Richard E. Masek *Legislative Service Commission*

H.B. 97

123rd General Assembly
(As Introduced)

Reps. Terwilleger, Taylor, Williams, Opfer

BILL SUMMARY

- Permits minors age 9 through 13 to be employed only in types of employment that are listed in statute, specified under rules adopted by the Administrator of the Bureau of Employment Services or otherwise approved by the Administrator, or not regulated by Ohio's Minor Labor Law.

- Permits employers to apply to the Administrator of the Bureau of Employment Services requesting approval to employ minors age 9 through 13 to perform certain labor or services.

- Makes violation of the new provisions relative to the employment of minors age 9 through 13 a third degree misdemeanor.

- Modifies existing hour restrictions governing the employment of minors by specifying that the existing restrictions placed upon minors age 14 and 15 instead apply to minors age 9 through 13, and the restrictions that currently apply to minors age 16 and 17 also apply to minors age 14 and 15.

- Eliminates all requirements under Ohio's Minor Labor Law relative to age and schooling certificates.

- Eliminates other age verifying document requirements under Ohio's Minor Labor Law.

- Reduces all employer reporting requirements under Ohio's Minor Labor Law for employers who employ less than four minors in casual labor and defines casual labor.

- Excludes a minor employed by an employer who employs less than four minors in any workweek to perform casual labor from mandatory workers' compensation coverage.

- Specifies that household and casual workers who earn less than $320, instead of $160, as under current law, in cash in any calendar quarter from a single employer are not covered under workers' compensation.

TABLE OF CONTENTS

Employment of minors age 9 through 13 years old 2
Minors age 9 through 11 2
Minors age 12 and 13 3
Other provisions relative to the employment of minors age 9 through 13 4
Hour restrictions 4
Minors age 9 through 13 4
Minors age 14 through 17 6
Elimination of age and schooling certificate requirements 6
Overview 6
Description of eliminated ASC provisions 8
Elimination of other age verifying documents 9
Age verification for summer employment of minors age 16 and 17 9
Part-time and vacation ASC 9
Over-age certificate 10
Reduced employer reporting requirements for casual labor 10
List of minors and Minor Labor Law abstract 10
Time book and other related records 11
Written agreements concerning compensation 11
Workers' compensation modifications for casual labor 12

CONTENT AND OPERATION

Employment of minors age 9 through 13 years old

Minors age 9 through 11

The bill prohibits a person from employing a minor age 9 through 11, except to perform the following labor or services:

(1) Delivery of handbills, advertising, and advertising samples;

(2) Shoe shining;

(3) Gardening and lawn care involving no power-driven gardening equipment, except lawn mowers;

(4) Cleaning of walkways;

(5) Caddying on a golf course, on the condition that the minor does not operate a golf cart;

(6) Labor or services common for the routine maintenance of a single-family detached dwelling house, on the condition that the labor or services are not prohibited under rules adopted by the Administrator of the Bureau of Employment Services prohibiting the employment of minors in occupations that are hazardous or detrimental to their health and well-being;

(7) Labor or services that are exempt from regulation under Ohio's Minor Labor Law;

(8) Labor or services that the Administrator specifies in rule are permissible;

(9) Labor or services that the Administrator approves upon application by an employer, as described below. (Sec. 4109.071(A).)

Minors age 12 and 13

The bill prohibits a person from employing a minor between the ages of 12 and 13, except to perform the following labor or services:

(1) Any of the labor or services described in (1) through (9) above;

(2) Door-to-door sale and delivery of merchandise;

(3) Baby-sitting;

(4) Gardening and lawn care that involves operating power-driven gardening and lawn care equipment;

(5) Agricultural labor, except agricultural labor prohibited under rules adopted by the Administrator prohibiting the employment of minors in occupations that are hazardous or detrimental to their health and well-being;

(6) Labor or services that the Administrator specifies in rule are permissible;

(7) Labor or services that the Administrator approves upon application by an employer, as described below. (Sec. 4109.071(B).)

Other provisions relative to the employment of minors age 9 through 13

Whoever violates the prohibitions described above relative to the employment of minors age 9 through 13 is guilty of a misdemeanor of the third degree. (Sec. 4109.99(B).)

