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Child Labor in America: History, Policy, and Legislative Issues

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Summary

The history of child labor in America is long and, in some cases, unsavory. It dates back to the founding of the United States. Traditionally, most children, except for the privileged few, had always worked — either for their parents or for an outside employer. Through the years, child labor practices have changed — and so have the benefits and risks associated with employment of children. In some respects, altered workplace technology has served to make work easier and less hazardous. At the same time, some processes and equipment have rendered the workplace more dangerous — especially for the very young.

Child labor first became a federal legislative issue at least as far back as 1906 with the introduction of the Beveridge proposal for regulation of the types of work in which children might be engaged. Although the 1906 legislation was not adopted, it led to extended study of the conditions under which children were employed or allowed to work and to a series of legislative proposals — some approved, others defeated or overturned by the courts — culminating in the Fair Labor Standards Act (FLSA) of 1938. The latter statute, amended periodically, remains the primary federal law dealing with the employment of children.

Although providing a framework for regulation of child labor (and, in some cases, forbidding it entirely), the FLSA is not comprehensive, nor does it deal with all employment of children in precisely the same way. Generally speaking, work by young persons (under 18 years of age) in mines and factories is not allowed. What other types of work may be suitable (or especially hazardous) for persons under 18 years of age has been left to the discretion of the Secretary of Labor. Some types of work — for example, some newspaper sales and delivery, theatrical (and related) employment — fall beyond the scope of FLSA child labor requirements. Finally, a distinction has been made between employment in nonagricultural fields and in agriculture — and, in the latter case, between work for a parent or guardian in an agricultural setting and commercial employment.

In the 108th Congress, a range of child labor legislation was introduced; but, with the exception of legislation legalizing child labor in certain Amish industries, no action was taken. However, given concerns about child labor, it may not be unreasonable to expect that further legislation in this area will be introduced in the 109th Congress — or beyond.

This report examines the historical issue of child labor in America and carries it through the 108th Congress.

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Child Labor in America: History, Policy, and Legislative Issues

Efforts to regulate (or to prohibit) certain forms of child labor in America largely commenced late in the 19th century — mostly at the state level. During the first decade of the 20th century, child labor became a federal concern. Congressional hearings were followed by extensive study of the issue — and by several abortive efforts to deal with child labor through law. Finally, with adoption of the Fair Labor Standards Act (1938), the modern federal role in child labor regulation took shape. But, debate concerning the issue has continued in Congress.¹

Through the years, regulation of child labor has been contentious, sparking sharp differences of opinion. Some have urged modification of existing federal child labor restraints to afford greater opportunities for young persons to gain entry into the world of work. But, the opportunity to learn a craft and industrial discipline can also provide an occasion for youth to be exploited and, possibly, endangered. Some have questioned whether young children ought to be employed at all — especially while attending school.

Discussion of child labor would seem to suggest trade-offs, resting upon fundamental socio-economic philosophy and the value one places upon time. For example, when is child labor a healthy and useful introduction to the world-of-work? And, when might it divert young persons from academic work and/or place them at physical (or psychological) risk? Do children (however defined) need time for their own purposes; and, if so, how much time? How might one distinguish between freedom (to play, to think, to associate informally with peers) and idleness that may be conducive to activities that may be less wholesome than some types of work? Is some work *suitable* for young children (persons less than 18 years of age) and, if so, how might *suitable work* be distinguished from work that is not suitable or that is “particularly hazardous” for persons under 18 years of age?

The history of child labor in American workplaces can be divided, roughly, into three periods. *First*. From the late 19th century to 1941, reformers sought to remove children from the workplace (whether factory, field, or tenement house) and to encourage more extended school attendance. *Second*. With World War II, the focus shifted to alleged labor shortages for war production. Some urged modification of work restrictions for older children: too young for the draft but old enough to be useful employees. *Third*. By the late 1940s, another shift took place. Too many older youths were believed to be out of school, out of work, and unable to find

¹ This report is a brief introduction to child labor and related policy issues. For an authoritative statement of the child labor requirements under the Fair Labor Standards Act, consult 29 C.F.R. Part 570.

employment for which, it was argued, they were often unprepared both in terms of training and discipline. Thus, various “school-to-work” transition programs were developed together with “incentives” for employers to hire youth workers.

This report is intended as an brief introduction to the issue of child labor. It sketches the early history of child labor regulation, reviews recent federal initiatives in that area, and discusses concerns voiced through the 108th Congress.

Early Child Labor in America

Prior to the 20th century, employment of children largely reflected socioeconomic class stratification. Where children were of working-class families, it was largely assumed that they would work — even when they were very young. Some were employed in the *street trades*: delivery of newspapers and telegrams, shining boots and shoes, running errands in various (often, unwholesome) sections of the city and at whatever hours the task demanded. Others were engaged in *industrial homework*: work often reserved for the very young who could work, usually alongside a parent or another adult, in a tenement flat in segments of garment production or in other types of work that could be performed, sometimes on a *piece rate* basis, in one’s place of residence. Still others worked in mines or factories: most notoriously, perhaps, the *breaker boys* in the coal mines, the child workers in the textile mills, and the helpers in the glass factories.

Agricultural labor by children seems always to have been in a category by itself. Usually, until the early 20th century, such work seems to have been on the family farm (whatever its size) or in an agricultural operation in the general vicinity of a youth’s place of residence — though he (or she) might reside and work beyond the view and reach of a parent. Such work was no less hazardous — and no less arduous — than that of the streets or tenement or industrial labor. Indeed, in some respects, agricultural work may have been more dangerous.

Regulation of child labor has been motivated by diverse concerns: economic, humane, and more broadly social. In the 19th and early 20th centuries, child workers were often viewed as an alternative source of low-wage labor who vied with their parents and other adults for employment — even at the cost of their own health and education. Products of child labor competed with goods produced by adults, exerting a downward pressure on wages and living standards. Aside from health and safety hazards, inadequate rest, it was argued, left children ill-suited for educational activities and, in turn, as adults, ill-prepared for employment or for the support of their own children — thus, extending the cycle of poverty and adding to social-welfare costs.²

² There is an extensive literature on child labor in America during the late 19th and early 20th centuries. See, for example Edward N. Clopper, *Child Labor in the City Streets* (New York: The Macmillan Company, 1912); Katharine DuPre Lumpkin, and Dorothy Wolff Douglas, *Child Workers in America* (New York: Robert M. McBride & Company, 1937); Edwin Markham, Benjamin B. Lindsey, and George Creel, *Children In Bondage* (New York: (continued...)

Opposition to Child Labor Begins to Organize

The trade union movement early voiced strong opposition to child labor. New York labor activist Samuel Gompers championed child labor reform during the late 19th century and later, as president of the American Federation of Labor (AFL), used his influence to improve the lot of working children.³ Worker's advocate "Mother" (Mary Harris) Jones brought added visibility to the plight of child workers — and to that of their parents as well.⁴ After its organization in 1899, the National Consumers League (NCL), under the leadership of Florence Kelley, took up the campaign against child labor as did a significant body of social workers, clergy, and concerned individuals.⁵ In 1904, these forces were drawn together with the establishment of the National Child Labor Committee (NCLC) which, thereafter, would remain a central force in the movement to end exploitation of children in the workplace.⁶

² (...continued)

Hearst's International Library Co., 1914); John Spargo, *The Bitter Cry of the Children* (New York: The Macmillan Company, 1906); and John William Larnier, Jr., "The Glass House Boys: Child Labor Conditions in Pittsburgh's Glass Factories, 1890-1917," *The Western Pennsylvania Historical Magazine*, Oct. 1965. pp. 355-364.

³ Robert H. Bremner, *From the Depths: The Discovery of Poverty in the United States* (New York: New York University Press, 1964). Page 218 notes: "The labor unions had been active in the [child labor] movement since the days of the Knights of Labor in the 1880's, and Gompers only slightly exaggerated the facts when he declared [in 1906]: 'There is not a child labor law on the statute books of the United States but has been put there by the efforts of the trade-union movement.'" But, he added: "It is unlikely ... that the campaign against child labor would have made such rapid headway after 1900 had it not been for the pressure brought to bear on both public opinion and legislatures by voluntary groups such as the consumers' leagues, state charities aid associations, federations of women's clubs, and the child-labor committees." See also Samuel Gompers, *Labor and the Common Welfare* (New York: E. P. Dutton & Company, 1919), p. 129; Jeremy P. Felt, *Hostages of Fortune: Child Labor Reform in New York State* (Syracuse: Syracuse University Press, 1965), pp. 10-13, 60, and 196-197; and Roger W. Walker, "The A.F.L. and Child-Labor Legislation: An Exercise in Frustration," *Labor History*, summer 1970, pp. 323-340.

⁴ Mary Field Parton (ed.), *The Autobiography of Mother Jones* (Chicago: Charles H. Kerr Publishing Company, 1980), pp. 71-83, 118-131.

⁵ Concerning the work of the National Consumers' League, see Josephine Goldmark, *Impatient Crusader* (Urbana: University of Illinois Press, 1953), a biography of Florence Kelley; Kathryn K. Sklar, *Florence Kelley and the Nation's Work*, (New Haven: Yale University Press, 1995); and Landon R. Y. Storrs, *Civilizing Capitalism: The National Consumers' League, Women's Activism, and Labor Standards in the New Deal Era* (Chapel Hill: University of North Carolina Press, 2000). (Hereafter cited as Storrs, *Civilizing Capitalism*).

⁶ Walter I. Trattner, *Crusade for the Children: A History of the National Child Labor Committee and Child Labor Reform in America* (Chicago: Quadrangle Books, 1970). (Hereafter cited as Trattner, *Crusade for the Children*). For a discussion of the politics of child labor reform during this early period, see Hugh C. Bailey, *Edgar Gardner Murphy: Gentle Progressive* (Coral Gables: University of Miami Press, 1968), pp. 65-108; and Herbert J. Doherty, Jr., "Alexander J. McKelway: Preacher to Progressive," *Journal of Southern History*, May 1958, pp. 177-190.

Child labor regulation generally commenced at the state level. Early laws were experimental, loosely drawn, and, where they exerted a restraining influence, subject to court challenge. Each type of work by children — in the mines, factories, fields, the street trades, etc. — presented its own special challenges for reformers; but, industrial homework by children was especially difficult to restrain. Although often not formally *employed*, children worked in tenement sweatshops making clothing, processing food, and engaging in whatever other work might profitably be conducted at home. Any tenement might become a little factory where conditions were adverse (often, effectively unregulated) and hours of work were unrestrained except by exhaustion. Thus, child labor and industrial homework, from a regulatory/reform perspective, became intermeshed. Reformers tended to agree that child labor could not be controlled while industrial homework continued: that regulation of the latter, *per se*, would never be successful. A total ban on the system was needed.⁷

Reformers, however, did not always agree on timing or overall strategy. Most seem to have concurred that, ultimately, reform would need to be federal. Faced with state regulation of child labor and/or industrial homework, employers could simply move to another state. Further, those who utilized child labor could play one jurisdiction against another in terms of wage-based economic development. For labor standards, it was *a race to the bottom*. At the same time, the strength of reform organization varied from one state to another. Some believed that state action was more nearly feasible than securing broader national change — at least at that time.

