

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 49 Employment and Curfew of Minors

**SPONSOR(S):** Local Administration, Federal Affairs & Special Districts Subcommittee, Regulatory Reform & Economic Development Subcommittee, Chaney

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	10 Y, 5 N, As CS	Thompson	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 5 N, As CS	Burgess	Darden
3) Commerce Committee			

### SUMMARY ANALYSIS

Subject to some exceptions, federal and state child labor laws prevent work hours and timeframes from interfering with the child's health, safety, and education. At the federal level, the Fair Labor Standards Act (FLSA) determines the minimum age for work during school hours, performing certain jobs after school, and places restraints on work considered hazardous. Florida's Child Labor Law also restricts the employment of minors, sometimes more than federal law. Florida's Child Labor Law contains protections specifically directed to 16 and 17-year-olds, including restrictions on what times during a day they may work, how many hours in a week they may work, and what jobs or occupations they may perform.

Florida authorizes cities and counties to enact their own curfew ordinances for minors under the age of 16. The law provides that any minor under the age of 16 cannot be present at a public establishment during the following hours, not including legal holidays:

- Sunday to Thursday from 11:00 p.m. to 5:00 a.m.
- Saturday or Sunday from 12:01 a.m. to 6:00 a.m.
- 9:00 a.m. to 2:00 p.m. if suspended from school.

The statutory curfew does not apply unless the curfew is adopted by a governing body of the county or municipality. A governing body of a county or municipality is allowed to adopt restrictions that are more or less stringent than the statutory curfew.

The bill:

- Removes restrictions concerning the number of work hours per day and per week for minors 16 and 17 years-of-age, and specifies that minors 16 and 17 years-of-age may work the same number of hours as a person who is 18 years-of-age or older.
- Revises the times of day in which minors 16 and 17 years-of-age may work.
- Limits the restriction that currently prohibits 16- and 17-year-olds from working more than 6 consecutive days in any one week, or working 4 hours continuously without a break of at least 30 minutes for a meal period to only apply to minors age 15 or younger.
- Requires 16- and 17-year-olds to be granted breaks and meal periods in the same manner as employees who are 18 years of age or older.
- Requires juvenile curfews adopted by county or municipal ordinance to include certain exceptions.

The bill may have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Federal Fair Labor Standards Act**

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.<sup>1</sup> Congress adopted the FLSA to prevent substandard labor conditions from being used as an “unfair method of competition.”<sup>2</sup> The FLSA covers employees and enterprises engaged in interstate commerce. An enterprise is covered if it has annual sales or business done of at least \$500,000.<sup>3</sup> Regardless of the dollar volume of business, the FLSA applies to hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; federal, state, and local governments; and preschools, elementary and secondary schools, and institutions of higher education.<sup>4</sup>

The FLSA was adopted as a minimum set of standards, which allowed states to provide more protections for employees. Under the FLSA, if states enact minimum wage, overtime, or child labor laws that are more protective than what is provided by the FLSA, the state law applies.<sup>5</sup> Because states may enact laws that are more protective than what is provided by the FLSA, minimum wage, overtime, and child labor standards vary state by state.

#### Child Labor

The FLSA prohibits the employment of “oppressive child labor” in the United States and the shipment of goods made in proximity to oppressive child labor.<sup>6</sup> The FLSA establishes a general minimum age of 16 years for employment in nonhazardous occupations, and a minimum age of 18 years for employment in any occupation determined by the Secretary of Labor to be hazardous to the health or well-being of minors. However, children younger than 16 may work if certain conditions are met, and rules for agricultural and nonagricultural employment vary significantly.<sup>7</sup>

According to the US Department of Labor (DOL), two things are certain:<sup>8</sup>

- Once an employee is 18 years-of-age, there are no Federal child labor rules.
- Federal child labor rules do not require work permits. However, many states issue age certificates if you are asked to provide them by your employer.

#### Nonagricultural Employment – Minimum Standards

For nonexempt children, the minimum age for employment in nonagricultural occupations is:<sup>9</sup>

- 18 years-of-age for occupations determined by the Secretary of Labor to be hazardous to the health and well-being of children (i.e., “hazardous occupations”);
- 16 years-of-age for employment in nonhazardous occupations; or

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<sup>1</sup> 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

<sup>2</sup> *Brooklyn Savings Bank V. O’Neil*. 324 U.S. 697 (1945).

<sup>3</sup> 29 C.F.R. §§ 779.258-779.259.

<sup>4</sup> 29 U.S.C. § 203(s)(1).

<sup>5</sup> 29 U.S.C. § 218.

<sup>6</sup> 29 U.S.C. § 212.

<sup>7</sup> Congressional Research Service, *The Fair Labor Standards Act (FLSA): An Overview*, (Mar. 8, 2023), <https://crsreports.congress.gov/product/pdf/R/R42713> (last visited Nov. 30, 2023).

<sup>8</sup> US Department of Labor, *Fair Labor Standards Act (FLSA) Child Labor Rules Advisor*, <https://webapps.dol.gov/elaws/whd/flsa/cl/default.htm> (last visited Dec. 3, 2023).

<sup>9</sup> 29 C.F.R. § 570.2.

- 14 years-of-age for a limited set of occupations, with restrictions on hours and work conditions, as determined by the Secretary of Labor.

