



March 30, 1999

**ENGROSSED  
SENATE BILL No. 432**

DIGEST OF SB 432 (Updated March 25, 1999 10:32 am - DI 96)

**Citations Affected:** IC 20-8.1; IC 22-2.

**Synopsis:** Child labor restrictions and employee matters. Provides that the employer of a child who is at least 16 years of age and less than 18 years of age must have parental consent on file in the employer's office for the child to work: (1) up to 40 hours per week during school weeks; and (2) 48 hours per week during a nonschool week. Provides that a child who is at least 17 years of age and less than 18 years of age may work until 1 a.m. the following day on a night followed by a school day only if the child's employer has the consent of the child's parent on file in the employer's office and no more often than two non-consecutive school nights a week. Provides for a warning letter for a first violation of child labor laws, and for fines for subsequent violations. Provides that one half of the money in the employment of youth fund shall be used each year for the purpose of education regarding child labor laws. Provides that half of the money in the employment of youth fund shall  
(Continued next page)

**Effective:** July 1, 1999.

**Harrison, Howard**  
(HOUSE SPONSORS — LIGGETT)

January 13, 1999, read first time and referred to Committee on Pensions and Labor.  
February 11, 1999, reported favorably — Do Pass.  
February 16, 1999, read second time, amended, ordered engrossed.  
February 17, 1999, engrossed.  
February 22, 1999, read third time, passed. Yeas 49, nays 0.

**HOUSE ACTION**

March 3, 1999, read first time and referred to Committee on Labor and Employment.  
March 29, 1999, amended, reported — Do Pass.

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be used for the expenses of hiring and salaries of additional inspectors to enforce child labor laws. Provides that an employee of a seasonal amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center that is exempt under the Fair Labor Standards Act who is covered by the Indiana minimum wage law is not entitled to overtime wages for a work week longer than 40 hours.

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March 30, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## ENGROSSED SENATE BILL No. 432

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 20-8.1-4-20 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. (a) This section  
3 applies only to occupations for which a child who is fourteen (14) years  
4 of age or older and less than eighteen (18) years of age must obtain an  
5 employment certificate under this chapter.

6 (b) **As used in this section, "nonschool week" refers to a week in**  
7 **which school is not in session on any day.**

8 ~~(b)~~ (c) The following apply only to a child who is **at least** fourteen  
9 (14) years of age ~~or older~~ and less than sixteen (16) years of age:

10 (1) The child may not work before 7:00 a.m. or after 7:00 p.m.  
11 However, the child may work until 9:00 p.m. ~~from June + through~~  
12 ~~Labor Day.~~ **during a nonschool week.**

13 (2) The child may not work:  
14 (A) more than three (3) hours on a school day;  
15 (B) more than eighteen (18) hours in a school week;  
16 (C) more than eight (8) hours on a nonschool day; or  
17 (D) more than forty (40) hours in a nonschool week.

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1           ~~(e)~~ **(d)** A child who is at least sixteen (16) years of age and less than  
2 ~~eighteen (18)~~ **seventeen (17)** years of age may not: ~~work:~~

- 3           (1) **work** for more than eight (8) hours in any one (1) day;  
4           (2) **work** for more than ~~forty (40)~~ **thirty (30)** hours in any one (1)  
5           week;  
6           (3) **work** for more than six (6) days in any one (1) week; or  
7           (4) **begin a work day** before 6:00 a.m.

8           **(e) A child who is at least seventeen (17) years of age and less**  
9 **than eighteen (18) years of age may not:**

- 10           (1) **work for more than eight (8) hours in any one (1) day;**  
11           (2) **work for more than thirty (30) hours in any one (1) week;**  
12           (3) **work for more than six (6) days in any one (1) week; or**  
13           (4) **begin a work day before 6:00 a.m. on a school day.**

14           ~~(d)~~ **(f)** A child who is at least sixteen (16) years of age and less than  
15 ~~seventeen (17)~~ **eighteen (18)** years of age may work until 10:00 p.m.  
16 on nights that are followed by a school day in any occupation except  
17 those which the commissioner of labor determines to be dangerous to  
18 life or limb or injurious to health or morals.