The Early Federal Role in Child Labor Regulation

In 1906, Senator Albert Beveridge (R-Ind.) and Representative Herbert Parsons (R-N.Y.) introduced legislation to prevent employment of children in factories and mines. Debate on this first federal initiative continued through several years but it did not become law. However, with the work of the various reform groups, the proposal raised the visibility of child labor as a public policy issue.⁸ In 1907, legislation was approved (P.L. 59-41) which authorized the Secretary of Commerce and Labor (then, a single department) “to investigate and report upon the industrial, social, moral, education[al], and physical condition of woman and child workers in the United States.” The result was a detailed survey which appeared in 19 volumes between 1910 and 1913.⁹ Building from that evidentiary record, Congress turned again to the legislative process to deal with child labor and related problems.

⁷ Ruth E. Shallcross, *Industrial Homework: An Analysis of Homework Regulations, Here and Abroad* (New York: Industrial Affairs Publishing Co., 1939); Eileen Boris, *Home to Work: Motherhood and the Politics of Industrial Homework in the United States* (New York: Cambridge University Press, 1994); and Ruth Crawford, “Development and Control of Industrial Homework,” *Monthly Labor Review*, June 1944. pp. 1145-1158.

⁸ John Braeman, “Albert J. Beveridge and the First National Child Labor Bill,” *Indiana Magazine of History*, Mar. 1964. pp. 1-36.

⁹ U.S. Congress, Senate, 61st Cong., 2nd sess., Document No. 645. *Report on Condition of Woman and Child Wage-Earners in the United States*, 19 Volumes, Washington, U.S. GPO, 1913. See also U.S. Department of Labor, Bureau of Labor Statistics, Women in Industry Series No. 5, *Summary of the Report on Condition of Woman and Child Wage Earners in the United States*, Washington, GPO, 1916, 445 p.

The Child Labor Initiatives (1916-1924). Although Congress and the advocates of reform sought to limit exploitive/oppressive child labor, the best approach was not immediately clear. Thus, sequentially, Congress moved in three directions — each, uniformly unsuccessful.

In 1916, a decade after the Beveridge proposal, new federal child labor legislation was introduced by Senator Robert Owen (D-Okla.) and by Representative Edward Keating (D-Colo.) with support from the reform community. A regional struggle then in progress pitted one state against another in a contest for economic growth with low-wage non-union labor a bargaining chip. Southern manufacturers viewed child labor restriction as an “effort of northern agitators to kill the infant industries of the south.”¹⁰ The **Owen-Keating Act (1916)**, based on the commerce clause of the Constitution, sought to ban movement in interstate commerce of certain products of child labor. In June 1918, however, the Supreme Court declared the act unconstitutional (*Hammer v. Dagenhart*, 247 U.S. 251), and reformers searched for a new approach.¹¹

Congress next turned to the taxing power as an indirect method for controlling child labor. Senator Atlee Pomerene (D-Ohio) proposed to levy a 10% tax “on the annual net profits of industries” that employed children in violation of certain age and hours standards.¹² The tax penalty would offset any competitive advantage that child labor might otherwise provide. Although the measure was in reality child labor legislation, it was hoped that it might secure Court approval. The Supreme Court demurred and the **Pomerene (child labor tax) Act (1919)** was declared unconstitutional in May 1922 (*Bailey v. Drexel Furniture Company*, 259 U.S. 20).¹³

In the wake of the *Drexel* case, Samuel Gompers met at AFL headquarters with Florence Kelley of the National Consumers League, representatives of the NCLC, and others. After extended discussion and a weighing of options, the group developed a proposal for a constitutional amendment to grant Congress the right “to limit, regulate, and prohibit the labor of persons under 18 years of age.” The **child labor amendment (1924)** involved far more than the mere passing of legislation since the case for approval had to be made to each state legislature. While the proponents of child labor reform began optimistically, support began to erode on a number of fronts for reasons not necessarily associated with child labor *per se*. The

¹⁰ Grace Abbott, “Federal Regulation of Child Labor, 1906-1938,” *The Social Service Review*, Sept. 1939. p. 411. (Hereafter cited as Abbott, *Federal Regulation of Child Labor*).

¹¹ Trattner, *Crusade for the Children*, pp. 119-138. See also Edward Keating, *The Gentleman from Colorado: A Memoir* (Denver: Sage Books, 1964), pp. 349-355; Lawrence R. Berger, and S. Ryan Johannson, “Child Health in the Workplace: The supreme Court in *Hammer v. Dagenhart* (1918),” *Journal of Health Politics, Policy and Law*, spring 1980, pp. 81-97; Arden J. Lea, “Cotton Textiles and the Federal Child Labor Act of 1916,” *Labor History*, fall 1975, pp. 485-494; and Walter I. Trattner, “The First Federal Child Labor Law (1916),” *Social Science Quarterly*, Dec. 1969. pp. 507-524.

¹² Abbott, *Federal Regulation of Child Labor*, p. 416.

¹³ Trattner, *Crusade for the Children*, pp. 138-142.

proposed amendment remained unratified in 1937 when Congress turned back to direct legislation with consideration of the Fair Labor Standards Act.¹⁴

Early New Deal Enactments (1933-1937). From the period of the Beveridge bill (1906) to the New Deal era, children's advocates remained divided over the means for ending exploitive child labor. The reform community initially split with respect to federal action. Then, it had largely coalesced behind the Owen-Keating (1916) and Pomerene (1918) bills, debating long and hard over the wisdom of a constitutional amendment (1924). By late 1932, leaders of the Children's Bureau in the Department of Labor (DOL) and the NCLC, with others, decided to shift their focus away from ratification of the constitutional amendment (which was then perceived to be in doubt) and back toward action by individual states.

In retrospect, this shift of emphasis may have been a misreading of the times. "By 1933," notes Walter Trattner in his reform-oriented study, *Crusade for the Children*, "the spreading contagion of child labor had found every weakness and loophole in state labor legislation." He observes: "Sweatshops and fly-by-night plants were exploiting children for little or no pay, moving at will across state lines to take advantage of laws of nearby states. The individual states were unable to halt these abuses which had far-reaching effects, including the complete breakdown of wage scales." Thus, in competitive terms, some argued, it wasn't feasible for individual states to lead in labor-related reform, even were they predisposed to do so. Trattner concludes: "Everywhere people were looking to Washington for help and direction."¹⁵

Soon after the inauguration of President Roosevelt, Congress passed the National Industrial Recovery Act (NIRA, 1933). Under the National Recovery Administration (NRA), industries were encouraged to develop codes of fair competition, which in many instances came to include minimum wage and overtime pay standards, a ban on industrial homework, and the restriction or elimination of child labor. Elimination of child labor under the Cotton Textile Code seemed, momentarily, a major breakthrough. However, in May 1935, the NIRA was declared unconstitutional (*Schechter Poultry Corp. et al v. United States*, 295 U.S. 495).¹⁶

¹⁴ Ibid., pp. 163-186. See also "Now the States Must Act! The Past, the Present and the Future of the Effort to Free American Childhood," *American Federationist*, July 1924. pp. 541-553 — the AFL journal of which Gompers was editor; Vincent A. McQuade, *The American Catholic Attitude on Child Labor Since 1891* (Washington: The Catholic University of America, 1938), pp. 79-100, and 112-128; Thomas R. Green, "The Catholic Committee for the Ratification of the Child Labor Amendment, 1935-1937: Origin and Limits," *The Catholic Historical Review*, Apr. 1988, pp. 248-269; and Richard B. Sherman, "The Rejection of the Child Labor Amendment. *Mid-America: An Historical Review*, Jan. 1963, pp. 3-17. Sherman analyzes the various factors that contributed to the defeat of the child labor campaign during the 1920s.

¹⁵ Trattner, *Crusade for the Children*, p. 189. See also Irwin Yellowitz, "The Origins of Unemployment Reform," *Labor History*, fall 1968, pp. 354-355.

¹⁶ Margaret H. Schoenfeld, "Analysis of the Labor Provisions of the N.R.A. Codes," *Monthly Labor Review*, Mar. 1935. pp. 591-595; Ella Arvilla Merritt, "Trend of Child (continued...)

The Agricultural Adjustment Act (AAA) of May 1933 and the Jones-Costigan Sugar Stabilization Act (1934) were roughly companion measures to the NIRA. In exchange for certain price supports, the government required grower/producer adherence to certain labor and marketing standards.¹⁷ In 1937, the AAA was similarly declared unconstitutional.

In an effort to salvage NIRA and AAA labor standards, less comprehensive measures followed. *First*. Labor Secretary Frances Perkins, long a child labor reformer, urged that government, *as a consumer* (a more likely constitutional strategy), refuse to purchase items produced by child labor or under unsafe and unclean conditions in tenements (industrial homework). These restrictions were made part of the Public Contracts Act (1936), co-sponsored by Senator David Walsh (D-Mass.) and Representative Arthur Healey (D-Mass.) — i.e., the Walsh-Healey Act.¹⁸ *Second*. Agricultural labor standards, though limited, reemerged in the Beet Sugar Act (1937), again linked to a federal support system.¹⁹

The FLSA and General Child Labor Regulation (1938). Following adoption of Walsh-Healey, Secretary Perkins urged passage of general federal minimum wage and overtime pay legislation. Trattner notes that Roosevelt, possibly believing that the wage/hour measure could more easily be enacted “if it were made more attractive by integrating it with child labor,” combined the several provisions.²⁰ Perkins recalls that child labor provisions were added, late in the process, at the urging of Grace Abbott, for many years head of the Children’s Bureau at DOL. “The President readily agreed and was delighted that we might make this bill cover child labor as well as low wages and long hours.”²¹ After exhaustive debate, the Fair Labor Standards Act (FLSA), with its child labor provisions, became law during the summer of 1938.²²

¹⁶ (...continued)

Labor, 1927-1936,” *Monthly Labor Review*, Dec. 1937, pp. 1371-1390.

¹⁷ Trattner, *Crusade for the Children*, pp. 209-210; Fred Greenbaum, *Fighting Progressive: A Biography of Edward P. Costigan*, (Washington: Public Affairs Press, 1971), pp. 143-154; and, Stuart Jamieson, *Labor Unionism in American Agriculture*, Washington, U.S. Department of Agriculture, Bulletin No. 836, June 1945, pp. 243-244.

¹⁸ Herbert C. Morton, *Public Contracts and Private Wages: Experience Under the Walsh-Healey Act* (Washington: The Brookings Institution, 1965), pp. 14-15, and 23-24. Where government efforts to regulate private sector labor standards had often been disallowed by the courts, setting standards for itself as a consumer had been more successful.

¹⁹ Concerning constitutional issues of this period, see John W. Chambers, “The Big Switch: Justice Roberts and the Minimum-Wage Cases,” *Labor History*, winter 1969, pp. 44-73.