A child under the age of 14 may not be employed unless his or her employment is explicitly excluded from the definition of oppressive child labor (e.g., a parent is the child's sole employer in a nonhazardous occupation) or exempt from the FLSA child labor provisions (e.g., newspaper delivery).<sup>10</sup>

The hours and times of day that 14- and 15-year-olds are allowed to work and specific occupations that are permitted or prohibited for such minors in nonagricultural occupations are set by federal and state law.

The FLSA allows the employment of minors 14 and 15 years-of-age during the following hours and times-of-day:<sup>11</sup>

- Outside of school hours;<sup>12</sup>
- Not more than 40 hours in any 1 week when school is not in session;
- Not more than 18 hours in any 1 week when school is in session;
- Not more than 8 hours in any 1 day when school is not in session;
- Not more than 3 hours in any 1 day when school is in session, including Fridays; and
- Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

### Oppressive Child Labor

The following occupations constitute oppressive child labor within the meaning of the FLSA when performed by minors who are 14 and 15 years-of-age:<sup>13</sup>

- Manufacturing, mining, or processing occupations.
- Occupations that the Secretary of Labor may, pursuant to section 3(l) of the FLSA, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being.
- Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing hoisting apparatus.
- Work performed in or about boiler or engine rooms or in connection with the maintenance or repair of the establishment, machines, or equipment.
- Occupations that involve operating, tending, setting up, adjusting, cleaning, oiling, or repairing any power-driven machinery, including but not limited to lawn mowers, golf carts, all-terrain vehicles, trimmers, cutters, weed-eaters, edgers, food slicers, food grinders, food choppers, food processors, food cutters, and food mixers. Youth 14 and 15 years of age may, however, operate office equipment pursuant to § 570.34(a) and vacuum cleaners and floor waxers pursuant to § 570.34(h).
- The operation of motor vehicles.
- Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes.
- All baking and cooking activities except that cooking which is permitted by § 570.34(c).
- Work in freezers and meat coolers and all work in the preparation of meats for sale except as permitted by § 570.34(j). This section, however, does not prohibit the employment of 14- and 15-year-olds whose duties require them to occasionally enter freezers only momentarily to retrieve items as permitted by § 570.34(i).
- Youth peddling, which entails the selling of goods or services to customers at locations other than the youth-employer's establishment, such as the customers' residences or places of business, or public places such as street corners and public transportation stations.

<sup>10</sup> 29 C.F.R. § 570.119.

<sup>11</sup> 75 C.F.R. § 28448 (2010).

<sup>12</sup> 29 C.F.R. § 570.35(b) defines "school hours" as the hours that the local public school district where the minor resides while employed is in session during the regularly scheduled school year.

<sup>13</sup> 29 C.F.R. § 570.33.

- Loading and unloading of goods or property onto or from motor vehicles, railroad cars, or conveyors, except the loading and unloading of personal non-power-driven hand tools, personal protective equipment, and personal items to and from motor vehicles as permitted by § 570.34(k).
- Catching and cooping of poultry in preparation for transport or for market.
- Public messenger service.
- Occupations in connection with transportation of persons or property, warehousing and storage, communications and public utilities, and construction (including demolition and repair).

### Authorized Occupations

The FLSA allows the following occupations to be performed by minors 14 and 15 years-of-age when performed within the required timeframes:<sup>14</sup>

- Office and clerical work, including the operation of office machines.
- Work of an intellectual or artistically creative nature.
- Cooking with electric or gas grills which does not involve cooking over an open flame.
- Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.
- Price marking and tagging by hand or machine, assembling orders, packing, and shelving.
- Bagging and carrying out customers' orders.
- Errand and delivery work by foot, bicycle, and public transportation.
- Clean up work, including the use of vacuum cleaners and floor waxers, and the maintenance of grounds, but not including the use of power-driven mowers, cutters, trimmers, edgers, or similar equipment.
- Kitchen work and other work involved in preparing and serving food and beverages.
- Cleaning vegetables and fruits, and the wrapping, sealing, labeling, weighing, pricing, and stocking of items.
- The loading onto motor vehicles and the unloading from motor vehicles of the light, non-power-driven, hand tools and personal protective equipment that the minor will use as part of his or her employment at the work site; and the loading onto motor vehicles and the unloading from motor vehicles of personal items such as a back pack, a lunch box, or a coat that the minor is permitted to take to the work site.
- The employment of 15-year-olds (but not 14-year-olds) to perform permitted lifeguard duties at traditional swimming pools and water amusement parks (including such water park facilities as wave pools, lazy rivers, specialized activity areas that may include water falls and sprinkler areas, and baby pools; but not including the elevated areas of power-driven water slides) when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety.
- Employment inside and outside of places of business where machinery is used to process wood products.
- Work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing by hand; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.
- Work in connection with riding inside passenger compartments of motor vehicles.

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<sup>14</sup> 29 C.F.R. § 570.34.

