition to the criminal violation in section 294.110 be civilly liable for damages of not less than fifty dollars but not more than one thousand dollars for each violation. Each day a violation continues shall constitute a separate violation. Each child employed or permitted to work in violation of this chapter shall constitute a separate violation. The director may bring the civil action to enforce the provisions of this chapter. The attorney general may, on behalf of the director, bring suit pursuant to this section.

2. The director shall determine the amount of civil damages to request in the suit based on the nature and gravity of the violation. **The director shall also consider the size of the business when determining the appropriate civil damages. The size of the business shall be determined by the number of people employed by that business.** A request for the maximum civil damages shall be justified by the following, **to be considered individually or in combination:**

(1) The likelihood of injury and the seriousness of the potential injuries to which the child has been exposed;

(2) The business or employer has had multiple violations;

(3) The business or employer has had recurring violations;

(4) Employment of any child in a hazardous or detrimental occupation;

(5) Violations involving children under fourteen years of age;

(6) A substantial number of hours worked in excess of the statutory limit;

(7) Falsification or concealment of information regarding the employment of children;

(8) Failure to assure future compliance with the provisions of this chapter.

3. If the director decides to seek civil damages as provided by this section, the director shall notify, by certified mail, the person, firm or corporation charged with the violation. The notice of violation shall include the following:

(1) The nature of the violation;

(2) The date of the violation;

(3) The name of the child or children involved in the violation;

(4) The amount of civil damages the director is requesting;

(5) The terms and conditions for any settlement agreement; and

(6) The right to contest the director's decision to seek civil damages.

4. The initial violation determination from the division shall be final, unless within twenty calendar days after the division mails the violation determination or notification, the person, firm or corporation charged with the violation notifies the director in writing that the violation determination is being contested.

5. The parties named in the violation determination may contest the violation determination if a written notice appealing the violation determination is received by the director within twenty calendar days after the division mailed the violation determination. The director shall set a meeting with the parties

contesting the findings in order to review the findings of the division. After review of the findings, the director may hold that the findings support the violation determination or the director may issue a revised violation determination.

6. If the parties cited in the subsequent violation determination disagree with the violation determination of the director, then the parties cited in the subsequent violation determination may contest the subsequent determination by filing a written appeal with the department director. The appeal contesting the subsequent determination shall be sent to the department director in time to be received within twenty calendar days after the division mailed the subsequent violation determination from the director. If the director does not receive the written appeal within twenty calendar days after the division mailed the subsequent violation determination then the determination of the director shall be final. If the subsequent written appeal is received within the twenty-calendar-day period, then the department director, or the department director's designee, shall set a meeting with the parties contesting the findings in order to review the findings of the division and the director. After review of the findings, the department director, or the department director's designee, may hold that the findings of the division and the director to support the violation determination or the department director, or the department director's designee, may issue a revised violation determination.

7. The determination of the department director or the department director's designee shall be the final determination pertaining to the violation determinations, unless judicial review is sought under chapter 536, RSMo.

294.141. The records of the division shall constitute prima facie evidence of the date of [mailing] **transmission** of any notice, determination or other paper [mailed] **transmission** pursuant to the provisions of this chapter.

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