²⁰ Trattner, *Crusade for the Children*, p. 203. See also Storrs, *Civilizing Capitalism*, p. 334.

²¹ Frances Perkins, *The Roosevelt I Knew* (New York: The Viking Press, 1946), p. 257.

²² Although child labor concerns were voiced during debate on the wage/hour legislation, separate hearings were held on that issue. See U.S. Congress, Senate Committee on Interstate Commerce, *To Regulate the Products of Child Labor*, 75th Cong., 1st sess., May 12, 18, and 20, 1937, 192 p.

The FLSA was not a complete victory for advocates of child labor regulation. Historian Jeremy Felt argues that the act may have served “as a deterrent and as an educational force” but adds that “in those areas where children are useful they continue to be employed.”²³ Further, the act did not deal with competition from goods produced abroad by child workers under conditions the FLSA proscribed in America.

During the early 1940s, as enforcement of the FLSA commenced, DOL found (like reformers early in the century) that illegal exploitation of children as laborers was extremely difficult to eradicate where industrial homework persisted. Attempts to regulate the latter were largely unproductive. By the mid-1940s, DOL had imposed an outright ban on industrial homework in certain garment-related fields. Thereafter, abusive child labor seems to have faded as a public policy issue, gradually being replaced by concern with youth unemployment, training, and “school-to-work” transition.

Child Labor Under the Fair Labor Standards Act

The FLSA (1938, as amended) protects children by setting conditions under which they may be employed and, in certain types of work, prohibiting their employment altogether.²⁴ While the basic structure of the act has changed little since 1938, Congress has altered specific provisions of the statute and DOL has variously refined its administration through the rulemaking process.

The Basic Pattern of Coverage

Under the FLSA, employers may not use “oppressive child labor in commerce or in the production of goods for commerce.” “Oppressive” is partially defined in the act and partly left to the discretion of the Secretary. Persons under 18 years of age may not be employed in mining or manufacturing or “in any occupation which the Secretary of Labor shall ... declare to be *particularly hazardous* for the employment of children ... or detrimental to their health or well-being.” (Italics added.)

²³ Jeremy P. Felt, “The Child Labor Provisions of the Fair Labor Standards Act,” *Labor History*, fall 1970, pp. 4478-479. Jonathan Grossman, then DOL staff historian, similarly notes: “The law avoided some sectors of the work force where most abuses of child labor were concentrated, such as migrant labor, and ‘street trades,’ such as newspaper venders and shoeshine boys. According to one estimate, only 30,000 child laborers outside of agriculture would be affected.” See Jonathan Grossman, “Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage,” *Monthly Labor Review*, June 1978, p. 29.

²⁴ Section 203(l) defines “oppressive child labor.” Section 212 defines the relationship of goods produced by child labor with movement in interstate commerce. Section 213(c) sets forth the specialized treatment of child workers under the act and the pattern of exemptions from otherwise standard coverage. The states may (and normally do) have their own child labor laws. While these may supplement the FLSA, they are not necessarily consistent with the FLSA standard. Where there is overlapping coverage, the higher standard (most protective of the youth worker) will normally prevail. When exploring coverage in any particular case, both the state and federal statutes need to be taken into account.

Otherwise, 16 years of age is the usual minimum age for employment. The Secretary may permit employment of persons 14 to 16 years of age in work not deemed “oppressive,” that does not interfere with the youth’s schooling, and that is not detrimental to his/her “health and well-being.” The Secretary has established hours during which children of various ages may work: i.e., the number of hours they may be employed, taking into account the demands of academic attendance.

Exemptions

The Fair Labor Standards Act is a broad umbrella statute that sets forth general policies and, at the same time, may specify in precise detail — either in the statute *per se* or through implementing regulations — how coverage is to be applied: i.e., who is covered and who is exempt. Because of the technical nature of wage/hour and child labor law, it may be unwise to accept any segment of the statute (or regulations) in isolation and at face value. Most provisions of the act have either been the subject of litigation or have long administrative/legislative histories. What may seem obvious on the surface may, in fact, be inordinately complex.²⁵

The FLSA, rooted in the commerce clause of the Constitution, excludes from coverage children who are not involved in activities affecting interstate commerce — *though such persons may be protected by state statutes*. Also excluded are children employed by “a parent or a person standing in place of a parent employing his own child or a child in his custody.” A child, for instance, assisting a parent (helping around a “mom-and-pop” corner grocery or doing chores around the home) would not be covered under federal child labor law. Nor do the child labor provisions of the act apply to children employed as actors or in related activities. Traditionally, the “street trades” (e.g., newspaper delivery) have been regarded as appropriate for children and, thus, are not restrained by FLSA child labor provisions. During the mid-1990s, the Departmental regulations were altered, administratively, to allow youth of 14 and 15 years of age to work in certain “sports-attending services at professional sporting events.”

Child/youth employment in agriculture is treated somewhat differently from non-agricultural employment.²⁶ For example, a child working for a parent on a family farm would not be covered under the FLSA. There are also disparities of treatment with respect to age and the types of work that children may perform. (See **Table 1** for a very general summary of these requirements.) Under the 1977 amendments to the act, a specialized exemption, carefully circumscribed, was written

²⁵ See Title 29 C.F.R. Part 570, for a more complete explanation of child labor regulation in general. In addition, DOL may have issued “opinion letters” that apply a provision of the FLSA to specific workplaces.

²⁶ The Department of Labor *estimates* that, during the late 1990s, about 7% of all farmworkers were between 14 and 17 years of age: i.e., about 126,000 children in that age group were employed on American farms. However, an unknown number of youth younger than 14 years of age are also employed in agriculture. See U.S. Department of Labor, *Report on the Youth Labor Force*, pp. 52-53.

into the statute for the employment of children of 10 and 11 years of age as hand harvest workers in agriculture.²⁷

Table 1. Summary of Child Labor Regulation Under the Fair Labor Standards Act

Non-agricultural jobs	Agricultural employment
<p>Regulations governing youth employment in non-farm jobs differ somewhat from those pertaining to agricultural employment. In non-farm work, the permissible jobs and hours of work, by age, are as follows:</p> <p>(1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;</p> <p>(2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and</p> <p>(3) Youths 14 and 15 years old may work outside school hours in various non-manufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a non-school week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.</p> <p>Fourteen is the minimum age for most non-farm work. However, at any age, youth may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their sole-owned non-farm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.</p>	<p>In farm work, permissible jobs and hours of work by age, are as follows:</p> <p>(1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;</p> <p>(2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;</p> <p>(3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent's written consent or on the same farm as the parent(s);</p> <p>(4) Youths under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.^a</p>

Source: Material in this table has been excerpted from the *Handy Reference Guide to the Fair Labor Standards Act*, published by the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, WH Publication 1282, Revised Oct. 1996. **This summary is not all-inclusive.** See Title 29 C.F.R, Part 570, for a more complete explanation of child labor regulation.

- a. The "not covered by minimum wage" provision limits the exemption, effectively, to small farms. Children are allowed to perform *chores* for their parents on family farms and, at any age, to assist their parents.

²⁷ As the 1977 FLSA amendments were written, a grower could employ children age 10 and 11 so long as the grower/employer could demonstrate that any pesticides used in the production process would not be harmful for children under 12. Since growers have not been able to demonstrate the harmlessness of such pesticides, etc., they have the choice of (a) not using pesticides or (b) not employing children age 10 or 11. Children 12 years of age can be employed.

Enforcement

Even where child labor is banned, enforcement can be difficult. FLSA compliance staff is relatively small and enforcement is often *complaint driven*. Child workers, themselves, are not likely to complain. If children are employed with parental knowledge and/or consent, complaints from their family may not be frequent — even where such employment may be illegal and/or hazardous to the child. Where migratory agricultural work is concerned, enforcement problems are more complex.

Children, like adults, work for diverse reasons: e.g., peer pressure, desire for otherwise unaffordable consumer goods. But, they may also enter the workforce under pressure from parents who believe that employment, even for young children, provides good discipline and keeps youngsters off the street and out of mischief. A traditional argument for child labor has been economic necessity: i.e., contributing to family income. If child workers and their parents fail to cooperate in enforcement of child labor law, then DOL compliance activity can become extremely difficult.

Some have urged non-parental oversight. Academic problems or frequent truancy could indicate oppressive child labor; but, do school authorities have the time and resources to monitor the work arrangements of their students? When physicians treat young persons for problems that might be work-related, can they reasonably be expected to contact the child/patient's employer and/or inspect working conditions? Efforts in these directions, early in the century, were often unsuccessful but systems of work permits — sometimes linking school attendance and performance to employment — continue to be urged, together with work injury reporting.

Hazardous Occupations Orders

Under the FLSA, manufacturing and mining work is deemed too hazardous *for persons under 18 years of age*. However, the Secretary may, at his or her discretion, designate other types of work as similarly too hazardous for persons under 18. In such cases, the Secretary will issue “hazardous occupations orders” or HOs which are incorporated in the Code of Federal Regulations (see **Table 2**).

Often, an exception will be made (and written into the HO) with respect to apprentices and student-learners. The regulations make clear that, where there is a conflict between the HOs and any other provision of law, the higher standard prevails. Each HO is precise, frequently responding to problems that have arisen in the workplace. Currently, there are 17 specific HOs in place with respect to non-agricultural employment which include (among others) occupations such as work involving “manufacturing or storing explosives,” “operation of power-driven meat-processing machines and occupations involving slaughtering, meat packing or processing, or rendering,” and “logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill.” Eleven others have

been published with respect to agricultural employment (see **Table 3**). Changes in the HOs or HOAs often invoke close oversight by the Congress.²⁸

**Table 2. Hazardous Occupations Orders
Issued by the Secretary of Labor:
Work Generally Unsuitable for Certain Young Persons**

HO 1 (29 C.F.R. § 570.51)	Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.
HO 2 (29 C.F.R. § 570.52)	Occupations of motor-vehicle driver and outside helper.
HO 3 (29 C.F.R. § 570.53)	Coal mine occupations.
HO 4 (29 C.F.R. § 570.54)	Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill.
HO 5 (29 C.F.R. § 570.55)	Occupations involved in the operation of power-driven wood-working machines.
HO 6 (29 C.F.R. § 570.56)	Exposure to radioactive substances and to ionizing radiations.
HO 7 (29 C.F.R. § 570.58)	Occupations involved in the operation of power-driven hoisting apparatus.
HO 8 (29 C.F.R. § 570.59)	Occupations involved in the operations of power-driven metal forming, punching, and shearing machines.
HO 9 (29 C.F.R. § 570.60)	Occupations in connection with mining, other than coal.
HO 10 (29 C.F.R. § 570.61)	Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat packing or processing, or rendering.
HO 11 (29 C.F.R. § 570.62)	Occupations involved in the operation of bakery machines.
HO 12 (29 C.F.R. § 570.63)	Occupations involved in the operation of paper-products machines.
HO 13 (29 C.F.R. § 570.64)	Occupations involved in the manufacture of brick, tile, and kindred products.
HO 14 (29 C.F.R. § 570.65)	Occupations involved in the operations of circular saws, band saws, and guillotine shears.
HO 15 (29 C.F.R. § 570.66)	Occupations involved in wrecking, demolition, and shipbreaking operations.
HO 16 (29 C.F.R. § 570.67)	Occupations in roofing operations.
HO 17 (29 C.F.R. § 570.68)	Occupations in excavation operations.