## Agricultural Employment – Minimum Standards

With some exceptions, the minimum age for employment in agricultural occupations is:

- 16 years-of-age for employment in any agricultural job, including those determined to be hazardous by the Secretary of Labor, with no restrictions on hours of work;<sup>15</sup>
- 14 years-of-age for employment in nonhazardous agricultural jobs, outside of school hours;<sup>16</sup>
- 12 years-of-age (up to 13 years) for employment in nonhazardous agricultural jobs, outside of school hours, with the written consent of a parent; written consent is not required if the work takes place on a farm that also employs the child's parent;<sup>17</sup>
- 10 years-of-age (and up to 11 years) for employment to hand-harvest select crops for up to eight weeks in nonhazardous agricultural jobs, outside of school hours, with the written consent of a parent, providing the employer has obtained a waiver permitting this employment from the Secretary of Labor;<sup>18</sup> or
- Any age (up to 12 years), for employment in nonhazardous agricultural jobs, outside of school hours on certain small farms, with a parent's written consent.<sup>19</sup>

A child of any age who is employed by a parent on a farm owned or operated by the parent may work without restriction.<sup>20</sup> DOL regulations also provide limited exemptions to child labor rules concerning hazardous agricultural occupations for student learners and graduates of vocational training programs that meet regulatory criteria.<sup>21</sup>

### FLSA Child Labor Exemptions

The FLSA excludes the following occupations and work arrangements from coverage of its child labor provisions:

- *Children with a Parental Employer*: Children who work for a parent or a person standing in place of a parent<sup>22</sup> in an occupation other than manufacturing, mining, or hazardous work may be employed at any age and for any number of hours.<sup>23</sup>
- *Child Performers*: Children of any age may be employed as actors or performers in motion pictures or in theatrical, radio, or television productions.<sup>24</sup>

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<sup>15</sup> 29 C.F.R. § 570.2.

<sup>16</sup> 29 U.S.C. §213(c)(1)(C). DOL regulations identify the set of jobs and activities that—subject to hours-of-work restrictions—do not constitute oppressive child labor for children ages 14 and 15 years old; these are at 29 C.F.R. §570.33.

<sup>17</sup> 29 U.S.C. §213(c)(1)(B).

<sup>18</sup> The conditions under which the Secretary of Labor will grant a waiver permitting the employment of 10 and 11 year old children to harvest certain crops are in 29 U.S.C. 213(c)(4) and 29 C.F.R. § part 575. However, as DOL notes “the Department was enjoined from issuing such waivers in 1980 because of issues involving exposure, or potential exposure, to pesticides (see National Ass’n of Farmworkers Organizations v. Marshall, 628 F.2d 604 (DC Cir. 1980)). Therefore, no waivers have been granted under FLSA section 13(c)(4) for thirty years.” DOL-WHD, “Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations -Civil Money Penalties - A Proposed Rule,” 75 Federal Register 54842, September 2, 2011.

<sup>19</sup> 29 U.S.C. §213(c)(1)(A). Applies to the employment of children on farms that are exempt from FLSA minimum wage provisions because they employed fewer than 500 “man-days of agricultural labor” during any calendar quarter in the previous calendar year. FLSA defines a man-day of agricultural labor as “any day during which an employee performs any agricultural labor for not less than one hour”; 29 U.S.C. §203(u).

<sup>20</sup> 29 U.S.C. §213(c)(2).

<sup>21</sup> 29 C.F.R. §570.72.

<sup>22</sup> Parent or person standing in place of a parent is defined in 29 C.F.R. §570.126 as including “natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent.”

<sup>23</sup> This exemption stems from the FLSA definition of oppressive child labor at 29 U.S.C. §203(1), which excludes children employed by a parent in most nonhazardous occupations. For children employed in nonagricultural work, the parent must be the sole employer for the exemption to hold. The parent need not be the sole employer for children working in agriculture on a farm owned or operated by the parent.

<sup>24</sup> 29 U.S.C. §213(c)(3).

- Newspaper Delivery Persons: Children of any age may be employed to deliver newspapers to consumers.<sup>25</sup>
- Evergreen Wreath Producers (Homebased): Children of any age may be employed as homeworkers to make evergreen wreaths and to harvest forest products used in making such wreaths.<sup>26</sup>

### Hazardous Occupations

Seventeen groups of nonagricultural occupations have been determined to be hazardous or detrimental to the health or well-being of children between the ages of 16 and 18 years.<sup>27</sup> Employment in these jobs is prohibited, with limited exemptions for registered apprentices and student learners.<sup>28</sup> In some instances, children’s employment is banned in entire industries (e.g., coal mining) with some exceptions for office, sales, or maintenance work; others prohibit children’s exposure to materials (e.g., radioactive substances) or equipment (e.g., power-driven hoisting apparatus).

Eleven types of agricultural occupations have been determined to be hazardous, in which—with few exceptions—a child below the age of 16 may not be employed.<sup>29</sup> These include, for example, handling or applying certain agricultural chemicals, and working on a farm in a pen occupied by a stud horse maintained for breeding purposes. The prohibition on employment in agricultural hazardous occupations does not apply to children employed by a parent on a farm owned or operated by the parent.<sup>30</sup> When certain requirements are met, student learners and graduates of tractor or machine operation programs that meet regulatory criteria may be employed in select hazardous occupations.

### FLSA Violations

Two remedies are available for violations of the FLSA child labor provisions. The Secretary of Labor may assess civil penalties or seek other relief, including injunctive relief. Employers who violate the FLSA child labor provisions may be assessed the following civil penalties:

- Up to \$15,138 for each employee who was the subject of a child labor violation; or
- Up to \$68,801 for each violation that causes the death or serious injury of a minor employee, a penalty may be doubled if the violation is a repeated or willful violation.<sup>31</sup>

U.S. district courts have jurisdiction to enjoin violations of the FLSA’s child labor provisions.<sup>32</sup> For example, a federal court may order an employer to halt employment of a minor in a hazardous occupation or may enjoin a producer from shipping goods out of state from an establishment in or about which a child labor violation has occurred. Criminal penalties are also prescribed for willful violations of the FLSA’s child labor provisions.<sup>33</sup>

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<sup>25</sup> 29 U.S.C. §213(d).