19           ~~(e)~~ **(g)** An employer may employ a child who is at least sixteen (16)  
20 years of age and less than seventeen (17) years of age to work until  
21 midnight if:

- 22           (1) the work will be performed:  
23           (A) ~~while schools are closed for summer vacation;~~ **during a**  
24 **nonschool week;** or  
25           (B) on days that are not followed by a school day; and  
26           (2) the employer has:  
27           (A) obtained written permission from a child's parent **or legal**  
28 **guardian;** and  
29           (B) placed the written permission on file in the employer's  
30 office.

31           **(h) An employer may employ a child who is at least sixteen (16)**  
32 **years of age and less than eighteen (18) years of age up to forty (40)**  
33 **hours during a school week if the employer has:**

- 34           (1) **obtained written permission from a child's parent or legal**  
35 **guardian; and**  
36           (2) **placed the written permission on file in the employer's**  
37 **office.**

38           ~~(f)~~ **(i)** If an employer has obtained written permission required under  
39 subsection ~~(e)~~, **(h)**, the employer may employ a child who is at least  
40 sixteen (16) years of age but less than eighteen (18) years of age for  
41 periods that do not exceed a total of nine (9) hours in any one (1) day  
42 and a total of forty-eight (48) hours in any one (1) **nonschool** week.

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1 during summer vacation from school:

2 ~~(g)~~ (j) A child who is

3 ~~(1)~~ seventeen (17) years of age or older but less than eighteen (18)  
4 years of age ~~and~~

5 ~~(2)~~ a student in grades 9 through 12;

6 may work until 11:30 p.m. on nights that are followed by a school day  
7 **if the employer has obtained written permission from the child's**  
8 **parent or legal guardian and placed the permission on file in the**  
9 **employer's office.** A child covered by this subsection may work ~~later~~  
10 ~~than 11:30 p.m. on nights followed by a school day~~ **until 1 a.m. the**  
11 **following day** if the employer has obtained written permission from  
12 the child's parent **or legal guardian** and placed the permission on file  
13 in the employer's office. However, the nights followed by a school day  
14 on which a child works ~~later than 11:30 p.m. until 1 a.m. the following~~  
15 **day** may not be consecutive and may not exceed two (2) nights per  
16 week.

17 ~~(h)~~ (k) Children who are sixteen (16) years of age or older and less  
18 than eighteen (18) years of age may be employed the same daily and  
19 weekly hours and at the same times of day as adults if they fit into any  
20 one (1) of the following categories:

21 (1) They are a high school graduate.

22 (2) They have completed an approved vocational or special  
23 education program.

24 (3) They are not enrolled in a regular school term.

25 SECTION 2. IC 20-8.1-4-23 IS AMENDED TO READ AS  
26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) Every person,  
27 firm, corporation, or company which employs any child who is fourteen  
28 (14) years of age or older and less than eighteen (18) years of age in an  
29 occupation for which the child must obtain an employment certificate  
30 shall post and keep posted, in a conspicuous place or in places where  
31 notices to employees are customarily posted, a printed notice. This  
32 notice shall state:

33 (1) the maximum number of hours these children may be  
34 employed or permitted to work in each day of the week; **and**

35 (2) the hours of beginning and ending each day. ~~and~~

36 ~~(3) the names and ages of the children employed there.~~

37 The printed forms for this notice shall be furnished by the department  
38 of labor.

39 (b) The employment of children for a longer time on any day than  
40 is stated in the notice is a violation of this chapter.

41 SECTION 3. IC 20-8.1-4-31 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) A person, firm,

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1 limited liability company, or corporation that violates this chapter may  
2 be assessed the following civil penalties by the department of labor:

3 (1) For an employment certificate violation under section 1 or 13  
4 of this chapter, the following:

5 (A) A warning letter for any violations identified during an  
6 initial inspection.