Note: Each of these Hazardous Occupation Orders is developed in detail in the Code of Federal Regulations with specific qualifying factors explained.

²⁸ See 29 C.F.R. § 570.50.

Table 3. Hazardous Occupations Orders Issued by the Secretary of Labor: Work Unsuitable for Young Persons Under 16 Years of Age Employed in Agriculture

HOA 1	Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
HOA 2	Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: — Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner; — Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or — Power post-hole digger, power post driver, or nonwalking type rotary tiller.
HOA 3	Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: — Trencher or earthmoving equipment; — Fork lift; — Potato combine; or — Power-driven circular, band, or chain saw.
HOA 4	Working on a farm in a yard, pen, or stall occupied by a: — Bull, boar, or stud horse maintained for breeding purposes; or — Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).
HOA 5	Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
HOA 6	Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) At a height of over 20 feet.
HOA 7	Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
HOA 8	Working inside: — A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere; — An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; — A manure pit; or — A horizontal silo while operating a tractor for packing purposes.
HOA 9	Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified ... as Category I of toxicity, identified by the word “poison” and the “skull and crossbones” on the label; or a Category II of toxicity, identified by the word “warning” on the label.
HOA 10	Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.
HOA 11	Transporting, transferring, or applying anhydrous ammonia.

Source: 29 C.F.R. Parts 570-571.

Re-Emergence of the Child Labor Issue (1982-2000)

By the late 1940s, exploitation and endangerment of young children in the world of work was popularly believed to have been resolved through legislation (the FLSA) and through the administrative discretion of the Secretary of Labor in implementing the FLSA. But, occasionally, someone would recall that very young children still toiled in field harvest work or an especially egregious accident would bring the more general issue back to the front page.

At the same time, there had begun a gradual shift of focus: to a *new* issue i.e., inadequate opportunities for youth employment — and the related question of delinquency. In May 1961, for example, some 500 men and women met in Washington “to discuss [this] ... serious but little known national problem.” The summary report of the conference observed:

Again and again in the past decade, juvenile delinquency and the outbreaks of youthful street gangs have made headlines. The fact that large numbers of our youth, 16 to 21 years of age, are out of school and unemployed, significant as it may be in terms of delinquency, has far greater significance in terms of what changes are taking place in our society

The summary report pointed to an unemployment rate of 17.1% for this age group — with a somewhat higher rate for minority youth. “There have always been young people who dropped out before finishing high school or grade school But until recently, except during the depression, there were ample unskilled jobs for workers of limited education.” That, the report stated, was no longer true. “When no work is to be had at home, the small-town boys and the farm boys go off to the cities where, ill-prepared for urban jobs, they swell the ranks of the young unemployed.” And that, argued Harvard’s James B. Conant, “is *social dynamite*.”²⁹

Through the next two decades, the literature on youth employment (youth joblessness) grew rapidly with numerous panaceas for the *problem* being advanced. In retrospect, there seems to have been little agreement among policy analysts — except that the problem was serious.³⁰ However, youth unemployment (or joblessness) notwithstanding, large numbers of youths have continued to seek and to find work (see **Table 4**).

²⁹ National Committee for Children and Youth, *Social Dynamite: The Report of the Conference on Unemployed, Out-of-School Youth in Urban Areas, May 24-26, 1961*, Washington, 1961, pp. 1-2. Italics in original.

³⁰ The article, “To Be Young, Black and Out of Work,” *The New York Times Magazine*, Oct. 23, 1977, p. 39, stated: “Nearly half of all minority youths between 16 and 19 who are in the work force are unemployed.” Similarly, *The AFL-CIO American Federationist*, Jan. 1978, p. 1, in an article by Barbara Becnel, “Black Workers: Progress Derailed,” observed that unemployment rates “for black teenagers have reached catastrophic levels. In 1976 they averaged 39.2 percent, and in July 1977 they reached an all-time recorded high of 45.5 percent.” See U.S. Congress, Joint Economic Committee, *Youth Unemployment*, hearing, 94th Cong., 2nd sess., Sept. 9, 1976 (Washington: GPO, 1977), 130 p.; and U.S. Congress, Senate Committee on the Budget, *Youth Unemployment*, hearing, 95th Cong., 2nd sess., Feb. 17, 1978 (Washington: GPO, 1978), 136 p.

Table 4. Employed Persons 15 to 17 Years of Age by Class of Worker, Selected Characteristics, School and Summer Months, 1996-1998

Sex, age, race, & Hispanic origin ^b	School months			Summer months		
	Total employed (in thousands)	Percent distribution ^a		Total employed (in thousands)	Percent distribution ^a	
		Wage & salary workers	Self-employed workers ^c		Wage & salary workers	Self-employed workers ^c
Total, 15-17 years	2,896	97.1	2.3	3,969	95.9	3.3
Male	1,460	96.3	2.9	2,070	94.7	4.3
Female	1,437	97.8	1.8	1,899	97.2	2.2
Age 15	366	92.3	6.3	694	90.3	8.2
Age 16	1,011	97.2	2.2	1,412	96.0	3.0
Age 17	1,520	98.1	1.4	1,862	97.9	1.6
White, 15-17 years	2,569	97.0	2.4	3,474	95.7	3.5
Black, 15-17 years	240	98.8	1.3	376	98.4	1.6
Hispanic origin, 15-17 years	225	97.3	1.8	309	96.8	1.6

Source: The table is adapted from data provided in the *Report on the Youth Labor Force*, published by the U.S. Department of Labor, and updated Nov. 2000, p. 43. Data are pooled (i.e., combined to increase the sample size) across a three-year period.

a. Percentages may not add up to 100% because unpaid family workers are not included here. There may also be some impact from rounding.

b. Identification of youth by race and ethnicity may result in some double counting.

c. Self-employed workers are those who work in their own business, trade, or profession and not for a regular employer: for example, mowing lawns, baby sitting, etc.

Many young persons under the age 15 are employed, but surveys have only commenced to assess their work patterns.³¹ However, an absence of data ought not to be construed to imply that persons younger than 15 years of age are not employed.

³¹ Concerning employment of workers under 15 years of age, see the collection of essays on youth employment, based on the National Longitudinal Surveys Program of the Bureau of Labor Statistics commencing from 1997 (NLSY97), published in the August 2001 edition of the *Monthly Labor Review*. In their article, "Illegal Child Labor in the United States: Prevalence and Characteristics" (*Industrial and Labor Relations Review*, Oct. 2000, pp. 17-40), Douglas L. Kruse and Douglas Mahony examine this sub-set of youth workers and evaluate the value of currently available data on workers under 15 years of age.

The extent of their employment and the socio-economic circumstances of their lives may be open to speculation.

Employment of older youth, however, is better understood. Looking at labor force participation by 15- to 17-year-old-youth through the period 1996-1998, on average, “about a fourth of both male and female youths were employed during average school months. During the summer, about one-third of both male and female youths worked,” the Department of Labor reported. But DOL also reported significant variations in employment status when considered in terms of race and ethnicity. About 28% of white youths were employed during school months; about 38% during the summer. For blacks, the comparable figures were 13% (school months) and 20% (summer); for youth of Hispanic origin, 15% (school months), 20% (summer).³²

The Reagan Era Initiatives

In July 1982, Labor Secretary Raymond Donovan (for the Reagan Administration) proposed that existing child labor policy be updated. The Administration’s plan would have: (a) opened more opportunities for employment for children of 14 and 15 years of age; (b) extended the number of hours per day and per week that children might be employed; (c) revised standards for the employment of child workers in jobs once considered too hazardous; and (d) simplified and broadened the manner in which employers could become certified by DOL to employ full-time students at less than the standard minimum wage.

The Donovan proposal sparked an immediate reaction. When opening hearings before the House Labor Standards Subcommittee of which he was chair, Representative George Miller (D-Calif.) sharply criticized the Administration’s proposals.³³ In turn, Wage/Hour Administrator William Otter defended them as sound and reasonable public policy. He read from letters from young persons, parents and potential employers urging flexibility in child labor regulation so that 14- and 15-year-olds could be more easily employed. Although acknowledging a high unemployment rate among 16- to 19-year-olds, Otter affirmed his concern “about the unemployment levels of all age groups” and stated the view that “[u]nreasonable and artificial impediments to the employment of all age groups should be eliminated.”³⁴

Proponents and critics seemed to agree that the Reagan Administration “had walked into a minefield” where the child labor issue was concerned.³⁵ In February 1983, *Nation’s Restaurant News* reported that “Federal wage and hour regulators are

³² U.S. Department of Labor, *Report on the Youth Labor Force*, updated Nov. 2000, pp. 30-31. Hispanics are included in both black and white data sets. Data are pooled across a three-year period.

³³ Press release from Congressman George Miller, July 27, 1982.

³⁴ U.S. Congress, House Committee on Education and Labor, Subcommittee on Labor Standards, *Oversight Hearings — Proposed Changes in Child Labor Regulations*, hearing, 97th Cong., 2nd sess., July 28, and Aug. 3, 1982, pp. 1-30.

³⁵ Peter Edelman, “Child Labor Revisited,” *The Nation*, Aug. 21-28, 1982, p. 136.

sifting through a blizzard of letters from restaurant operators across the nation supporting the Reagan Administration's plan to relax child labor restrictions on the employment of young teenagers in food-service outlets." But, the *News* also reported that the proposal had "generated a storm of protest from educational groups, labor unions and Congressmen who expressed outrage over what some described as a scheme to enable restaurateurs to exploit school age workers."³⁶

For a time, the regulations remained under review with periodic speculation that their release was imminent. In the spring of 1984, the *Nation's Restaurant News* speculated that they would likely appear "by the end of the year."³⁷ Later, it was reported that the proposal was "likely to resurface" in the near future.³⁸ But, after a year, it was noted that DOL was again delaying "action on a regulation governing the employment of minors between the ages of 14 and 16."³⁹ Some suggested "a politically inspired delay" in release of a final rule.⁴⁰ Whatever the cause, a final revision never appeared.

Controversies and Changes of Law

As the Reagan Administration proposals receded ever further into the background, several committees of the Congress conducted hearings on aspects of child labor — a process that would continue, intermittently, through the 1980s and 1990s. But, although they established an evidentiary record, no general legislation restructuring child labor law was approved.

In 1987, Labor Secretary William Brock announced formation of a Child Labor Advisory Committee to assist him with interpretation of child labor issues. The Committee was chaired by Linda Golodner who was also executive director of the National Consumers' League. The advisory body quickly concluded that child labor was "often on the low end of the priority list" at DOL and that it took "very, very long for [its] ... recommendations to get through the bureaucracy." In the spring of 1989, the Department explained that the suggestions of the Committee had, gradually, moved through four lower levels of review and that, by mid-May, they had reached the desk of the Administrator of the Wage and Hour Division.⁴¹

³⁶ *Nation's Restaurant News*, Feb. 28, 1983, p. 2.