<sup>26</sup> 29 U.S.C. §213(d).

<sup>27</sup> 29 C.F.R. §§570.50-570.68.

<sup>28</sup> The prohibition on minors’ employment in the nonagricultural hazardous occupations applies even if the child is employed by a parent. The conditions under which a registered apprentice or student learner may participate in hazardous occupation tasks are described in 29 C.F.R. §570.50 (b) and (c).

<sup>29</sup> Hazardous agricultural occupations are described in 29 C.F.R. §570.71; exemptions to the ban on children’s employment in hazardous agricultural occupations are in 29 C.F.R. §570.72.

<sup>30</sup> 29 U.S.C. §213(c)(2).

<sup>31</sup> These civil money penalties took effect on January 16, 2023, and are as adjusted for inflation as provided by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74).

<sup>32</sup> 29 U.S.C. §217.

<sup>33</sup> Congressional Research Service, The Fair Labor Standards Act (FLSA): An Overview, Mar.8, 2023, at 17

<https://crsreports.congress.gov/product/pdf/R/R42713> (last visited Dec. 3, 2023).

## Florida Child Labor Law

The Florida Department of Business and Professional Regulation, Division of Regulation, administers and enforces the state's Child Labor Law<sup>34</sup> through its Child Labor Program.<sup>35</sup> The "mission of the Child Labor Program is to provide a program of education, enforcement, and administrative initiatives designed to achieve full compliance in the enforcement of Child Labor laws and ensure the health, education and welfare of Florida's working minors."<sup>36</sup>

Florida's Child Labor Law restricts the employment of minors, sometimes more than federal law. Once a worker reaches the age of 18, child labor laws do not restrict their employment.

Florida's Child Labor Law defines "child" or "minor" as any person 17 years of age or younger, unless:<sup>37</sup>

- The person is or has been married;
- The person's disability of nonage has been removed by a court of competent jurisdiction;
- The person is serving or has served in the Armed Forces of the United States;
- It has been found by a court having jurisdiction over the person that it is in the best interest of such minor to work and the court specifically approves any employment of such person, including the terms and conditions of such employment; or
- The person has graduated from an accredited high school or holds a high school equivalency diploma.

### Minimum Age

Under Florida's Child Labor law, minors of any age may be employed as follows:<sup>38</sup>

- As pages in the Florida Legislature.
- By the entertainment industry as prescribed in ss. 450.012, F.S., and 450.132, F.S.
- In domestic or farm work in connection with their own homes or the farm or ranch on which they live, or directly for their own parents or guardian, or in the herding, tending, and management of livestock, during the hours they are not required by law to be in school.

The law provides the following prohibitions:

- Persons 10 years-of-age or younger: Prohibited from engaging in the sale and distribution of newspapers.
- Except as provided above, persons 13 years-of-age or younger: Prohibited from being employed, permitted, or suffered to work in any gainful occupation at any time.
- Persons 17 years old or younger: Whether or not such person's disabilities of nonage have been removed by marriage or otherwise, are prohibited from being employed, permitted, or suffered to work in any place where alcoholic beverages are sold at retail, except as provided in s. 562.13, F.S.<sup>39</sup> For example, a 16- or 17-year-old may work at a grocery store that sells alcohol under certain conditions and a restaurant that sells beer and wine under certain conditions.

The law provides the following prohibition to prevent minors being exploited and becoming victims of human trafficking:<sup>40</sup>

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<sup>34</sup> See ss. 450.001-450.165, F.S.

<sup>35</sup> S. 450.155, provides that Child Labor Law program appropriations made by the Legislature shall be used to carry out the proper responsibilities of administering the Child Labor Law, to protect the working youth of the state, and to provide education about the Child Labor Law to employers, public school employees, the general public, and working youth.

<sup>36</sup> Florida Department of Business and Professional Regulation, Child Labor, <http://www.myfloridalicense.com/DBPR/child-labor/> (last visited Dec. 3, 2023).

<sup>37</sup> S. 450.012(3), F.S.

<sup>38</sup> S. 450.021, F.S.

<sup>39</sup> Section 562.13, F.S., prohibits any vendor licensed under the Beverage Law from employing any person under 18 years of age. However, this section provides specific exceptions, including, but not limited to, professional entertainers under 17 years of age, certain minors employed in the entertainment industry, persons under the age of 18 employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations for consumption off the premises.

<sup>40</sup> S. 450.021(5), F.S.

- A person under the age of 18, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, may not be employed, permitted, or suffered to work in an adult theater, as defined in s. 847.001(2)(b), F.S.