The Administrator is required by the bill to adopt rules, in consultation with the Director of Health and in accordance with the Administrative Procedure Act, specifying labor and services for which minors who are at least 9 and not more than 13 years old may be employed. An employer is permitted under the bill to submit a written application to the Administrator requesting that labor or services for which the employer would like to employ minors between the ages of 9 and 13 be approved. The Administrator must prescribe guidelines for the submission and approval or rejection of those applications. (Sec. 4109.05(C) and (D).)

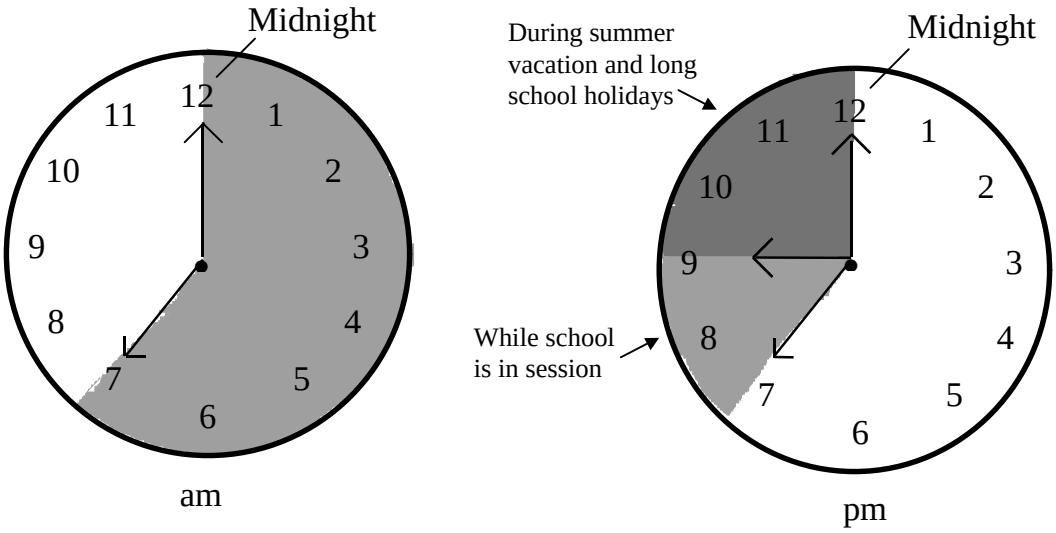
The bill makes a corresponding change in the law to reflect that, for purposes of employment, a minor's minimum age under the bill is age 9 instead of 14, as under current law. (Sec. 3331.12.)

Hour restrictions

The bill modifies the existing hour restrictions so that the restrictions that currently apply to minors age 14 and 15 will apply instead to minors age 9 through 13, and the restrictions that currently apply to minors age 16 and 17 will apply instead to minors age 14 through 17.

Minors age 9 through 13

The following clocks depict the hours during which minors age 14 and 15 under current law, and minors age 9 through 13 under the bill, are prohibited from working:



9-13 year olds
shaded hours are hours employment is prohibited

Additionally, minors age 14 and 15 under current law, and minors age 9 through 13 under the bill, are prohibited from working:

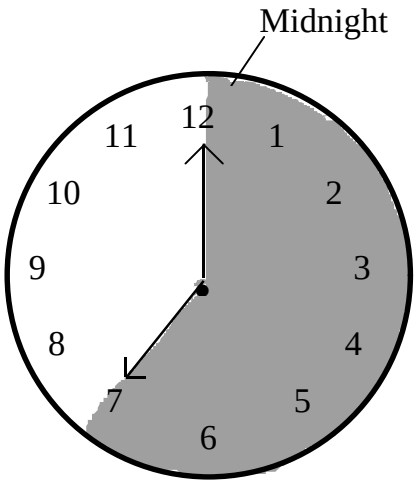
- More than *three* hours on a school day;
- More than *eight* hours on a nonschool day;
- More than *eight* hours in a week while school is in session;
- More than *40* hours in a week when school is *not* in session. (Sec. 4109.07(A).)

Existing law prohibits minors age 14 and 15, which the bill changes to minors age 9 through 13, from working more than 40 hours and from working during school hours, unless the work is incidental to specified programs of vocational cooperative training, work-study, or other work-oriented programs. (Sec. 4109.07(B).)

