



BILL SUMMARY

HF 618 Child Labor Law

Status of Bill: Calendar
Committee: Labor Committee – Passed 17-0
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Background:

The bill is the legislative response to the Agriprocessors raid in Postville last year. It is meant to crack down on corporations and CEO's who exploit and abuse workers. House File 618 would increase the penalties for not paying employees and violating child labor laws. After the May 12th raid, Agriprocessors was socked with two OSHA violations for unsafe working conditions and 57 child labor violations. In addition, the company has been charged with wage and hour violations for nonpayment to workers and charging workers for the use of equipment. Many workers went without health care benefits since the company, without the worker's knowledge, was not paying their health care premiums. They only found out after seeing a doctor.

Summary:

Division I. Wage Payment Collection Penalties

Section 1. Raises civil penalty to \$500 per pay period for each violation. It was \$100 per violation.

Division II. Child Labor Violation Penalties

Section 2. Current law requires that before a work permit can be issued, there must be proof the individual is 14 or older. A birth certificate, passport or certificate of baptism can be used to verify age. This section say if none of these documents are available, a document issued by the federal government and deemed sufficient by the commissioner of proof of age can also be used. A affidavit signed by a licensed physician certifying that in the physician's opinion the individual is 14 or older is also acceptable.

Section 3. Current law says no parent or guardian having control of a person under 18 years of age shall willfully permit the person to work or be employed in violation of the law. This bill says the parent or guardian shall not negligently permit it. Also makes the same change to a person who certifies any statement or certificate to help someone procure employment or to any person, firm or corporation who conceals or permits a person to be employed in violation of the child labor chapter.

Section 4. A parent or guardian of any migratory worker or any child who engages in any street occupation in violation of the law commits a serious misdemeanor. Current law said simple misdemeanor. Also becomes a serious, rather than simple, misdemeanor to furnish or sell to any minor child any article that the person knows, or should have known, the minor intends to sell in violation of the child labor law. A serious misdemeanor is punishable by no more than one year in jail and a fine of at least \$315

but no more than \$1,875. Any other violation, where a penalty is not specified, is also a serious misdemeanor. Each day during which a violation continues constitutes a separate and distinct offense and each person illegally employed constitutes a separate and distinct offense.

Section 5. Instructs the labor commissioner to adopt rules specifically defining the civil penalties to be assessed for violating this law.

Section 6. An employer who violates this chapter is subject to a civil penalty not to exceed \$10,000. The labor commissioner notifies the employer of the proposed penalty by certified mail and the employer has 15 day to contest the penalty. If no contest is filed, the penalty is deemed final agency action for purposes of judicial review. The commissioner will then notify the department of revenue regarding the assessment of the penalty against the employers. Interest is calculated from date of final agency action. If no judicial review is filed within 60 days of the commissioner's action, the finds of fact and final agency action shall be conclusive. The clerk of the court shall enter the decree enforcing the action and send a copy to the commissioner and the employer. Any penalties collected by the commissioner go into the state general fund.

Additional Explanation

1. Willful versus negligently.

Current law requires prosecutors to prove that a person willfully violated the statute. Willful is very difficult to prove. A prosecutor would have to show somebody did something purposely with a specific intent toward a violation.

The proper balance is a negligence standard. Negligence requires that an employer exercise reasonable care.

2. How do you distinguish Postville type violations from the mom and pop dairy queen that keeps a teenager late?

There are two levels of discretion on the criminal prosecution side of this bill. The first level of discretion is with the labor commissioner. The labor commissioner has the discretion to refer violations to the local county attorney. The county attorney then has the discretion to prosecute.

3. Simple misdemeanor versus serious misdemeanor.

A simple misdemeanor is currently up to 30 days in jail and/or between a \$65-\$625 dollar fine. This bill moves that to a serious misdemeanor which is up to 1 year in jail and/or between a \$315-\$1875 fine.

4. The bill also includes a provision for a civil penalty. How does this work?

In order to impose a civil penalty, the commissioner needs to prove by a preponderance of evidence that a violation occurred. Preponderance means that it more likely than not that a violation occurred. If the employer wishes to contest it, the process follows normal Chapter 17A procedure. Chapter 17A requires that a hearing be set with an administrative law judge. The administrative law judge takes in all of the evidence at a due process hearing. The administrative law judge then issues an opinion. The opinion is reviewed by the head of the agency, who can then change or accept the decision of the administrative law judge. This decision by the agency head is what is considered final agency action. After final agency action, the employer can appeal to district court and then on to the Iowa Supreme Court.