### Hazardous Occupations

Florida law prohibits minors 15 years-of-age or younger, whether or not such person's disabilities of nonage have been removed by marriage or otherwise, from being employed or permitted or suffered to work in any of the following occupations:<sup>41</sup>

- In connection with power-driven machinery, except power mowers with cutting blades 40 inches or less.
- In any manufacturing that makes or processes a product with the use of industrial machines.
- The manufacture, transportation, or use of explosive or highly flammable substances.
- Sawmills or logging operations.
- On any scaffolding.
- In heavy work in the building trades.
- In the operation of a motor vehicle, except a motorscooter which he or she is licensed to operate, except that 14-year-old and 15-year-old workers may drive farm tractors in the course of their farmwork under the close supervision of their parents on a family-operated farm, and except that qualified 14-year-old and 15-year-old workers may drive tractors in the course of their farmwork under the close supervision of the farm operator. "Qualified," as used herein, means having completed a training course in tractor operation sponsored by a recognized agricultural or vocational agency, as evidenced by duly executed certificate, such certificate to be filed with the farm operator for the duration of the employment.
- In oiling, cleaning, or wiping machinery or shafting or applying belts to pulleys.
- In repairing of elevators or other hoisting apparatus.
- Work in freezers or meat coolers and all work in preparation of meats for sale, except wrapping, sealing, labeling, weighing, pricing, and stocking when performed in another area. This shall not prohibit work done in the normal operations of a food service facility licensed by chapter 509, F.S.
- In the operation of power-driven laundry or drycleaning machinery or any similar power-driven machinery.
- At spray painting.
- Alligator wrestling, work in connection with snake pits, or similar hazardous activities.
- Door-to-door selling of magazine subscriptions, candy, cookies, flowers, or other merchandise or commodities, except merchandise of nonprofit organizations, such as the Girl Scouts of America or the Boy Scouts of America.
- In working with meat and vegetable slicing machines.

Florida law prohibits minors under 18 years-of-age, whether such person's disabilities of nonage have been removed, from being employed or permitted or suffered to work in any of the following places of employment or in any of the following occupations:<sup>42</sup>

- In or around explosive or radioactive materials.
- On any scaffolding, roof, superstructure, residential or nonresidential building construction, or ladder above 6 feet.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- In or around toxic substances or corrosives, including pesticides or herbicides, unless proper field entry time allowances have been followed.
- Any mining occupation.
- In the operation of power-driven woodworking machines.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.

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<sup>41</sup> S. 450.061(1), F.S.

<sup>42</sup> S. 450.061(2), F.S.



- In the operation of power-driven hoisting apparatus.
- In the operation of power-driven metal forming, punching, or shearing machines.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Slaughtering, meat packing, processing, or rendering, except as provided in 29 C.F.R. s. 570.61(c), F.S.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- In the operation of power-driven bakery machinery.
- In the operation of power-driven paper products and printing machines.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Manufacturing brick, tile, and like products.
- Wrecking or demolition.
- Excavation operations.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Logging or sawmilling.
- Working on electric apparatus or wiring.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Firefighting.
  - Does not apply to the employment of student learners under the conditions prescribed in s. 450.161, F.S.
- Operating or assisting to operate, including starting, stopping, connecting or disconnecting, feeding, or any other activity involving physical contact associated with operating, a tractor over 20 PTO horsepower, any trencher or earthmoving equipment, fork lift, or any harvesting, planting, or plowing machinery, or any moving machinery.

Florida law prohibits the employment of minors under 18 years-of-age, whether such person's disabilities of nonage have been removed by marriage or otherwise, from being employed or permitted or suffered to work in any place of employment or at any occupation hazardous or injurious to the life, health, safety, or welfare of such minor, as such places of employment or occupations may be determined and declared by the department to be hazardous and injurious.

These prohibitions do not apply to minors employed in the entertainment industry.<sup>43</sup>

### Hours of Work

Generally, Florida law allows minors who are 16 and 17 years-of-age to work in a broad range of jobs, unless the jobs are hazardous. Minors who are 14 and 15 years-of-age are allowed to work in a broad range of jobs but are limited in the number of hours per day and per week they may work, especially when school is in session.<sup>44</sup> Minors 13 years old or younger are prohibited from working in Florida, except in some limited situations.

### *Minors Under the Age of 16*

For minors younger than 16 years-of-age, Florida Child Labor Law provides the following restrictions on hours of work:

- Before 7 a.m. or after 7 p.m. when school is scheduled the following day or for more than 15 hours in any one week.
- More than 3 hours on any school day, if not enrolled in a career education program, unless there is no session of school the following day.
- During holidays and summer vacations:

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<sup>43</sup> S. 450.061(4), F.S.

<sup>44</sup> See S. 450.081, F.S.

- Before 7 a.m. or after 9 p.m.;
- For more than 8 hours in any one day; or
- For more than 40 hours in any one week.

### *Sixteen and Seventeen-Year-Olds*

For minors 16 and 17 years-of-age, Florida's Child Labor Law provides the following restrictions on hours of work:

- Before 6:30 a.m. or after 11:00 p.m.
- More than 8 hours in any one day when school is scheduled the following day.
- When school is in session, more than 30 hours in any one week.
- During school hours on any school day, if not enrolled in a career education program.
- More than 6 consecutive days in any one week.
- More than 4 hours continuously without an interval of at least 30 minutes for a meal period.
  - No period of less than 30 minutes is deemed to interrupt a continuous period of work.

### *Exemptions*

The hours of work restrictions do not apply to the following:<sup>45</sup>

- Minors 16 and 17 years-of-age who have graduated from high school or received a high school equivalency diploma.
- Minors who are within the compulsory school attendance age limit who hold a valid certificate of exemption issued by the school superintendent or his or her designee pursuant to the provisions of s. 1003.21(3), F.S.
- Minors enrolled in a public educational institution who qualify on a hardship basis such as economic necessity or family emergency.
  - Such determination must be made by the school superintendent or his or her designee, and a waiver of hours must be issued to the minor and the employer.
- Children in domestic service in private homes, children employed by their parents, or pages in the Florida Legislature.