³⁷ Bureau of National Affairs, *Daily Labor Report*, Apr. 23, 1984, p. A7.

³⁸ Ken Rankin, "Pols May Pull Child Labor Scheme off Back Burner," *Nation's Restaurant News*, Nov. 26, 1984, p. 9.

³⁹ Bureau of National Affairs, *Daily Labor Report*, Apr. 30, 1985, p. A9.

⁴⁰ Joseph A. Walsh, "Teen-Age Work Rules Targeted Again," *UA Journal*, Sept. 1982, p. 4.

⁴¹ Bureau of National Affairs, *Daily Labor Report*, May 18, 1989, pp. A10-A11. The Committee had addressed such issues as "door-to-door" sales by persons 14 to 15 years of age, a special overtime exemption for "bat boys," and work around commercial paper balers. It also examined the structure of penalties for child labor violations. During this period, GAO was looking into some of these same issues while the National Consumers' League launched its own independent review of child labor practices.

Administrative changes in the wake of the 1988 election may have caused further delay in moving forward with child labor issues. With the appointment of Elizabeth Dole as Secretary of Labor (January 1989), the Department appears to have developed a more active interest in the welfare of working children. In mid-1989, Secretary Dole announced appointment of William Brooks of General Motors to serve as Assistant Secretary for Employment Standards and charged him, *inter alia*, with child labor issues.⁴²

Almost at once, the new assistant secretary was confronted with a GAO report affirming that child labor violations had increased dramatically during recent years. But GAO also suggested that data concerning work (and injuries) involving young persons were not entirely satisfactory. A more nearly adequate database was needed.⁴³

Departmental initiatives, with investigations by GAO and the Consumers' League, combined with existing congressional concern to give the issue of child labor enhanced visibility. In early 1990, Brooks informed the Advisory Committee that a special task force on child labor would be formed within DOL and would look into such issues as possible revision of the hazardous work orders and the penalty structure for child labor violations. Brooks promised, the *Daily Labor Report* reported, "that in the next six months, rigorous enforcement of child labor law will be the watchword of the agency."⁴⁴ Hearings followed — along with new legislative proposals. And, DOL launched *Operation Child Watch* — the first in a series of "sweeps" or general inspections aimed at compliance.⁴⁵ Changes were made in the penalty structure and, presumably, in DOL's enforcement policy.

Some viewed DOL's initiatives as a "commendable start" — but there were also misgivings. Representative Don Pease (D-Ohio), one of the more outspoken advocates of child labor reform, argued that something more was needed than "occasional public relations events" and intermittent crack-downs on violators. While Pease seems to have favored legislative reform, the Bush Administration apparently did not.⁴⁶ In June 1990, Brooks assured the National Grocers Association that no new legislation was necessary: that any needed changes "can be made administratively."⁴⁷ The status of the Advisory Committee was unclear. Golodner reported in November of 1990 that no meeting of the Committee had been held since early in the year, that the terms of current members had expired in March, and that

⁴² Bureau of National Affairs, *Daily Labor Report*, July 31, 1989, pp. A6-A7; and Aug. 30, 1989, pp. A7-A8.

⁴³ Bureau of National Affairs, *Daily Labor Report*, Nov. 22, 1989, pp. A7-A8.

⁴⁴ Bureau of National Affairs, *Daily Labor Report*, Feb. 8, 1990, pp. A10-A12.

⁴⁵ Bureau of National Affairs, *Daily Labor Report*, Mar. 19, 1990, pp. A16-A17; May 1, 1990, p. A11; and June 26, 1990, pp. A8-A9.

⁴⁶ Bureau of National Affairs, *Daily Labor Report*, May 4, 1990, pp. A13-A15.

⁴⁷ Bureau of National Affairs, *Daily Labor Report*, June 25, 1990, p. A8.

no new members had been named by DOL. In late 1990, Secretary Dole indicated her intent to retire. Brooks resigned to return to General Motors.⁴⁸

In 1994, the Clinton Administration proposed a general review of child labor regulation, similar in scope to that proposed by Secretary Donovan — though of a different thrust. Comprehensive oversight and administrative reform continued to be discussed but, essentially, both Congress and DOL proceeded on an *ad hoc* basis.

The “Bat Boy” Issue. In April 1986, Senator Dan Quayle (R-Ind.) proposed that child labor law be loosened to permit 14- and 15-year-olds to work as bat boys or bat girls for professional baseball teams — even when games might run until late at night. The Senator stated that baseball “is the All-American sport” and indicated that youngsters should not be forced to wait until they were 16 years of age “to associate with the players of their home town teams.”⁴⁹ Congress mandated a study of the question — and the issue was allowed to die.

In the spring of 1993, the matter was raised again when it prevented a 14-year-old youngster from Georgia from serving as a bat boy for the Savannah Cardinals. Labor Secretary Robert Reich, faced with the difficulty of explaining the logic of the work hours requirement, suspended its enforcement and proposed to allow children of 14 and 15 years of age to work as late as circumstances might dictate — “before, during, and after a sporting event,” around the playing field, “club house or locker room” — to provide “sports-attending services at professional sporting events.” Certain conditions were specified, intended to protect children from hazardous activity. And thus, by the spring of 1995, the regulation had been changed.⁵⁰

But questions remained. For example, if it were inappropriate, *per se*, for young persons (14 and 15 years of age) to work late hours on a school night, did it really matter what sort of work they were doing? How did “sports-attending services” differ, in that context, from work in the food services industry — or in a real estate or law office entering data into a computer? Might a more routine business environment be preferable to that of professional sports for the education and welfare of 14- and 15-year-olds? Some in “the restaurant industry” argued that “it was unfair to exempt the sports industry from the hours and time restrictions while leaving the restrictions in place for all other employment.”⁵¹

Paper Balers and Compactors. Under Hazardous Occupations Order No. 12, persons under 18 were not allowed to load waste paper and boxes into commercial (industrial) paper balers and compactors. Operation of such equipment, DOL had determined, was especially hazardous for younger workers. Even loading

⁴⁸ Bureau of National Affairs, *Daily Labor Report*, Nov. 5, 1990, pp. A6-A7; and Nov. 13, 1990, p. A6.

⁴⁹ *Congressional Record*, Apr. 9, 1986, p. S9013.

⁵⁰ *Federal Register*, May 13, 1994, p. 25167; and Apr. 17, 1995, pp. 19336-19337. The basis for the decision is explained by Robert B. Reich in his account, *Locked in the Cabinet* (New York: Alfred A. Knopf, 1997), pp. 113-116.

⁵¹ *Federal Register*, Apr. 17, 1995, p. 19337.

them was viewed by the Department as a serious risk. Karen Keesling, Acting Administrator of DOL's Wage and Hour Division, explained that it was not just the loading but that individuals involved in that process would likely reach into a baler or compactor to keep the materials from falling out or to clear jammed materials — and “that is extremely hazardous.”⁵² Conversely, the National Grocers Association termed HO 12 “a prime example of regulatory excess.”⁵³

In March 1995, Representative Thomas Ewing (R-Ill.) introduced H.R. 1114, legislation that would have permitted operation of the baling/compacting machinery by “minors under 18 years of age” — so long as the equipment met safety standards established by the private sector American National Standards Institute (ANSI). A similar proposal was introduced by Senator Larry Craig (R-Ida.). The legislation was supported by the National Grocers Association and opposed by the Child Labor Coalition (a youth advocacy group) and by people in the trade union movement. As signed into law (P.L. 104-174) on August 6, 1996, the legislation had been redrawn to permit workers “who are 16 and 17 years of age ... to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors” that meet ANSI safety standards and where certain other requirements have been met. Whether the qualifying language was adequate to protect the youthful workers, however, remained in dispute.⁵⁴

Work-Related Operation of Motor Vehicles. Hazardous Occupations Order No. 2, as developed at the discretion of the Secretary of Labor, restricted the work-related operation of certain motor vehicles by persons under the age of 18 as “particularly hazardous” for younger workers. While not absolutely precluded, strict guidelines and limitations had to be complied with. Conformity with specified safety standards and operation only during daylight hours was required. Employment-related driving could only be “occasional and incidental” though there might be some doubt about the definition of such terms.

In April 1994, Representative Mike Kreidler (D-Wash.) introduced legislation directing the Secretary to modify HO 2 to permit a wider opportunity for young persons to drive in conjunction with their regular work. No action was taken on the Kreidler bill and in July 1995, new legislation was introduced by Representative Randy Tate (R-Wash.) and Senator Slade Gorton (R-Wash.). Hearings followed but the legislation died at the close of the 104th Congress. In July 1997, Representative Larry Combest (R-Texas) reintroduced the issue as H.R. 2327 (the “Drive for Teen Employment Act”).

⁵² Letter from Karen Keesling to Ronald A. Block (attorney for the National Grocers Association), Oct. 16, 1992.

⁵³ Statement of Thomas F. Wenning, Senior Vice President and General Counsel, National Grocers Association (NGA), July 11, 1995, House Subcommittee on Workforce Protection.

⁵⁴ *Congressional Record*, May 2, 1995, pp. S6009-S6010; Oct. 24, 1995, pp. H10661-H10667; and July 16, 1996, pp. S7912-S7914. See also U.S. Congress, House Committee on Economic and Educational Opportunities, *Authority for 16 and 17 Year Olds to Load Materials into Balers and Compactors*, report to accompany H.R. 1114, 104th Cong., 1st sess., H.Rept. 104-278 (Washington: GPO, 1995).

Though modification of HO 2 had been endorsed by automobile dealers, it had been opposed by the Department of Labor and by groups associated with children's advocacy such as the Child Labor Coalition and the National Consumers League. Persons 16 and 17 years of age, normally, are beginning drivers who will have only recently qualified for a driver's licence. Although some youngsters may be fine drivers, it was argued that their lack of experience created a significant risk, both to the young persons themselves and to the public.

In its final form, the legislation proposed to allow persons 17 years of age to engage in limited professional driving, under specified safety conditions and with certain limitations, but would still prohibit such activity by persons under 17. The Combest bill, as amended, was signed by President Clinton on October 31, 1998 (P.L. 105-334).⁵⁵

Child Labor Initiatives During the 108th Congress

Child labor concerns have, generally, been a mixture of economics and social policy. Although Congress and DOL, at least for now, have resolved certain aspects of child labor regulation, other and often broader issues remain (see **Table 5**).

Table 5. Child Labor Proposals of the 108th Congress

Bill no.	Sponsor	Action Beyond Referral	Impact
H.R. 756	Foley	—	To prohibit “exploitive child modeling” involving persons under 17 years of age
H.R. 1943	Pitts	Hearing, House Subcommittee on Workforce Protections, Oct. 8, 2003	Permits employment of children, at least 14 years of age, in wood processing plants
H.R. 3139	Lantos	—	Comprehensive restructuring of FLSA child labor requirements; adds prohibition on “youth peddling;” modifies coverage with respect to youth who work in agriculture
S. 404	Bunning	—	To prohibit “exploitive child modeling” involving persons under 17 years of age
S. 974	Specter	—	Permits employment of children, at least 14 years of age, in wood processing plants

⁵⁵ CRS Report 98-561, *Child Labor in Hazardous Occupations: “On-the-Job Driving” by Youth Workers*, by William G. Whittaker.