7 (B) ~~Twenty-five~~ **Fifty** dollars (~~\$25~~) (**\$50**) per instance for ~~each~~  
8 **a second** violation identified in a subsequent inspection.

9 (C) ~~One hundred~~ **Seventy-five** dollars (~~\$100~~) (**\$75**) per  
10 instance for ~~subsequent violations~~ **a third violation** that  
11 (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection.  
12 ~~subsequent to the inspection under clause (B); and~~

13 (ii) ~~occur not more than two (2) years after a prior violation.~~

14 (D) **One hundred dollars (\$100) per instance for a fourth**  
15 **or subsequent violation that:**

16 (i) **is identified in an inspection subsequent to the**  
17 **inspection under clause (C); and**

18 (ii) **occurs not more than two (2) years after a prior**  
19 **violation.**

20 (2) For a posting violation under section 23 of this chapter, the  
21 following:

22 (A) A warning letter for any violations identified during an  
23 initial inspection.

24 (B) ~~Twenty-five~~ **Fifty** dollars (~~\$25~~) (**\$50**) per instance for each  
25 violation identified in a subsequent inspection.

26 (C) ~~Twenty-five~~ **Seventy-five** dollars (~~\$25~~) (**\$75**) per instance  
27 for ~~subsequent violations~~ **a third violation** that

28 (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection.  
29 ~~subsequent to the inspection under clause (B); and~~

30 (ii) ~~occur not more than two (2) years after a prior violation.~~

31 (D) **One hundred dollars (\$100) per instance for a fourth**  
32 **or subsequent violation that:**

33 (i) **is identified in an inspection subsequent to the**  
34 **inspection under clause (C); and**

35 (ii) **occurs not more than two (2) years after a prior**  
36 **violation.**

37 (3) For a termination notice violation under section 11 of this  
38 chapter, the following:

39 (A) A warning letter for any violations identified during an  
40 initial inspection.

41 (B) ~~Twenty-five~~ **Fifty** dollars (~~\$25~~) (**\$50**) per instance for each  
42 violation identified in a subsequent inspection.



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- 1 (C) **Fifty Seventy-five** dollars (~~\$50~~) (**\$75**) per instance for  
 2 **subsequent violations a third violation** that  
 3 (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection.  
 4 ~~subsequent to the inspection under clause (B); and~~  
 5 (ii) ~~occur not more than two (2) years after a prior violation.~~  
 6 **(D) One hundred dollars (\$100) per instance for a fourth**  
 7 **or subsequent violation that:**  
 8 (i) **is identified in an inspection subsequent to the**  
 9 **inspection under clause (C); and**  
 10 (ii) **occurs not more than two (2) years after a prior**  
 11 **violation.**
- 12 (4) For an hour violation of not more than thirty (30) minutes  
 13 under section 20 of this chapter, the following:  
 14 (A) A warning letter for any violations identified during an  
 15 initial inspection.  
 16 (B) ~~Twenty-five~~ **Fifty** dollars (~~\$25~~) (**\$50**) per instance for each  
 17 violation identified in a subsequent inspection.  
 18 (C) ~~Twenty-five~~ **Seventy-five** dollars (~~\$25~~) (**\$75**) per instance  
 19 for **subsequent violations a third violation** that  
 20 (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection.  
 21 ~~subsequent to the inspection under clause (B); and~~  
 22 (ii) ~~occur not more than two (2) years after a prior violation.~~  
 23 **(D) One hundred dollars (\$100) per instance for a fourth**  
 24 **or subsequent violation that:**  
 25 (i) **is identified in an inspection subsequent to the**  
 26 **inspection under clause (C); and**  
 27 (ii) **occurs not more than two (2) years after a prior**  
 28 **violation.**
- 29 (5) For an hour violation of more than (30) minutes under section  
 30 20 of this chapter, the following:  
 31 (A) A warning letter for any violations identified during an  
 32 initial inspection.  
 33 (B) ~~Fifty~~ **One hundred** dollars (~~\$50~~) (**\$100**) per instance for  
 34 each violation identified in a subsequent inspection.  
 35 (C) ~~Seventy-five~~ **Two hundred** dollars (~~\$75~~) (**\$200**) per  
 36 instance for **subsequent violations a third violation** that  
 37 (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection.  
 38 ~~subsequent to the inspection under clause (B); and~~  
 39 (ii) ~~occur not more than two (2) years after a prior violation.~~  
 40 **(D) Four hundred dollars (\$400) per instance for a fourth**  
 41 **or subsequent violation that:**  
 42 (i) **is identified in an inspection subsequent to the**