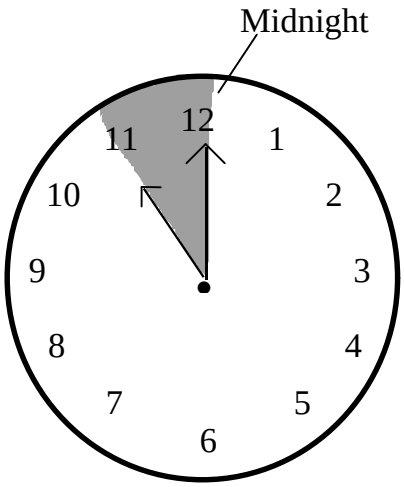
Employers are prohibited under current law from employing minors under age 16 in any door-to-door sales activity before seven a.m. or after seven p.m. or during school hours except as otherwise permitted under the Minor Labor Law. Under the bill, this prohibition applies with respect to the employment of minors under age 14 instead of under age 16. (Sec. 4109.21(F)(1).)

Minors age 14 through 17

The following clocks depict the hours during which minors age 16 and 17 under current law unchanged by the bill, and minors age 14 and 15 as added by the bill, who are required to attend school, are prohibited from working:



am*



pm*

* If a minor does not work after 8:00 p.m. the night before, the minor may work beginning at 6:00 a.m. instead of 7:00 a.m. These hour restrictions apply only on days that school is in session.

* This hour restriction applies only on nights preceding a day that school is in session

14-17 year olds
shaded hours are hours employment is prohibited

Employers are prohibited under current law from employing minors age 16 and 17 in any door-to-door sales activity before seven a.m. or after eight p.m. or during school hours except as otherwise permitted under the Minor Labor Law. Under the bill, this prohibition applies with respect to the employment of minors between age 14 and 17. (Sec. 4109.21(F)(2).)

Elimination of age and schooling certificate requirements

Overview

Current law places various requirements upon employers who employ minors. Among these requirements are specifications concerning a minor's age and schooling certificate (hereafter "ASC"). An ASC is issued by an appropriate

school superintendent for the purpose of verifying certain information about a minor, including a minor's age and physical fitness for employment. An employer cannot employ a minor without first obtaining the minor's ASC. Additionally, current law specifies several other requirements, as described below, relative to ASCs. The bill abolishes all references to ASCs as they relate to employers governed by Ohio's Minor Labor Law (R.C. Chapter 4109.).[1]

Many employers in Ohio, however, are governed by the minor labor provisions of the federal "Fair Labor Standards Act of 1938" (FLSA), 52 Stat. 1060, 29 U.S.C.A. 201 et seq., and not by Ohio's Minor Labor Law. Under that federal law, employers are encouraged, though not required, to utilize some form of official document like Ohio's ASCs to verify the age of a potential employee.[2]

While the bill eliminates all requirements under Ohio's Minor Labor Law related to ASCs, the bill does not eliminate all references to ASCs under Ohio law generally. Thus, employers governed by the federal FLSA could continue to utilize ASCs, as they are not eliminated altogether under the bill, but only as related to Ohio's Minor Labor Law requirements. Additionally, because minors still may obtain ASCs under the bill, employers governed by Ohio's Minor Labor Law could opt to require minors to provide an ASC as a condition of employment.

---

[1] *An ASC may be issued only by the superintendent of the city or exempted village school district or educational service center in which the minor resides. A superintendent cannot issue an ASC until approving the following documents:*

(a) A pledge from the employer that the employer will legally employ the minor and return or specify nonuse of the ASC within two days after the minor withdraws or is dismissed from employment;

(b) Specified school records of the minor, including the minor's age, standing in studies, rating in conduct, and attendance record;

(c) At least one of various specified documents that give evidence of the minor's age (for a description of those documents, see footnote number 4);

(d) A certificate from a physician attesting that the minor is physically fit to be employed in occupations not prohibited by law. (R.C. § 3331.02, not in the bill.)

[2] *According to the United States Department of Labor, the intended use of such official documentation is to provide employers with information necessary to avoid committing inadvertent violations of the minor labor provisions of the federal FLSA (e.g.: hiring a 13-year-old because the employer thought he was a 16-year-old).*

Description of eliminated ASC provisions

The following is a description of provisions under Ohio's Minor Labor Law relative to ASCs as they exist in current law. Each of these provisions (secs. 4109.02 and 4109.03) is eliminated by the bill.

