

Legislative Analysis



PROHIBIT DEVIATIONS FOR MINORS IN EMPLOYMENT AND INCREASE PENALTIES FOR VIOLATIONS

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House Bill 4932 (H-1) as reported from committee
Sponsor: Rep. Phil Skaggs

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4962 as reported from committee
Sponsor: Rep. Helena Scott

Committee: Labor
Complete to: 10-25-23

SUMMARY:

House Bill 4932 would prohibit the director of the Department of Labor and Economic Opportunity (LEO) from granting deviations from certain employment standards for minors and would increase penalties for violations of the Youth Employment Standards Act. House Bill 4962 is a companion bill that would add the felonies established by House Bill 4932 to the sentencing guidelines chapter of the Code of Criminal Procedure.

House Bill 4932 would amend the Youth Employment Standards Act to limit the circumstances under which a deviation can be granted and to modify penalties for violations of the act.

Deviations

Currently, 16- and 17-year-olds cannot work between 10:30 p.m. (or 11:30 p.m. on weekends and while school is not in session) and 6 a.m. without receiving approval from LEO for a deviation from those hours.¹ Those 15 and younger may not work outside the hours of 7 a.m. to 9 p.m. and are not eligible to receive a deviation.

The bill would prohibit a deviation that allows a minor to be employed to work between the hours of midnight and 5 a.m. or that allows a minor to be employed in, about, or in connection with an occupation that is hazardous or injurious to their health or personal well-being.

Violations

Violations of the Youth Employment Standards Act are generally misdemeanors punishable by up to one year's imprisonment, a fine of up to \$500, or both. There are separate penalties for the employment of minors in occupations involving cash transactions without required supervision after sunset or 8 p.m., whichever is earlier, and for the employment of children in sexually abusive activity.

Under House Bill 4932, an initial violation of the act would remain a misdemeanor, but the maximum fine would be raised to \$5,000. A second violation would be a felony punishable by up to two years' imprisonment, a fine of up to \$25,000, or both, and a third or subsequent

¹ For a fact sheet on Michigan's youth labor rules, see: https://www.michigan.gov/-/media/Project/Websites/leo/Folder23/whd9803_act_90_brochure_JH_Sugg_Edits.pdf

offense would be a felony punishable by up to five years' imprisonment, a fine of up to \$50,000, or both.

The bill would eliminate the separate penalties for adult supervision violations, which would be subject to the same penalties as described above. (Current enhanced penalties would remain for the employment of children in sexually abusive activity.)

Under the bill, if a minor is killed or suffers great bodily harm while working for their employer² in violation of the act, the employer or their agent would be guilty of a felony and would have to be fined at least \$50,000 but no more than \$500,000. A first offense would be punishable by up to five years' imprisonment, a second offense would be punishable by up to 10 years' imprisonment, and a third or subsequent offense would be punishable by up to 20 years' imprisonment. The bill would provide that the imposition of a fine, penalty, or other sanction under the Youth Employment Standards Act does not affect any other right or remedy under another law.

Additionally, the bill would allow the LEO director to impose an administrative fine of up to \$5,000 for each violation of the act after providing notice and an opportunity for a contested case hearing under the Administrative Procedures Act. If a person who violates the act does not pay the fine, the attorney general would have to bring a civil action to recover the fine, in addition to any related costs or fees. Fines would be deposited in the general fund.

The LEO director could also bring an action to obtain a declaratory judgment that a method, act, or practice violates the act, or obtain an injunction against an employer who engages or is about to engage in a method, act, or practice that violates the act, or both.

The LEO director could also obtain a judgment requiring an employer to pay an award to each minor employed in violation of the act. If the violation resulted in the minor's being unable to continue work with that employer, the amount of the award would have to be at least quadruple the minor's hourly wage rate at the time of the violation multiplied by the average number of hours they worked during the four weeks preceding the violation. (Presumably this would mean the average number of hours *per week*, but the bill does not specify a time period to average.)

Additionally, a minor aggrieved by an employer's violation of the act could bring an action in the circuit court for the county in which the alleged violation occurred or the county in which the employer's principal place of business is located.³ If the minor prevails, the court could award any combination of actual damages, punitive damages, and costs of the action (including reasonable attorney fees).

Finally, the bill would prohibit employers from discharging, disciplining, retaliating against, or otherwise discriminating against an employee or minor who exercises a right under the act on their own behalf or on behalf of another employee or minor.

MCL 409.102 et seq.

² The bill would amend the act's definition of "employer" to specifically include a partnership or limited liability company that employs a minor.

³ A minor would not be required to notify LEO before bringing an action.