The Traveling Sales Crew Protection Act

On September 23, 2003, Representative Tom Lantos (D-Calif.) introduced **H.R. 3139**, the “Youth Worker Protection Act,” one component of which was the provision that “No employer may employ a minor [a person under 18 years of age] in youth peddling.” The bill, which went on to define what is included within the concept of “peddling,” was referred to the Committee on Education and the Workforce and, in mid-October 2003, to the Subcommittee on Workforce Protections.

Some Questions of Public Policy. Periodically through recent years, concerns have been raised about the welfare of young persons (the age varies) who are engaged in certain types of outside sales work. On occasion, the focus has been upon the “street trades” — selling newspapers, candy, or other items at subway stops or, locally, from door-to-door. In such cases, a manager/supervisor may recruit young persons, move them to various local sites and, at day’s end, collect them and bring them back to their homes. But, there is also another arrangement: the “traveling sales crews” in which a sales team goes on-the- road and remains away from its home base — possibly for extended periods. Some argue that each of these types of sales (“peddling”) can encompass risks, especially for young persons.

Such sales work by young persons suggests numerous questions of public policy. For example, how young is *too young* for children to be engaged in street sales, potentially in rough neighborhoods with which they may not be familiar? And, if they do engage in such work, through what hours should they be employed: i.e., how early in the morning and how late at night?

The situation becomes more complicated when groups of recruits are transported from their homes to a distant city to engage in sales work. Are the vehicles in which they are transported safe and insured? How/where are these workers housed? Does the manager/supervisor have authority and responsibility with respect to the off-hours behavior of these young workers? What happens if one of these young persons becomes ill and needs medical attention?

Beyond the personal, there are strictly workplace questions. What is the employment relationship between these workers and the manager/supervisor? Are the youth workers employees, independent contractors, or something else entirely? To the extent that they are *employees*, by whom are they employed? The manager/supervisor may, himself, be an *employee* of some more distant entity. Where does responsibility ultimately reside? How are wages and benefits handled? What employment records are maintained — and by whom?

From a policy perspective, some may ask: Should young persons be excluded, by law, from working in street or door-to-door sales — or in related support services other than actual selling? Were otherwise applicable hours restrictions to be observed, would such work be acceptable? Would a blanket prohibition on outside sales work by persons under 18 years of age unduly restrict their capacity to earn? Is there something inherently inappropriate about street sales and/or door-to-door sales? Is such work *wrong* when 16- and 17-year-olds are involved, but a legitimate entrepreneurial activity if all of the sales staff (and, perhaps, support staff) are 18 and

over? Is such work acceptable when confined to a certain radius from the permanent residence of the sales staff? And, how expansive should that radius be?

The Wyden Initiative. In May 1985 (the 99th Congress), then-Representative Ron Wyden (D-Ore.), stating that “unscrupulous door-to-door selling groups” were exploiting young persons (some of them, children; others, young adults), introduced legislation to establish a National Clearinghouse on Fraudulent Youth Employment Practices. While Wyden conceded that “the vast majority of door-to-door sellers are wholly honorable and reputable,” others, he suggested, were not. These companies “can be peddling anything from magazine subscriptions to chemical cleaners.” He outlined a host of alleged violations of law and fraudulent sales practices engaged in by such firms and urged his colleagues to help “put these dangerous and unscrupulous operators out of business. And ... take a step toward protecting our youth from dangerous employment practices.”⁵⁶

Hearings were conducted (November 1985) by the House Subcommittee on Civil and Constitutional Rights. Susan Meisinger, speaking for the Reagan Labor Department, testified that there was indeed a problem. “Unlawful practices reported by the States include violations of their child labor laws, violations of minimum wage laws, employer failure to pay taxes and unemployment insurance, and abuse of child workers,” Meisinger noted, “including forcing them to pay kickbacks, child molesting, and placing them in high risk, late night employment environments.”⁵⁷

But the Reagan Administration was divided on the issue. Victoria Toensing, representing the Department of Justice, agreed that “problems relating to the recruitment and use of salespersons do exist” but she suggested that any legislative action would be premature. “The extent of these problems has not yet been established,” Toensing stated, and, in any case, state and local authorities “may be as effective, if not more so, than the federal government in preventing such abuses.” Further, she suggested, not all of the alleged worker/victims were minors. After reviewing a series of federal statutes that might apply if there actually were a problem, Toensing noted that the Department of Justice “... considers present statutory provisions adequate.”⁵⁸

The Wyden bill (H.R. 2544) died at the close of the 99th Congress. Hearings on the general issue were subsequently conducted by the Senate Permanent Subcommittee on Investigations (1987)⁵⁹ and by the House Committee on

⁵⁶ *Congressional Record*, May 16, 1985, p. E2251.

⁵⁷ Statement of Susan R. Meisinger, Deputy Under Secretary for Employment Standards, DOL, Nov. 6, 1985, the House Judiciary Subcommittee on Civil and Constitutional Rights.

⁵⁸ Statement of Victoria Toensing, Deputy Assistant Attorney General, Criminal Division, Nov. 6, 1985, the House Judiciary Subcommittee on Civil and Constitutional Rights.

⁵⁹ U.S. Congress, Senate Committee on Governmental Affairs. Permanent Subcommittee on Investigations, *Exploitation of Young Adults in Door-to-Door Sales*, hearing, 100th Cong., 1st sess., Apr. 6, 1987, 217 p.

Government Operations' Subcommittee on Employment and Housing (1990).⁶⁰ In each case, the matter was restricted to general oversight. Further legislation was not then proposed.⁶¹

The Kohl Proposals. In November 1999 (the 106th Congress), Senator Kohl introduced S. 1989, the "Traveling Sales Crew Protection Act" — his interest sparked by an auto accident in Wisconsin in which seven young people were killed and others injured. The Senator explained: "The driver [in the Wisconsin case] had a suspended license and a series of violations." These firms, he stated, "employ crews who travel from city to city selling products door to door. Often times," he asserted, "... [they] mistreat their workers and violate local, state, and federal labor law. Because they rapidly move from state to state, enforcement efforts are difficult if not impossible for local authorities." Senator Kohl recalled that it had been 12 years since the hearing by the Permanent Subcommittee on Investigations (noted above) and affirmed: "... nothing has changed. These abuses continue, and Congress should act."⁶² But, no action was taken: the bill died at the close of the 106th Congress.

Early in the 107th Congress, Senator Kohl introduced new traveling sales crew/peddling legislation (S. 96). The Kohl bill would have amended the FLSA to provide that "No individual under 18 years of age may be employed in a position requiring the individual to engage in door to door sales or in related support work in a manner that requires the individual to remain away from his or her permanent residence for more than 24 hours." After defining the operative language, the bill set forth a registration requirement for employers and supervisors of traveling sales crew workers. Then, assuming that such practices were to be allowed, it outlined the obligations of the parties — dealing with such issues as housing, transportation, wages (and deductions therefrom), insurance, and related matters. It then proposed a system for enforcement.

A comprehensive and detailed proposal, S. 96 was referred to the Committee on Health, Education, Labor and Pensions (HELP) where no action was taken.⁶³ Then, on May 22, 2002, Senator Kohl introduced S. 2549, an abbreviated version of the traveling sales crew/peddling legislation. An amendment to Section 12 of the FLSA, S. 2549 read in pertinent part:

⁶⁰ U.S. Congress, House Committee on Government Operations, Subcommittee on Employment and Housing, *Children at Risk in the Workplace*, hearing, 101st Cong., 2nd sess., Mar. 16, June 8, 1990, pp. 277-297.

⁶¹ The issue, however defined, continued to arise periodically. See Jim Naughton, "Children's Candy Sales Are Criticized: Distributors Under Scrutiny for Possible Child Labor Infractions," *The Washington Post*, May 9, 1990, pp. A1, A10; "State Trying To Close Down Firm Employing Youngsters," *The Daily Olympian*, Oct. 15, 1990, pp. C1-C2; and Julie Barrett, "Kiddie Hawkers," *Generation Next*, July/Aug. 1995, pp. 22-23.

⁶² *Congressional Record*, Nov. 19, 1999, p. S15102.

⁶³ A somewhat condensed version of the legislation (H.R. 3070) was introduced in the House during the 107th Congress by Representative Thomas Petri (R-Wisc.). No action was taken on the Petri bill.

No individual under 18 years of age may be employed in a position requiring the individual to engage in door to door sales or in related support work in a manner that requires the individual to remain away from his or her permanent residence for more than 24 hours.

It further authorized the Secretary of Labor to “issue such rules and regulations as are necessary to carry out” the proposed amendment. On August 1, 2002, the HELP Committee, to which the bill had been referred, was discharged from further consideration and the bill, under unanimous consent, was agreed to by the Senate.⁶⁴ It was referred to the House Committee on Education and the Workforce, Subcommittee on Workforce Protections, where it died at the close of the 107th Congress.

The issue was raised in the 108th Congress, again in an abbreviated form, with introduction of **H.R. 2139** by Representative Lantos (an umbrella child labor reform proposal, discussed below). No action, however, was taken on the Lantos bill.⁶⁵

Sawmilling/Woodworking by 14-Year-Olds

On May 1, 2003, legislation to permit employment of young persons (of at least 14 years of age) in sawmilling and woodworking facilities was introduced by Representative Joseph Pitts (R-Pa.) and Senator Arlen Specter (R-Pa.) — respectively **H.R. 1943** and **S. 974**. On October 8, 2003, a hearing on the Pitts bill was conducted by the House Subcommittee on Workforce Protections.

A Question of Public Policy. Work in or around sawmills and woodworking machinery has been deemed by DOL as especially hazardous for persons under 18 years of age. The practice violates at least two Departmental Hazardous Occupations (HO) Orders: HO 4, covering sawmills, and HO 5, dealing with power-driven woodworking machines.⁶⁶

Speaking generally, the Amish resist requirements of law that would alter their traditional way of life and have rejected compulsory school attendance beyond the 8th grade. The *Daily Labor Report* explains: “After completing their formal classroom training [elementary school] at age 14 or 15, Amish boys typically receive training in farming or carpentry from their fathers.”⁶⁷ In recent years, the opportunity

⁶⁴ *Congressional Record*, Aug. 1, 2002, p. S8022.

⁶⁵ *Congressional Record*, Sept. 24, 2003, pp. E1873-E1874.

⁶⁶ See 29 C.F.R. §§ 570.54 and 750.55. In a letter of July 22, 1998, to Chairman William F. Goodling (R-Pa.), then-Chair of the Committee on Education and the Workforce, Deputy Secretary of Labor Kathryn Higgins explained the special hazards associated with work in the lumber and wood products industry which, she said, were “exacerbated for youth” given their “lack of training” and “immaturity.”