Florida law provides that the presence of any minor in any place of employment during working hours is prima facie evidence of his or her employment.<sup>46</sup>

### Partial Waivers

In extenuating circumstances when it clearly appears to be in the best interest of the child, DBPR is authorized to grant a waiver of the restrictions imposed by the Child Labor Law on the employment of a child. Such waivers are granted upon a case-by-case basis and based upon such factors as the department, by rule, establishes as determinative of whether such waiver is in the best interest of a child.<sup>47</sup>

DBPR, or the school district designee if the minor is enrolled in the public school system, is authorized to grant a waiver of any restriction imposed by the Child Labor Law, or by rule. In determining whether to grant a Partial Waiver, the Department shall consider all relevant information which may establish what is in the best interest of the minor, including:<sup>48</sup>

- ***School Status:*** DBPR, or the school district designee, is required to grant a partial waiver based on school status when:
  - The minor will receive instruction by a tutor at the place of employment;
  - The minor has been authorized by the District School Superintendent to complete his or her education through alternative methods such as home school;
  - The minor has been permanently expelled from the public school system;

<sup>45</sup> S. 450.081(5), F.S.

<sup>46</sup> S. 450.081(6), F.S.

<sup>47</sup> S. 450.095, F.S.

<sup>48</sup> R. 61L-2.007, F.A.C.

- The minor is enrolled in school in a foreign country and is visiting Florida during his or her home country's non-school period; or
- The employment would provide an educational, vocational, or public service experience that would be beneficial to the minor.
  - Documentation shall consist of confirmation from the minor's school principal or the Superintendent of the School District and of copies of school records clearly defining the minor's school status.
- ***Financial Hardship:*** DBPR, or the school district designee, is required to grant a partial waiver based on financial hardship when compliance with the Child Labor Law or rule will result in undue financial hardship for the minor or the minor's immediate family. Documentation must include:
  - A notarized letter, explaining the particular circumstances creating a hardship, from a parent, guardian, or other adult, who knows and can attest to the minor's financial hardship; written confirmation from a school recently attended;
  - Documentation from a social service agency; or
  - Verification of participation in AFDC, Food Stamp, Project Independence, or other similar programs.
  - DBPR is authorized to require other documentation which proves financial hardship.
- ***Medical Hardship:*** DBPR, or the school district designee, must grant a partial waiver based on medical hardship when compliance with the Child Labor Law or rule will result in physical or mental hardship for the minor. Documentation may consist of written confirmation from the minor's physician stating the specific medical reasons that require the minor to be excused from mandatory school attendance and affirming that the minor to be excused from mandatory school attendance may be allowed to work the requested hours, or that the minor should be considered an adult for the purpose of work hours.
- ***Other Hardship:*** DBPR, or school district designee, must grant a partial waiver based on other hardship when compliance with the Child Labor Law or rule will result in unreasonable hardship to the minor in specific situations.
- ***Court Order:*** DBPR, or the school district designee, must grant a partial waiver based on a court order when compliance with the Child Labor Law or rule will result in the minor violating an order issued by a court mandating that the minor work specified hours or in a specified occupation.

According to DBPR, for the current fiscal year, the department has received 1,416 waiver applications. Of this amount, 639 have been approved and 777 have been found to be deficient.<sup>49</sup>

### Enforcement

DBPR and local law enforcement are required to:<sup>50</sup>

- Enforce the provisions of the Child Labor Law;
- Make complaints against persons violating its provisions; and
- Prosecute violations.

DBPR is authorized to enter and inspect at any time any place or establishment covered by this law and to have access to age certificates kept on file by the employer and other records. Designated school representatives are required to report to DBPR all violations of the Child Labor Law.<sup>51</sup>

The Child Labor Law also provides that:

- Trial courts in the state have the duty to issue warrants and try cases within their jurisdiction in connection with violations of the Child Labor Law.
- Grand juries have inquisitorial powers to investigate violations, and trial court judges shall specially charge the grand jury to investigate violations of the Child Labor Law.

<sup>49</sup> Email from Derek Miller, Director of Legislative Affairs, Florida Department of Business and Professional Regulation, RE: Child Labor Partial Waivers, (Dec. 11, 2023).

<sup>50</sup> S. 450.121(1), F.S.

<sup>51</sup> S. 450.121(2), F.S.

The Child Labor Law provides the following penalties for violations:<sup>52</sup>

- Second degree misdemeanor, punishable by up to 60 days in prison<sup>53</sup> and a \$500 fine.<sup>54</sup>
  - Each day during which any violation of this law continues, and the employment of any minor in violation of the law, constitutes a separate and distinct offense.
- Second degree felony, punishable by up to 15 years in prison,<sup>55</sup> a \$10,000 fine,<sup>56</sup> or up to 30 years in prison for habitual offenders<sup>57</sup> any person who:<sup>58</sup>
  - Takes, receives, hires, employs, uses, exhibits, or, in any manner or under any pretense, causes or permits any child less than 18 years of age to suffer;
  - Inflicts upon any such child unjustifiable physical pain or mental suffering;
  - Willfully causes or permits the life of any such child to be endangered or his or her health to be injured or such child to be placed in such situation that his or her life may be endangered or health injured; or
  - Has in custody any such child for any of these purposes.