Currently, employers must:

(1) Obtain an ASC from a minor as a condition of employment;

(2) Keep the ASC on file in the office of the business or in the residence in or about which the minor is employed for inspection by any enforcement official;

(3) Return or specify nonuse of the ASC to the appropriate superintendent or superintendent's authorized representative within five working days from the minor's withdrawal or dismissal from service;[3]

(4) Terminate the employment of a minor whose ASC is void;

(5) Permit an enforcement official to examine a minor's ASC.

The bill abolishes a provision in current law specifying that after a minor makes a written request to the employer asking for return of the ASC, if the employer fails to mail the ASC to the issuing authority within three days of receipt of the request, the minor is entitled to recover the amount the minor would have earned in wages if the minor had continued in employment for the period between receipt of the request and initiation of the suit or compliance by the employer. (Sec. 4109.09(A).)

If a minor fails to appear for work without explanation for three days, an employer is required under current law to consider the employment terminated and return the ASC to the issuing authority. Under the bill, the requirement to return the ASC is eliminated. (Sec. 4109.09(B).)

The bill also abolishes a prohibition against a person making a false statement to any person authorized to issue an ASC, with the intent to assist a minor to procure employment. (Sec. 4109.08(D).)

---

[3] *R.C. section 3331.02 requires, as a condition of a superintendent's issuance of an ASC, that an employer submit a written pledge that the employer will return or specify nonuse of the ASC within* two *days (not five days) after the minor withdraws or is dismissed from employment. This section of law is not amended by the bill. This provision continues to be applicable to employers governed by the federal FLSA.*

Current law specifies that a valid ASC constitutes conclusive evidence of the age of a minor and the employer's right to employ the minor in occupations not denied to minors of that age under the Minor Labor Law and rules adopted under that law. The bill eliminates this provision. If, however, an employer opted to obtain an ASC from a minor prior to employment, it is conceivable that the employer could use the ASC as evidence of the age of a minor, despite the bill's elimination of this express provision in the law. (Sec. 4109.02.)

Elimination of other age verifying documents

Age verification for summer employment of minors age 16 and 17

Minors age 16 or 17 who are to be employed between the last day of the school term in the Spring and the first day of the school term in the Fall, in nonagricultural and nonhazardous employment as defined by the FLSA and similar state statutes, or in other employment not prohibited to minors age 16 or 17 by the law, are not required to provide an ASC as a condition of employment. Instead, under current law, such minors must provide to the employer, and the employer must retain, both of the following:

(1) Specified evidence of proof of age;[4]

(2) A statement signed by the minor's parent or guardian consenting to the proposed employment during the summer vacation months.

The bill eliminates the summer employment age verification requirement described above. (Secs. 3331.05 and 4109.02(B).)

Part-time and vacation ASC

Existing law provides for a special ASC, referred to as a part-time and vacation ASC, permitting the employment of minors above 14 years of age. These special ASCs may be used for the employment of minors above 14 years of age in

---

[4] *The evidence that must be supplied is as follows: (a) a certified copy of an original birth record or certificate issued in accordance with the appropriate laws, or in the absence of this document, (b) a passport or duly attested transcript of a passport, or an attested transcript of the certificate of birth or baptism or other religious record showing the date and place of the minor's birth, or in the absence of any of these documents, (c) other documentary evidence satisfactory to the local superintendent of schools, or if no documentary proof of age can be procured, the superintendent may file a specified type of application to secure a physician's certificate establishing the sufficiency of the minor's age. (Sec. 3331.02(C), not in the bill.)*

occupations not forbidden by either Ohio's Minor Labor Law or any other law. They are for use to secure employment only during the time in which the minor's school is not in session. They must be filed and returned by employers under the same conditions and penalties as apply to regular ASCs.

The bill specifies that these special ASCs may be used for the employment of minors above 14 years of age in occupations not forbidden by any law and eliminates reference specifically to those occupations not forbidden by Ohio's Minor Labor Law. (Sec. 3331.05.) Additionally, the bill eliminates the requirement that these special ASCs be filed and returned by employers and eliminates the statement assigning the same penalties for violation concerning these special ASCs as those applicable to regular ASCs. (Sec. 3331.05.)