⁶⁷ Bureau of National Affairs, *Daily Labor Report*, July 23, 1998, p. A11. Concerning the Amish perspective on public education, see Gertrude Enders Huntington, “Persistence and Change in Amish Education,” in Donald B. Kraybill and Marc A. Olshan (eds.), *The Amish Struggle with Modernity* (Hanover, New Hampshire: University Press of New England, (continued...))

for the Amish to farm has diminished — in part, because of increased land values and property taxes. Therefore, the Amish have sought other activities for their children. “What are we supposed to do with them if they don’t work here,” lamented one member of the Amish community, “have them stay on the street all day?”⁶⁸

The Amish have sought to have their sons work in sawmills and woodworking plants where there is Amish supervision (or where they are supervised by an adult relative).⁶⁹ The Department of Labor has held that permitting children to work in such plants would be a violation of federal child labor law: HO 4 and HO 5. The result has been a clash between the Amish and DOL. The Amish have pressed for an amendment to the child labor provisions of the FLSA in order to accommodate their practices.

Taking the Issue to Congress. At least since the 105th Congress, legislation to amend federal child labor law on behalf of the Amish has been repeatedly introduced, both in the House and in the Senate. The bills, generally, would have widened the opportunity for youth aged 14 to 18 “to be employed inside or outside places of business where machinery is used to process wood products.” In order to qualify for such employment, a youth would have to be “a member of a religious sect or division thereof whose established teachings do not permit formal education beyond the eighth grade.” In the 105th and 106th Congresses, the Amish legislation was passed by the House under suspension but the Senate did not act.⁷⁰

Had the legislation been adopted, Amish children, having left school after the 8th grade, could have been employed in work otherwise regarded as too hazardous for persons under 18 years of age. Some have suggested that constitutional issues may be involved in affording special treatment to the Amish that is not afforded to other religious groups. Setting aside issues of legality, other questions could be raised — given that Amish children are permitted to leave school after the 8th grade.⁷¹ **First.**

⁶⁷ (...continued)

1994), pp.77-95; and Thomas J. Meyers, “Education and Schooling,” in Kraybill (ed.), *The Amish and the State* (Baltimore: The Johns Hopkins University Press,2003) pp. 87-106.

⁶⁸ Steven Greenhouse, “Foes of Idle Hands, Amish Contest a Child Labor Law,” *The New York Times*, Oct. 18, 2003, p. A1.

⁶⁹ Ibid. The issue involves sons, not daughters. Greenhouse explains, p. 9, “Teenage girls, as always, learn skills like quilting or work in retail shops.” See also Marc A. Olshan and Kimberly D. Schmidt, “Amish Women and the Feminist Conundrum,” in Kraybill and Olshan (eds.), pp. 215-230.

⁷⁰ *Congressional Record*, Sept. 28, 1998, pp. H9121-H9124. See also U.S. Congress, House Committee on Education and the Workforce, Subcommittee on Workforce Protections, *The Effect of the Fair Labor Standards Act on Amish Families and H.R. 2038, the MSPA Clarification Act*, hearing, 105th Cong., 2nd sess., Apr. 21, 1998 (Washington: GPO, 1998); and U.S. Congress, House Committee on Education and the Workforce, *Amending the Fair Labor Standards Act of 1938 To Permit Certain Youth To Perform Certain Work with Wood Products*, report together with minority views to accompany H.R. 221, H.Rept. 106-31, 106th Cong., 1st sess., (Washington: GPO, 1999), 29 p.

⁷¹ The issue of school attendance is developed in some detail in *Wisconsin v. Yoder*, 406 (continued...)

Would elimination of federal restrictions upon child labor — to the extent proposed in the legislation — provide an opportunity (and, perhaps, an incentive) for Amish children to leave school and to enter the world of work? Or, would it merely recognize that Amish children are already out of school and, thus, permit them to be productively occupied? **Second.** Assuming that these children do leave school to work, are sawmills and wood processing establishments appropriate places of employment for any youngsters under the age of 18? Might other areas of skills training be more suitable for children than mill work with its attendant hazards? What types of work *are* suitable for 14-year-old Amish children and who should decide?⁷²

In order to strengthen the ties of Amish children to the Amish community, youngsters are systematically separated from the non-Amish world.⁷³ The work experience of Amish children with the skills they acquire on the family farm *may not be* readily transferable to the non-Amish marketplace. Thus, with only an eighth grade education and lacking experience in the non-Amish world, their subsequent choices may be, accordingly, restricted, rendering their out-migration from the community within which they were raised extremely difficult.⁷⁴ Some may applaud this result; others may question the appropriateness of a federal role in its facilitation.

On May 3, 2001, the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education, conducted an oversight hearing on the employment needs of Amish youth. Representative Mark Souder (R-Ind.) spoke in support of exemption. Mr. Souder, representing a partly Amish constituency, explained that the Amish had not been able to persuade DOL to acquiesce in industrial employment for Amish children at age 14. Urging amendment of the FLSA to permit such employment, he argued that the Amish children would be “supervised by adults who know and care about them” and that the proposed amendment “would protect a truly endangered religion and culture.”⁷⁵

Thomas M. Markey of DOL testified in opposition, arguing: “Sawmills are dangerous places to work, even for adults.” Pointing to a high accident and fatality

⁷¹ (...continued)

U.S. 205 (1972).

⁷² The proposed legislation deals narrowly with employment of children in sawmills and related woodworking establishments. Their employment in other fields, currently restricted by law or by administrative ruling, would require separate action.

⁷³ Jennifer Brown, “Old Ways Persevere, Flourish: Non-Mainstream Culture Helps Anabaptist Communities Retain Hold on the Young,” *The Washington Post*, Apr. 21, 2001, p. B9.

⁷⁴ These issues are discussed in Joel Feinberg, “The Child’s Right to an Open Future,” in William Aiken and Hugh LaFollette (eds.), *Whose Child? Children’s Rights, Parental Authority, and State Power* (Totowa, N.J.: Rowman and Littlefield, 1980), pp. 124-153; and Dena S. Davis, “The Child’s Right to an Open Future: Yoder and Beyond,” *Capital University Law Review*, vol. 26 (1997), pp. 93-105. See also Albert N. Keim (ed.), *Compulsory Education and the Amish: The Right Not to Be Modern* (Boston: Beacon Press, 1975).

⁷⁵ Testimony of Rep. Mark Souder before the Senate Subcommittee on Labor, Health and Human Services and Education, Committee on Appropriations, May 3, 2001.

rate for the industry nationwide, he stated that such work is “even more dangerous for children.”⁷⁶

On June 13, 2001, during consideration of S. 1 (reauthorization of the Elementary and Secondary Education Act), Senator Specter proposed S.Amdt. 420. It would have amended the FLSA to permit Amish youngsters, 14 years of age and older, to work, under specified conditions, in mills and woodworking plants. There followed a brief colloquy between Senators Specter and Edward M. Kennedy (D-Mass.), the latter chair, Committee on Health, Education, Labor, and Pensions. Senator Kennedy affirmed that it “would be valuable to have ... an open hearing” on the issue — particularly with respect to the safety of prospective workers — and agreed that his Committee would conduct such a hearing. With that understanding, Senator Specter then withdrew his proposed amendment.⁷⁷

On July 25, 2001, legislation to permit Amish youth to work at age 14 in wood processing plants was introduced both in the House and in the Senate: H.R. 2639 (Pitts) and S. 1241 (Specter). No action was taken on these proposals.

Revived in the 108th Congress. The Pitts (**H.R. 1943**) and Specter (**S. 974**) bills of the 108th Congress largely follow the pattern of recent years. To be exempt from the restraints of federal child labor law, several standards would be imposed. The targeted youth must be “at least 14” years of age. Further, the child:

- (a) Must be “by statute or judicial order ... exempt from compulsory school attendance beyond the eighth grade.”⁷⁸
- (b) Must be “supervised by an adult relative” or “by an adult member of the same religious sect or division as the individual.”
- (c) May not “operate or assist in the operation of power-driven woodworking machines.”
- (d) Must be “protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation ...”
- (e) “[I]s required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.”

Other concerns aside, some may ask: Would the safeguards be adequate? In the absence of frequent DOL inspections, would the precautions be observed? Does the fact that a supervisor would be of “the same religious sect” as the child worker render the work any less hazardous — or the supervisor any more diligent in monitoring the youth’s work?

⁷⁶ Testimony of Thomas M. Markey, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, before the Subcommittee on Labor, Health and Human Services, and Education, Committee on Appropriations, U.S. Senate, May 3, 2001.

⁷⁷ *Congressional Record*, June 13, 2001, pp. S6153-S6154.

⁷⁸ The wording is from S. 974. The phrasing of H.R. 1943 is slightly different.

On October 8, 2003, the Subcommittee on Workforce Protections conducted a hearing on H.R. 1943. In an opening statement, Chairman Charlie Norwood (R-Ga.) observed that the bill provides:

... that certain youth whose religious faith and beliefs dictate that they “learn by doing” are afforded an opportunity to do so, and that the federal government — however well-meaning — does not endanger the belief and culture of these young people and their families.⁷⁹

As the lead witness (DOL was not represented at the hearing), Representative Pitts stated that actions of the Department had “severely threatened the lifestyle and religion of this respected and humble community” and averred that the “government should not interfere” with Amish practices lest “their strong heritage ... be undermined.”⁸⁰ Representative Mark Souder (R-Ind.), while reviewing the proposed safeguards embodied in the amendment, also framed the issue in religious terms. Government bureaucracy, he stated, “... is threatening the Amish people’s very way of life. It is interfering with their religious freedom.”⁸¹ Christ K. Blank, speaking for the Old Order Amish, concurred, declaring “the ages 14 through 17 to be a very tender receptive age” and a period during which “to instill ... Amish values and work ethics in our children.”⁸²

But, not all were in complete agreement. Nicholas Clark of the United Food and Commercial Workers, AFL-CIO, recognized the religious desires of the Amish community. He also pointed out that federal government studies had found that working conditions in “sawmilling and woodworking are among the most hazardous occupations for adults, with a death rate that is *five times* the national average for all industries,” and that such work is “especially inappropriate for young workers.” (emphasis in the original.) Clark expressed concern about constitutional issues and raised, as well, the issue of equity. The proposed amendment “... would grant Amish-owned sawmills and woodworking firms an exception from child labor laws that are [sic.] denied firms owned by persons of non-Amish faiths.” Further, he argued, it would deny “Amish children the very real benefits of governmental health and safety protections that are afforded Catholic, Baptist, Jewish or any other” non-Amish children. While sawmills and woodworking plants “provide much needed employment for Amish adults,” he concluded, “they cannot safely or constitutionally serve that purpose for Amish children.”⁸³

⁷⁹ Opening statement of Chairman Norwood, Oct. 8, 2003.

⁸⁰ Testimony of Rep. Pitts, Oct. 8, 2003.

⁸¹ Testimony of Rep. Souder, Oct. 8, 2003.