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**inspection under clause (C); and**  
**(ii) occurs not more than two (2) years after a prior violation.**

(6) For a hazardous occupation violation under section 25 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) ~~One~~ **Two** hundred dollars (~~\$100~~) **(\$200)** per instance for ~~subsequent violations~~ **a third violation** that

~~(i) are~~ **is** identified in ~~an~~ **a subsequent** inspection. ~~subsequent to the inspection under clause (B); and~~

~~(ii) occur not more than two (2) years after a prior violation.~~

**(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:**

**(i) is identified in an inspection subsequent to the inspection under clause (C); and**

**(ii) occurs not more than two (2) years after a prior violation.**

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) ~~One~~ **Two** hundred dollars (~~\$100~~) **(\$200)** per instance for ~~subsequent violations~~ **a third violation** that

~~(i) are~~ **is** identified in ~~an~~ **a subsequent** inspection. ~~subsequent to the inspection under clause (B); and~~

~~(ii) occur not more than two (2) years after a prior violation.~~

**(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:**

**(i) is identified in an inspection subsequent to the inspection under clause (C); and**

**(ii) occurs not more than two (2) years after a prior violation.**

(8) For each minor employed in violation of section 21(b) of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation

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1 identified in a subsequent inspection.

2 (C) ~~One~~ **Two** hundred dollars (~~\$100~~) (**\$200**) per instance for  
3 subsequent violations **a third violation** that

4 (i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection.  
5 subsequent to the inspection under clause (B); and

6 (ii) occur not more than two (2) years after a prior violation.

7 (D) **Four** hundred dollars (**\$400**) per instance for a fourth  
8 or subsequent violation that:

9 (i) **is** identified in an inspection subsequent to the  
10 inspection under clause (C); and

11 (ii) **occurs** not more than two (2) years after a prior  
12 violation.

13 (b) A civil penalty assessed under subsection (a):

14 (1) is subject to IC 4-21.5-3-6; and

15 (2) becomes effective without a proceeding under IC 4-21.5-3  
16 unless a person requests an administrative review not later than  
17 thirty (30) days after notice of the assessment is given.

18 (c) For purposes of determining whether a second violation has  
19 occurred when assessing a civil penalty under subsection (a), a first  
20 violation expires one (1) year after the date of issuance of a warning  
21 letter by the department of labor under subsection (a).

22 (d) **For purposes of determining recurring violations of this**  
23 **section, each location of an employer shall be considered separate**  
24 **and distinct from another location of the same employer.**

25 (e) There is established an employment of youth fund for the  
26 purpose of educating affected parties on the purposes and contents of  
27 this chapter and the responsibilities of all parties under this chapter.  
28 **One-half (1/2) of the fund each year shall be used for the purpose**  
29 **of the education provision of this subsection. This portion of the**  
30 **fund may be used to award grants to provide educational**  
31 **programs. The remaining one-half (1/2) of the fund shall be used**  
32 **each year for the expenses of hiring and salaries of additional**  
33 **inspectors to enforce this chapter under section 29 of this chapter.**  
34 **All inspectors hired to enforce this chapter shall also be available**  
35 **to educate affected parties on the purposes and contents of this**  
36 **chapter and the responsibilities of all parties under this chapter.**

37 The fund shall be administered by the department of labor. The  
38 expenses of administering the fund shall be paid from money in the  
39 fund. The treasurer of state shall invest the money in the fund not  
40 currently needed to meet the obligations of the fund in the same  
41 manner as other public funds may be invested. Interest that accrues  
42 from these investments shall be deposited in the fund. Money in the



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1 fund at the end of a state fiscal year does not revert to the state general  
2 fund. Revenue received from civil penalties under this section shall be  
3 deposited in the employment of youth fund.