The Child Labor Law authorizes DBPR to provide administrative fines not to exceed \$2,500 per offense.<sup>59</sup> Upon discovery by DBPR that an employer is in violation, it is required to give written notice to the employer specifying the violation, the facts alleged to constitute the violation, and the requirements and time limitations for remedial action. If the employer refuses or fails to comply, DBPR is authorized to seek assessment of the following schedule of fines:<sup>60</sup>

<b>Violation</b>	<b>1st Offense</b>	<b>2nd Offense</b>	<b>3<sup>rd</sup> and Subsequent Offenses</b>
Child Labor Poster	Up to \$500	Up to \$1,000	Up to \$1,500
Employment of Minor	Up to \$1,000	Up to \$1,500	Up to \$2,500
Proof of Age or Copy of Partial Waiver	Up to \$700	Up to \$1,200	Up to \$2,000
Employment of Minor in Violation of Beverage law.	Up to \$1,000	Up to \$1,500	Up to \$2,500
Work Hours or Consecutive Days	Up to \$1,000	Up to \$1,500	Up to \$2500
Hazardous Occupation	Up to \$1,500	Up to \$2,000	Up to \$2,500
Employment of minor in violation of any provision of Child Labor.	Up to \$2,500	Up to \$2,500	Up to \$2,500
Law or this rule chapter which results in injury or death to minor.			
Violation of proof of age and identity requirements for Adult Theaters.	Up to \$1,000	Up to \$2,000	Up to \$2,500
Any other violation of the Child Labor Law or this rule chapter.	Up to \$1,000	Up to \$1,500	Up to \$2,500
Failure to provide records or documentation upon request.	Up to \$500	Up to \$1,200	Up to \$2,000

### Career Education Exemptions

Florida's Child Labor Law specifies that it does not:

- Prevent minors of any age from receiving career education furnished by the U.S., this state, or any county or other political subdivision of this state and duly approved by the Department of Education or other duly constituted authority, nor any apprentice indentured under a plan approved by the Department of Economic Opportunity; or
- Prevent the employment of any minor 14 years of age or older when such employment is authorized as an integral part of, or supplement to, such a course in career education and is authorized by regulations of the district school board of the district in which such minor is

<sup>52</sup> S. 450.141(1), F.S.

<sup>53</sup> S. 775.082, F.S.

<sup>54</sup> S. 775.083, F.S.

<sup>55</sup> S. 775.082, F.S.

<sup>56</sup> S. 775.083, F.S.

<sup>57</sup> S. 775.084, F.S.

<sup>58</sup> S. 450.151, F.S.

<sup>59</sup> S. 450.141(2), F.S.

<sup>60</sup> R. 61L-2.009, F.A.C.

employed, provided the employment is in compliance with the provisions of ss. 450.021(4), F.S. and 450.061, F.S.

Exemptions for the employment of student learners 16 to 18 years-of-age provided in s. 450.061, F.S., apply when:<sup>61</sup>

- The student learner is enrolled in a youth vocational training program under a recognized state or local educational authority.
- Such student learner is employed under a written agreement that provides:
  - That the work of the student learner in the occupation declared particularly hazardous shall be incidental to the training.
  - That such work shall be intermittent and for short periods of time and under the direct and close supervision of a qualified and experienced person.
  - That safety instructions shall be given by the school and correlated by the employer with on-the-job training.
  - That a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

### Proof of Identity

In order to hire a child to work, the law requires an employer to obtain and keep on record during the entire period of employment proof of the child's age.<sup>62</sup> Employers who hire minors are also required to post posters notifying minors of the Child Labor Law.<sup>63</sup>

### **Local Juvenile Curfew Ordinances**

Florida authorizes cities and counties to enact their own curfew ordinances for minors under the age of 16.<sup>64</sup> The law provides the following statutory restrictions that do not apply unless they are adopted by a governing body of the county or municipality:<sup>65</sup>

- A minor may not be or remain in a public place or establishment between the hours of 11:00 p.m. and 5:00 a.m. of the following day, Sunday through Thursday, except in the case of a legal holiday.
- A minor may not be or remain in a public place or establishment between the hours of 12:01 a.m. and 6:00 a.m. on Saturdays, Sundays, and legal holidays.
- A minor who has been suspended or expelled from school may not be or remain in a public place, in an establishment, or within 1,000 feet of a school during the hours of 9:00 a.m. to 2:00 p.m. during any school day.

Local curfew ordinances for minors under the age of 16 are allowed to be more or less stringent than the statutory curfew.<sup>66</sup>

These restrictions do not apply to a minor who is:<sup>67</sup>

- Accompanied by his or her parent or by another adult authorized by the minor's parent to have custody of the minor.
- Involved in an emergency or engaged, with his or her parent's permission, in an emergency errand.
- Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.

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<sup>61</sup> S. 450.161, F.S.

<sup>62</sup> S. 450.045(1), F.S. Such proof must include photocopies of the child's birth certificate and driver license, an age certificate issued by the district schoolboard of the district in which the child is employed, certifying the child's date of birth, or a photo copy of a passport or visa which lists the child's date of birth.

<sup>63</sup> S. 450.045(2), F.S.

<sup>64</sup> See ss. 877.20-877.25, F.S.

<sup>65</sup> S. 877.22, F.S.

<sup>66</sup> S. 877.25, F.S.

<sup>67</sup> S. 877.24, F.S.

- Going directly to or returning directly from lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged.
- Returning directly home from a school-sponsored function, a religious function, or a function sponsored by a civic organization.
- On the property of, or on the sidewalk of, the place where the minor resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.
- Engaged in interstate travel or bona fide intrastate travel with the consent of the minor's parent.
- Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013(9), F.S.