⁸² Testimony of Christ K. Blank, Chairman, Voice of the Old Order Amish, Old Order Amish Steering Committee, Oct. 8, 2003.

⁸³ Testimony of Nicholas Clark, Oct. 8, 2003. Clark stated: “The proposal would also require government investigators to determine whether owners of firms seeking to employ child labor, and their child employees, are truly Amish. Such determinations would necessarily entangle the government in the practice of religion, also in violation of the First Amendment.”

Amish Child Workers and the 2004 Appropriations Bill. As the first session of the 108th Congress moved to a close, several appropriations bills (among them, the measure providing funding for the Department of Labor) remained to be passed. Ultimately, the several appropriations bills were combined in H.R. 2673, the FY2004 Consolidated Appropriations bill.

A conference report on H.R. 2673 (H.Rept. 108-401) was filed on November 25, 2003. Included in the conference report (Senator Specter had served as a Senate conferee) was language roughly paralleling that of H.R. 1943, the Amish child labor bill. In an explanation of the measure, the conference report stated:

The conference agreement includes a provision to permit youth, ages 14 through 17, who by statute or judicial order are exempt from compulsory school attendance beyond the eighth grade, to work inside or outside places of business where machinery is used to process wood products. The youth would be permitted to perform activities such as sweeping, stacking wood, and writing orders. Safety provisions include prohibiting the youth from operating machinery, and requiring the use of eye and body protections.

On December 8, 2003, the House voted to approve the conference report (with the Amish child labor provision included). The vote was 242 yeas to 176 nays.⁸⁴ Senate consideration of the measure was deferred until the second session of the 108th Congress.⁸⁵ On January 20 and 22, the Senate considered the conference report, though attention appears to have focused on overtime pay regulations and subjects other than the Amish child labor provision. On January 22, the Senate approved the conference report by a vote of 65 yeas to 28 nays.⁸⁶ The measure was signed by the President on January 23, 2004 (P.L. 108-199).

In a statement to the press, Senator Specter noted that he had “toured an Amish sawmill in Lancaster County, PA,” had met with some members of the Amish people, and had come to “know of the importance of this legislation to their community and culture. This is an issue of freedom of religion,” he affirmed, “where the Amish prefer to educate their children aside from the public schools and part of that educational process is for teenagers to work in the lumber mills.”⁸⁷

Young American Workers’ Bill of Rights

On September 23, 2003, Representative Tom Lantos (D-Calif.) introduced **H.R. 3139**, the “Youth Worker Protection Act.” The bill was referred to the Committee on Education and the Workforce.

⁸⁴ *Congressional Record*, Dec. 8, 2003, p. 12845.

⁸⁵ U.S. Congress, Conference Committees, *Making Appropriations ... for the Fiscal Year Ending September 30, 2004, and for Other Purposes*, conference report to accompany H.R. 2673, 108th Cong., 1st sess., H.Rept. 108-401 (Washington, GPO, 2003), pp. 734 and 235-236. See also *DLR* Dec. 3, 2003, pp. A11-A12.

⁸⁶ *Congressional Record*, Jan. 22, 2004, pp. S155-S156.

⁸⁷ Press release, Office of Senator Arlen Specter, Jan. 23, 2004, the Senator’s website, visited on Jan. 29, 2004.

General restructuring of the child labor components of the FLSA has long been sought, though from somewhat different perspectives, by industry and by labor. In 1990 (the 101st Congress), Representatives Don Pease (D-Ohio), Charles Schumer (D-N.Y.) and Tom Lantos (D-Calif.) introduced legislation titled the “Young American Workers’ Bill of Rights.” With various changes (but with a continuity of thrust), the legislation would be reintroduced in each Congress thereafter.

In the 108th Congress, the initiatives were set forth in H.R. 3139 (Lantos), the “Youth Worker Protection Act.” The Lantos bill was comprehensive, providing for a wide variety of changes in current law and practice.⁸⁸

(a) The bill defined “minor” as an individual “who is under the age of 18 years.” It further defined “school-age minor” as one who, “as determined under the law applicable to the school district in which the minor lives, has not earned a high school diploma or other document of equivalent or greater status.”

(b) For employment, a *minor* must be “at least 14 years old or, if younger than 14 years old, is otherwise permitted to work under this Act” and “is employed in accordance with this Act and ... any other Federal, State, or local law that provides greater protection to minors.” He or she must have a work permit (see below). “In the case of a minor who is between the ages of 16 and 18 years, the employment is not in an occupation that is particularly hazardous for the employment of children between those ages or detrimental to their health or well-being”

(c) Each state “shall designate a State agency” to have authority to issue work permits.

— The Secretary of Labor will prescribe a unified model for such work permits that will contain information concerning the identity of the child worker and his/her parent, contact information and parental consent for the child to work, school status, identification of employer, type of work to be engaged in, name and contact information of the designated state agency, summary of age limitations and other legal requirements for employment of minors, among other information. A system of expiration dates for individual work permits is specified.

— The designated state agency may revoke a work permit if the agency finds either of the following: (1) the minor “is not in compliance with school attendance requirements,” or (2) the minor is adversely affected by the employment involved. The minor or the parent of the minor would have had an option for appeal of the revocation.

(d) Hours that are allowable for work by minors were specified in H.R. 3139, together with the number of hours per day and week that can be worked.

(e) If the minor sustains a serious work-related injury, the designated state agency must be notified by each of the following: the employer, the appropriate medical professional, the appropriate law enforcement officer (where

⁸⁸ This is a simple summary of the provisions of H.R. 3139. The reader may want to review the text of the bill for more precision and detail.

applicable), and an employee of the school attended by the minor where an absence of more than three days is involved.⁸⁹

(f) The bill provided that the designated state agency must collect and retain (for seven years) statistical data concerning the work permit system and any work-related injury information.

(g) The designated state agency must report annually to the Secretary of Labor to include assorted statistical data (see item ‘f’ above) and information concerning “the activities and number of work-hours devoted by State and local government employees (including contractors) to the administration and enforcement of child labor laws in the State.”

(h) The bill would have provided that “[n]o employer may employ a minor in youth peddling” and defines what is included in the concept of youth “peddling.” (See discussion of the “peddling” issue, above.)

(i) It set forth extensive requirements for enforcement and penalties.

(j) The bill amended Section 13(c) of the FLSA to raise the age for employment in agriculture outside of school hours from “twelve years of age” to “fourteen years of age” and limits such employment to work for “his parent” or “a person standing in the place of his parent, on a farm owned or operated by such parent or person.”

(k) It made uniform the standard for employment in hazardous agricultural work.

(l) The bill would have repealed the provision of current law permitting, at the discretion of the Secretary (with certain specific criteria), children as young as 10 years of age to work in hand harvest agricultural work.

(m) It would have eliminated the employment of children under 18 years of age in connection with commercial paper balers and compactors. (See discussion above.)

(n) “Not later than 24 months after the date of the enactment of this section,” the Secretary of Labor was directed to promulgate a rule revising the Hazardous Occupations restraints in certain specified industries. The Secretary was also directed at “appropriate intervals, but in no case less than once during each five-year period,” to conduct “a comprehensive review” of the Hazardous Occupations Orders to assure that they are current.

(o) Within 24 months of enactment of this section, the Secretary was directed to promulgate a rule to prohibit employment of minors in (1) seafood processing and (2) employment “requiring a minor to handle or dispose of oil or other liquids from fryers.”

(p) Within 36 months, the Secretary was directed to review the employment of minors in work involving: (1) “[r]epetitive bending, stooping, twisting, or squatting,” (2) “[l]ifting of heavy and/or unwieldy objects,” (3) “[w]orking alone or late at night in retail establishments where there is direct contact with the

⁸⁹ A “serious work-related injury” is one that results in “(1) the death of the minor; (2) medical attention for the minor; or (3) investigation by a law enforcement agency.”

public and cash is handled,” and (4) “[w]ork in the entertainment industry that is detrimental to the health, safety, education or well-being of minors.”⁹⁰ The Secretary shall submit to Congress a report of the review, together with proposed regulations governing such work.

On October 14, 2003, H.R. 3139 was referred to the House Subcommittee on Workforce Protections — where it died at the close of the 108th Congress.

Protecting Child *Models*

On February 13, 2003, the “Child Modeling Exploitation Prevention Act” was introduced in the House (**H.R. 756**) and in the Senate (**S. 404**) by Representative Mark Foley (R-Fla.) and Senator Jim Bunning (R-Ky.). The bills were referred, respectively, to the House Committee on Education and the Workforce and to the House Committee on the Judiciary, and to the Senate Committee on the Judiciary.

During the 107th Congress, Representative Foley raised the issue of children being engaged in modeling on Internet sites. “What occurs,” he explained in a floor statement, “... is that young girls, 10, 12, 13 years old, are encouraged by their parents and aided and abetted by individuals to display themselves on the Internet for viewership, if you will, [by] people who pay a fee, a monthly fee in order to view the site.” While some parents, he suggested, “are deceived” into thinking that such activity is legitimate modeling, Mr. Foley averred that it was not.

What we found out through investigation at the National Center for Missing and Exploited Children is that often, the people that are paying \$19 a month to view these sites are pedophiles. They are often people who are depraved and who are looking at 11- and 12-year-old girls, and they are e-mailing each other back and forth saying, why do you not do this or pose like this.

Representative Foley stated that he was “not suggesting that there is not an appropriate place in commerce for young people to display their talents” but, rather, that he had in mind a particular type of website that encourages “inappropriate” types of modeling by children.⁹¹ On May 7, 2002, Mr. Foley introduced the “Child Modeling Exploitation Prevention Act of 2002.” No action was taken on the proposal.

Early in the 108th Congress (February 13, 2003), Representative Foley again proposed legislation to deal with exploitation of children through their involvement in Internet modeling. A companion bill was introduced by Senator Bunning who, like Mr. Foley, stressed that the legislation was “carefully crafted to protect legitimate modeling activities.” The legislation, he stated, would target *modeling* where the images are “indecent” and exploit children. “The primary viewers of these Internet sites are grown men,” the Senator affirmed. “Some are pedophiles. Some are even registered sex offenders.”⁹²

⁹⁰ Arguably, the latter could include protection of child models. See discussion below.

⁹¹ *Congressional Record*, Sept. 18, 2002, pp. H6349-H6350.

⁹² Press Release, Feb. 13, 2003, from Sen. Jim Bunning.

The Foley/Bunning proposal would have amended Section 12 of the FLSA to provide that “[n]o employer may employ a child model in exploitive child modeling.” It goes on to explain:

(A) In this subsection, the term ‘exploitive child modeling’ means modeling involving the use of a child under 17 years old for financial gain without the purpose of marketing a product or service other than the image of the child.

(B) Such term applies to any such use, regardless of whether the employment relationship of the child is direct or indirect, or contractual or noncontractual, or is termed that of an independent contractor.

The proposal distinguished between an image that is exploitive and one that, “taken as a whole, has serious literary, artistic, political, or scientific value.” The legislation proposed both fines and imprisonment (“not more than 10 years”) for violators.

No action was taken on the Foley or Bunning bills.