4 SECTION 4. IC 22-2-2-4, AS AMENDED BY SEA 40-1999, IS  
5 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:  
6 Sec. 4. (a) Every employer employing four (4) or more employees  
7 during a work week shall:

8 (1) in any work week beginning on or after July 1, 1968, in which  
9 he is subject to the provisions of this chapter, pay each of his  
10 employees wages of not less than one dollar and twenty-five cents  
11 (\$1.25) per hour;

12 (2) in any work week beginning on or after July 1, 1977, in which  
13 he is subject to this chapter, pay each of his employees wages of  
14 not less than one dollar and fifty cents (\$1.50) per hour;

15 (3) in any work week beginning on or after January 1, 1978, in  
16 which he is subject to this chapter, pay each of his employees  
17 wages of not less than one dollar and seventy-five cents (\$1.75)  
18 per hour; and

19 (4) in any work week beginning on or after January 1, 1979, in  
20 which he is subject to this chapter, pay each of his employees  
21 wages of not less than two dollars (\$2) per hour.

22 (b) Except as provided in subsection (c), every employer employing  
23 at least two (2) employees during a work week shall, in any work week  
24 in which the employer is subject to this chapter, pay each of the  
25 employees in any work week beginning on and after July 1, 1990, and  
26 before October 1, 1998, wages of not less than three dollars and  
27 thirty-five cents (\$3.35) per hour.

28 (c) An employer subject to subsection (b) is permitted to apply a "tip  
29 credit" in determining the amount of cash wage paid to tipped  
30 employees. In determining the wage an employer is required to pay a  
31 tipped employee, the amount paid the employee by the employee's  
32 employer shall be an amount equal to:

33 (1) the cash wage paid the employee which for purposes of the  
34 determination shall be not less than the cash wage required to be  
35 paid to employees covered under the federal Fair Labor Standards  
36 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,  
37 1996, which amount is two dollars and thirteen cents (\$2.13) an  
38 hour; and

39 (2) an additional amount on account of the tips received by the  
40 employee, which amount is equal to the difference between the  
41 wage specified in subdivision (1) and the wage in effect under  
42 subsections (b), (f), and (g).



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1 An employer is responsible for supporting the amount of tip credit  
2 taken through reported tips by the employees.

3 (d) No employer having employees subject to any provisions of this  
4 section shall discriminate, within any establishment in which  
5 employees are employed, between employees on the basis of sex by  
6 paying to employees in such establishment a rate less than the rate at  
7 which he pays wages to employees of the opposite sex in such  
8 establishment for equal work on jobs the performance of which  
9 requires equal skill, effort, and responsibility, and which are performed  
10 under similar working conditions, except where such payment is made  
11 pursuant to:

12 (1) a seniority system;

13 (2) a merit system;

14 (3) a system which measures earnings by quantity or quality of  
15 production; or

16 (4) a differential based on any other factor other than sex.

17 (e) An employer who is paying a wage rate differential in violation  
18 of subsection (d) shall not, in order to comply with subsection (d),  
19 reduce the wage rate of any employee, and no labor organization, or its  
20 agents, representing employees of an employer having employees  
21 subject to subsection (d) shall cause or attempt to cause such an  
22 employer to discriminate against an employee in violation of  
23 subsection (d).

24 (f) Except as provided in subsection (c), every employer employing  
25 at least two (2) employees during a work week shall, in any work week  
26 in which the employer is subject to this chapter, pay each of the  
27 employees in any work week beginning on or after October 1, 1998,  
28 and before March 1, 1999, wages of not less than four dollars and  
29 twenty-five cents (\$4.25) per hour.

30 (g) Except as provided in subsections (c) and (i), every employer  
31 employing at least two (2) employees during a work week shall, in any  
32 work week in which the employer is subject to this chapter, pay each  
33 of the employees in any work week beginning on or after March 1,  
34 1999, wages of not less than five dollars and fifteen cents (\$5.15) an  
35 hour.