A minor in violation must receive a written warning for a first violation. A minor who violates this section after having received a prior written warning is guilty of a civil infraction and must pay a fine of \$50 for each violation.<sup>68</sup>

A minor who violates a curfew and is taken into custody must be transported immediately to a police station or facility operated by a religious, charitable, or civic organization that conducts a curfew program in cooperation with a local law enforcement agency.<sup>69</sup>

After recording pertinent information about the minor, law enforcement is required to attempt to contact the parent of the minor, and:<sup>70</sup>

- If successful, request that the parent take custody of the minor and must release the minor to the parent.
- If not able to contact the minor's parent within 2 hours after the minor is taken into custody, or if the parent refuses to take custody of the minor, the law enforcement agency is authorized to transport the minor to her or his residence or take the child into custody as provided under part IV of chapter 39, F.S.

The parent of a minor who knowingly permits the minor to violate the curfew law is required to receive a written warning for a first violation. A parent who knowingly permits the minor to violate the curfew law after receiving a prior written warning is guilty of a civil infraction and subject to a fine of \$50 for each violation.<sup>71</sup>

According to a 2016 Florida Attorney General opinion, if a municipality adopts an ordinance that incorporates the state juvenile curfew provisions (ss. 877.20 – 877.24, F.S.) by reference, "it may not alter the statutory terms expressed in the statutes." However, the authority (s. 877.25, F.S.) to provide restrictions more stringent or less stringent than the state curfew provisions, does not "preclude a municipality from adopting an independently crafted juvenile curfew ordinance, but any such locally-crafted language must comport with federal and state constitutional law relating to juvenile curfews."<sup>72</sup>

## **Effect of the Bill**

### **Child Labor**

The bill removes the following restrictions on work hours for minors 16 and 17 years-of-age:

- Working for more than 8 hours in any one day when school is scheduled the following day.
- When school is in session, working more than 30 hours in any one week.

The bill revises the following restrictions on work hours for minors 16 and 17 years-of-age by:

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> S. 877.23, F.S.

<sup>72</sup> 2016-11 Fla. Op. Att'y Gen. (2016).

- Prohibiting work before 6:00 a.m. when school is scheduled the following day.
- Allowing such minors to be gainfully employed during school hours if they are enrolled in a home education program, enrolled in an approved virtual instruction program, or the student no longer attends school pursuant to s. 1003.21., F.S.

The bill reduces the age from 17 years-of-age to 15 years-of-age, which will continue to prohibit minors 15 years old or younger from working more than:

- 6 consecutive days in any one week.
- 4 hours continuously without an interval of at least 30 minutes for a meal period.

The bill clarifies that minors 16 and 17 years-of-age may work the same number of hours as a person who is 18 years-of-age or older but must be granted breaks and meal periods in the same manner as permitted for employees who are 18 years of age or older.

### **Local Juvenile Curfew Ordinances**

The bill provides that a governing body of a county or municipality may adopt an ordinance that regulates the presence of minors, as defined in s. 450.12, F.S., in public places and establishments that are more stringent or less stringent than the restrictions in ss. 877.20-877.24, F.S., provided that the ordinance contains the exceptions provided in s. 877.24, F.S., which allow these individuals to be:

- Accompanied by a parent or another adult authorized by the parent to have custody of the minor.
- Involved in an emergency or engaged, with the parent's permission, in an emergency errand.
- Attending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.
- Going directly to or returning directly from lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged.
- Returning directly home from a school-sponsored function, a religious function, or a function sponsored by a civic organization.
- On the property of, or on the sidewalk of, the place where the minor resides, or who is on the property or sidewalk of an adult next-door neighbor with that neighbor's permission.
- Engaged in interstate travel or bona fide intrastate travel with the consent of the parent.
- Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013(9), F.S.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 450.081, F.S., removing certain employment restrictions for minors 16 and 17 years of age; revising the age at which certain employment restrictions apply.

Section 2: Amends s. 877.25, F.S., requiring a curfew adopted by county or municipal ordinance to include certain exceptions.

Section 3: Provides an effective date of July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may increase opportunities for 16 and 17-year-old individuals to work and generate income.

The bill may allow certain employers to employ 16 and 17-year-old individuals without having to comply with the burdensome requirements in current law.

The bill may increase labor force participation among 16 and 17-year-old individuals, which may result in a reduction of obtaining higher skills, education, and healthcare for these individuals.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On December 13, 2023, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment clarifies that ordinances adopted by a governing body of a county or municipality that regulate the presence of minors in public places and establishments that are more stringent or less stringent than the restrictions in the current law:

- Apply to minors under the age of 18, as defined in s. 450.12, F.S.; and
- Must contain the exceptions provided in s. 877.24, F.S., which allow minors during curfew hours to go to and from work and school, and be involved in emergencies.



On January 10, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendment revises provisions concerning the employment of minors ages 16 and 17 years-of-age by:

- Prohibiting the work start time from beginning before 6.00 a.m. when school is scheduled the following day;
- Allowing such minors who are not enrolled in a career education program to work during school hours if they are enrolled in a home education program, virtual instruction program, or the student no longer attends school pursuant to s. 1003.21. F,S.;
- Requiring such minors be granted breaks and meal periods in the same manner as employees who are 18 years of age or older; and
- Making a conforming change.

This analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs, & Special Districts Subcommittee.