

LEGISLATIVE BILL 180

Approved by the Governor May 31, 2001

Introduced by Hilgert, 7; Connealy, 16

AN ACT relating to labor; to amend sections 48-301, 48-311, 48-2111, and 48-2114, Reissue Revised Statutes of Nebraska, and sections 48-303 and 48-446, Revised Statutes Supplement, 2000; to change provisions relating to child employment in detasseling, child employment certificates, and worker safety programs; to define and redefine terms; to provide duties; to change penalties; to harmonize provisions; to provide a duty for the Revisor of Statutes; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) A child under the age of twelve shall not be employed in detasseling.

(2) A child who is at least twelve years but less than sixteen years of age may be employed in detasseling if:

(a) The employment is outside of school hours during the month of June, July, or August;

(b) The employer of such child obtains the written consent of a parent of the child or a person standing in loco parentis to the child for the child to be so employed;

(c) The child is domiciled within seventy-five miles of the location where the labor is to be performed; and

(d) The child does not work more than forty-eight hours in any one week, nor more than nine hours in any one day, nor before the hour of 6 in the morning, nor after the hour of 8 in the evening if the child is under the age of fourteen, nor after the hour of 10 in the evening if the child is between the ages of fourteen and sixteen. Transportation time shall not be counted under this subdivision nor shall time spent during work breaks or waiting time spent during storm events if no work is required during those periods.

(3) Sections 48-302 and 48-310 do not apply to employment of a child in detasseling if the requirements of subsection (2) of this section are met.

(4) This section does not apply to a parent or a person standing in loco parentis who employs and directly supervises his or her own child or a child in his or her custody in a business owned and operated by such parent or person standing in loco parentis.

Sec. 2. (1) An employer who employs a child under sixteen years of age in detasseling shall provide at least two supervisors who are eighteen years of age or older at each location where detasseling is being performed by a child under sixteen years of age. The supervisors shall be capable of assisting with issues of health, safety, and wages, including bonuses and incentive payments.

(2) An employer who employs a child under sixteen years of age in detasseling shall provide the parents of such child with an information sheet defining the terms of employment, including, but not limited to, the availability of water and sanitary facilities on the job and wage, bonus, and incentive payment information. The information sheet shall set forth the name, address, and telephone number of the Division of Safety and Labor Standards of the Department of Labor for purposes of filing complaints concerning nonpayment of wages.

Sec. 3. Section 48-301, Reissue Revised Statutes of Nebraska, is amended to read:

48-301. For purposes of sections 48-302 to 48-313 and sections 1 and 2 of this act:

(1) Employment ~~7 employment~~ means ~~(1)~~ (a) service for wages or ~~(2)~~ (b) being under a contract of hire, written or oral, express or implied. Employment, other than detasseling, does not include any employment for which the employer is not liable for payment of the combined tax or payment in lieu of contributions under section 48-648, 48-649, or 48-660.01; and

(2) Detasseling means the removal of weeds, off-type and rogue plants, and corn tassels in hand pollinating and in any other engagement in hand labor in the production of seed.

Sec. 4. Section 48-303, Revised Statutes Supplement, 2000, is amended to read:

48-303. Except as otherwise provided in this section, an ~~an~~ employment certificate shall be approved only by the superintendent of the primary high school district in which the child resides or by a person

authorized by him or her in writing or, when there is no superintendent, by a person authorized by the school district officers, except that no school district officer or other person authorized by this section may approve such certificate for any child then in or about to enter his or her own employment or the employment of a firm or corporation of which he or she is a member, officer, or employee or in whose business he or she is interested. If a child who resides in an adjoining state seeks to work in Nebraska, the Department of Labor may approve the employment certificate. The officer or person approving such certificate may administer the oath provided for therein or in any investigation or examination necessary for the approval thereof. No fee shall be charged for approving any such certificate or for administering any oath or rendering any services related thereto. The school board or board of education of each school district approving the employment certificate, or the department if the department has approved the employment certificate, shall establish and maintain proper records where copies of all such certificates and all documents connected therewith shall be filed and preserved and shall provide the necessary clerical services for carrying out sections 48-302 to 48-313 and sections 1 and 2 of this act. The person who issued the employment certificate shall report to the Department of Labor department any complaint concerning the conditions of employment of a child for whom a certificate is in force. Upon receipt of the report, the Department of Labor department shall make such investigation as it deems advisable to protect an individual child or to promote the youth-work program.

Sec. 5. Section 48-311, Reissue Revised Statutes of Nebraska, is amended to read:

48-311. Whoever employs a child under sixteen years of age and whoever, having under his or her control a child under such age, causes or permits such child to be employed in violation of sections 48-302 to 48-313 and sections 1 and 2 of this act is guilty of a Class ¶ II misdemeanor. Whoever continues to employ any child in violation of any of such sections, after being notified by an attendance officer or by the Department of Labor or by its assistants or employees, is, for every day thereafter that such employment continues, guilty of a Class ¶ II misdemeanor.

The failure of an employer of child labor to produce, upon request of a person authorized to demand the same, any employment certificate or list required by such sections shall be prima facie evidence of the illegal employment of any child whose employment certificate is not produced or whose name is not listed. Any corporation or employer retaining employment certificates in violation of such sections is guilty of a Class ¶ II misdemeanor.

Every person authorized or required to sign any certificate or statement prescribed by such sections who knowingly certifies or makes oath to any material false statement therein or who violates any of the provisions of such sections is guilty of a Class ¶ II misdemeanor.

Every person who refuses admittance to any person authorized to visit or inspect any premises or place of business under the provisions of such sections and to produce all certificates and lists he or she may have when demanded, after such person shall have announced his or her name and the office he or she holds and the purpose of his or her visit, or otherwise obstructs such persons in the performance of their duties prescribed by such sections is guilty of a Class ¶ II misdemeanor.

Sec. 6. Section 48-446, Revised Statutes Supplement, 2000, is amended to read:

48-446. (1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

(a) The amount of premium paid by the employer for workers' compensation insurance;

(b) The experience modification produced by the experience rating system referenced in section 44-7524;

(c) Whether the employer is covered by workers' compensation insurance under section 48-146.01;

(d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Sec. 7. Section 48-2111, Reissue Revised Statutes of Nebraska, is amended to read:

48-2111. The commissioner shall serve notice of revocation on the contractor by mailing such notice by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery to the address of the contractor or the contractor's registered agent listed in the application. Upon a showing of compliance with the application requirements set out in section 48-2105, the commissioner may temporarily reinstate the registration pending a hearing on the revocation. A registration revoked under this section shall not be permanently reinstated. To receive a new registration number, the contractor shall reapply to the commissioner.

Sec. 8. Section 48-2114, Reissue Revised Statutes of Nebraska, is amended to read:

48-2114. (1) The commissioner shall issue a citation to a contractor when an investigation reveals that the contractor has violated:

(a) The requirement that the contractor be registered; or

(b) The requirement that the contractor's registration information be substantially complete and accurate.

(2) If a citation is issued, the commissioner shall notify the contractor ~~by certified mail~~ of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The contractor shall have fifteen working days from the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing pursuant to the Administrative Procedure Act.

Sec. 9. The Revisor of Statutes shall assign sections 1 and 2 of this act within sections 48-301 to 48-313, and any references to sections 48-302 to 48-313 shall be construed to include sections 1 and 2 of this act.

Sec. 10. Original sections 48-301, 48-311, 48-2111, and 48-2114, Reissue Revised Statutes of Nebraska, and sections 48-303 and 48-446, Revised Statutes Supplement, 2000, are repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.