House Bill 4962 would add the felonies created and modified by House Bill 4932 to the sentencing guidelines provisions of the Code of Criminal Procedure. Under the bill, the employment of a minor during certain hours that involves death or great bodily harm would be a class E felony against a person with a statutory maximum term of imprisonment of five years for a first offense. A second offense would be a class D felony against a person with a statutory maximum term of imprisonment of 10 years, and a third or subsequent offense would be a class B felony against a person with a statutory maximum term of imprisonment of 20 years.

The bill would remove the guidelines for adult supervision violations and add guidelines for felony violations of the Youth Employment Standards Act. A second offense would be a class G felony against a person with a statutory maximum term of imprisonment of two years, and a third or subsequent offense would be a class E felony against a person with a statutory maximum term of imprisonment of five years.

Finally, the bill would update references to the Youth Employment Standards Act to reflect paragraph numbering changes made by HB 4932.

The bill cannot go into effect unless House Bill 4932 is also enacted.

MCL 777.14b

BACKGROUND:

In Michigan, a 2019 incident at Ionia County meat processing company resulted in a serious and permanent injury to a minor who was employed in violation of the Youth Employment Standards Act. The owner of the company was fined \$1,143 for employing the child under hazardous conditions and without a verified work permit. At the time of sentencing, Michigan's Attorney General called on the legislature to strengthen the Youth Employment Standards Act's protections for children employed in dangerous conditions to better hold violating employers accountable.⁴

Additionally, a 2023 *New York Times* article uncovered the exploitation of foreign-born child workers employed in hazardous conditions across the United States, including some working at a food processing facility in Grand Rapids.⁵ It detailed how migrant children can face intense pressure to make money, which can result in them taking dangerous jobs, working night shifts, and being unable to attend or concentrate at school. The article also highlighted a lack of oversight of the businesses that employ children in violation of state and federal law, due to employer negligence and understaffed enforcement agencies.

FISCAL IMPACT:

House Bill 4932 would have an indeterminate fiscal impact on the state and on local units of government. The bill would authorize the department to impose an administrative fine of not more than \$5,000 for each violation. Revenue collected from payment of administrative fines

⁴ <https://www.michigan.gov/ag/news/press-releases/2023/08/08/ionia-meat-processor-sentenced-after-pleading-guilty-to-illegally-employing-minor>.

⁵ <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>.

would increase revenue to the state. Under the bill, revenue from administrative fines would be required to be deposited in the general fund.

The bill would authorize the attorney general to bring a civil action to recover the administrative fine and costs and fees, would authorize the director of the department to obtain a judgement or an injunction against an employer that violates provisions of the bill, and would authorize a minor aggrieved by an employer's violation of the bill to bring court action. Depending on the number of civil actions, judgements, injunctions, and other court actions, local court systems could see an increase in caseloads and related administrative costs.

An employer or agent of an employer who employs a minor in violation of the act is guilty of a crime. Under the bill, fines for first offense misdemeanors and second, third, and subsequent felony offenses would be increased. Increased fine revenue would increase funding for public and county law libraries.

Also under the bill, if a minor is killed or suffers great bodily harm while working, the employer or the employer's agent would be guilty of a felony. Sentencing times would vary for first, second, third, and subsequent offenses. The number of felony convictions that would result under the bill is not known. An increase in felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

The bill would increase costs to the Department of Labor and Economic Opportunity by an indeterminate amount. The amount of increased costs would be related to the number of new cases and violations that might arise under the bill's provisions. The fiscal impact to LEO is not expected to be significant.

The Department of the Attorney General (AG) may experience an increase of cases related to the bill to the extent that it takes civil action against individuals who are reported to the department for failing to pay a civil fine. In addition to recovering the civil fine, the bill would require the AG to collect an amount for a costs and attorney fees which would offset direct costs of the case for the AG. The AG would likely be able to absorb any increased caseload resulting from the bill with ongoing staff and funding. If existing AG staff is insufficient to comply with the bill additional employees may be hired. Annual state costs for an additional attorney FTE position are approximately \$200,000 and annual costs for a support staff position is approximately \$100,000.

House Bill 4962 is a companion bill to HB 4932 and would amend sentencing guidelines to include employment of children during certain hours involving death or great bodily harm,

first, second, third and subsequent offenses, as a Class E, D, and B felonies, respectively. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the Department of Labor and Economic Opportunity (LEO) testified in support of the bills. (10-12-23)

The following entities indicated support for the bills:

- Department of the Attorney General (10-12-23)
- AFT Michigan (10-12-23)
- Michigan AFL-CIO (10-12-23)
- Michigan Association for Justice (10-12-23)
- Michigan Laborers District Council (10-12-23)
- Michigan League for Public Policy (10-12-23)
- Michigan Nurses Association (10-12-23)
- Restaurant Opportunities Center of Michigan (10-19-23)

The following entities indicated support for House Bill 4932 (10-12-23):

- Michigan Education Association
- Michigan Immigrant Rights Center
- Oakland Schools

The Home Builders Association of Michigan indicated opposition to the bills. (10-12-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.