Over-age certificate

Currently, an enforcement official may require an employer, in or about whose establishment an employee apparently under age 18 is employed, and whose ASC is not on file with the employer, to furnish satisfactory evidence that the employee is at least age 18. Unless a special certificate called an "over-age certificate" has been issued to the minor, the enforcement official must require that the employer supply specified evidence of the person's age.[5]

The bill retains the portion of this provision permitting an enforcement official to require an employer to furnish satisfactory evidence that an employee is at least age 18, but the bill eliminates the aforementioned criterion regarding whether an ASC is on file. Additionally, under the bill, the type of evidence an employer must give to verify the employee's age is not specified, as it is in existing law. (Sec. 4109.08(B).)

Reduced employer reporting requirements for casual labor

List of minors and Minor Labor Law abstract

Current law prohibits an employer from employing a minor unless the employer keeps on the premises a complete list of all minors employed by the employer at the particular establishment and a printed abstract, furnished by the Bureau of Employment Services, summarizing the Minor Labor Law. The list and abstract must be posted in a conspicuous place to which all minors have access.

---

[5] *An over-age certificate may be issued to a person above age 18 who believes that others will think he is "under age." (Sec. 3331.15, not in the bill.)*

The evidence that must be supplied is the same evidence described in footnote number 4.

The bill specifies that the aforementioned list and abstract requirements do not apply to employers who employ less than four minors in casual labor. The bill defines "casual labor" as "any labor or service performed on or about a single-family detached dwelling house that is the employer's residence." (Secs. 4109.01(E) and 4109.08(A) and (E).)

Time book and other related records

Under existing law, every employer must keep a time book or other written records that state all of the following:

- The name, address, and occupation of each minor employed;
- The number of hours worked by each minor each day of the week;
- The hours of beginning and ending work;
- The hours of beginning and ending meal periods;
- The amount of wages paid each pay period to each minor.

The Administrator or the Administrator's authorized representative must have access to, and the right to copy from, the time book or records. Employers must keep records for a period of two years, must not fail to keep the time book or records, must not knowingly make false statements therein, and may not refuse to make the time book and records accessible to the Administrator or the Administrator's authorized representative.

Under the bill, the time book and records requirements described above are not applicable to an employer who employs less than four minors in any workweek to perform casual labor. (Sec. 4109.11(B).)

Written agreements concerning compensation

Before employing a minor, current law requires an employer to agree with the minor as to the wages or compensation the minor will receive for each day, week, month, or year; or per piece, for work performed. The employer must furnish the minor with written evidence of the agreement and, on or before each payday, with a statement of the earnings due and the amount to be paid to the minor. An employer may not reduce the wages or compensation of a minor without giving the minor notice at least 24 hours prior to the reduction, at which time, the employer must enter into a new written agreement with the minor.

The bill creates an exception to the above requirements. Under the bill, an employer need not provide the written evidence, earnings statement, or reduced compensation agreement described above to minors who perform casual labor, if the employer employs less than four minors in any workweek to perform casual labor. (Sec. 4109.10(D).)

Workers' compensation modifications for casual labor

For purposes of determining coverage under Ohio's Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.), the bill excludes from the definition of "employee" a minor employed by an employer who employs less than four minors in any workweek to perform casual labor. For purposes of this provision, "casual labor" is defined the same as it is for the Minor Labor Law, as described above (see "***Reduced employer reporting requirements for casual labor***").

Under an existing provision unchanged by the bill, employers could still elect to include these minors under their workers' compensation coverage. If an employer makes this election, the employer must make appropriate premium payments if the employer is what is referred to as a "state fund employer," or pay workers' compensation benefits directly for the minor, if the employer is what is referred to as a "self-insuring employer." If an employer does not make this election, the employer is potentially subject to suit, if a minor in the employer's employ is injured or killed on the job, or suffers an occupational disease. (Sec. 4123.01(A)(2)(c).)

In addition to creating the new exclusion described above, the bill modifies an existing exclusion. Under current law, household and casual workers who earn less than $160 in cash in any calendar quarter from a single employer are not included in the definition of "employee" for purposes of worker's compensation coverage. The bill increases the $160 threshold to $320. "Casual worker" as used in this provision, is not a defined term under the Workers' Compensation Law; instead questions concerning casual workers have been resolved by court determinations. (Sec. 4123.01(A)(1)(b).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-99	p. 119

H0097-I.123/rss