36 (h) This section does not apply if an employee:

37 (1) provides companionship services to the aged and infirm (as  
38 defined in 29 CFR 552.6); and

39 (2) is employed by an employer or agency other than the family  
40 or household using the companionship services, as provided in 29  
41 CFR 552.109 (a).

42 (i) This subsection applies only to an employee who has not attained

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1 the age of twenty (20) years. Instead of the rates prescribed by  
 2 subsections (c), (f), and (g), an employer may pay an employee of the  
 3 employer, during the first ninety (90) consecutive calendar days after  
 4 the employee is initially employed by the employer, a wage which is  
 5 not less than four dollars and twenty-five cents (\$4.25) per hour,  
 6 effective March 1, 1999. However, no employer may take any action  
 7 to displace employees (including partial displacements such as  
 8 reduction in hours, wages, or employment benefits) for purposes of  
 9 hiring individuals at the wage authorized in this subsection.

10 (j) Except as otherwise provided in this section, no employer shall  
 11 employ any employee for a workweek longer than forty (40) hours  
 12 unless the employee receives compensation for employment in excess  
 13 of the hours above specified at a rate not less than one and one-half  
 14 (1.5) times the regular rate at which he is employed.

15 (k) For purposes of this section the following apply:

16 (1) "Overtime compensation" means the compensation required  
 17 by subsection (j).

18 (2) "Compensatory time" and "compensatory time off" mean  
 19 hours during which an employee is not working, which are not  
 20 counted as hours worked during the applicable workweek or other  
 21 work period for purposes of overtime compensation, and for  
 22 which the employee is compensated at the employee's regular  
 23 rate.

24 (3) "Regular rate" means the rate at which an employee is  
 25 employed is considered to include all remuneration for  
 26 employment paid to, or on behalf of, the employee, but is not  
 27 considered to include the following:

28 (A) Sums paid as gifts, payments in the nature of gifts made at  
 29 Christmas time or on other special occasions, as a reward for  
 30 service, the amounts of which are not measured by or  
 31 dependent on hours worked, production, or efficiency.

32 (B) Payments made for occasional periods when no work is  
 33 performed due to vacation, holiday, illness, failure of the  
 34 employer to provide sufficient work, or other similar cause,  
 35 reasonable payments for traveling expenses, or other expenses,  
 36 incurred by an employee in the furtherance of his employer's  
 37 interests and properly reimbursable by the employer, and other  
 38 similar payments to an employee which are not made as  
 39 compensation for his hours of employment.

40 (C) Sums paid in recognition of services performed during a  
 41 given period if:

42 (i) both the fact that payment is to be made and the amount

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of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly;

(ii) the payments are made pursuant to a bona fide profit sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriately issued regulations, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the employee under subsection (h) or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where the premium rate is not less than one and one-half (1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to the employee under subsection (a)) where the premium rate is not less than one and one-half (1.5) times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

(I) No employer shall be considered to have violated subsection (j)

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1 by employing any employee for a workweek in excess of that specified  
 2 in subsection (a) without paying the compensation for overtime  
 3 employment prescribed therein if the employee is so employed:  
 4 (1) in pursuance of an agreement, made as a result of collective  
 5 bargaining by representatives of employees certified as bona fide  
 6 by the National Labor Relations Board, which provides that no  
 7 employee shall be employed more than one thousand forty (1,040)  
 8 hours during any period of twenty-six (26) consecutive weeks; or  
 9 (2) in pursuance of an agreement, made as a result of collective  
 10 bargaining by representatives of employees certified as bona fide  
 11 by the National Labor Relations Board, which provides that  
 12 during a specified period of fifty-two (52) consecutive weeks the  
 13 employee shall be employed not more than two thousand two  
 14 hundred forty (2,240) hours and shall be guaranteed not less than  
 15 one thousand eight hundred forty (1,840) hours (or not less than  
 16 forty-six (46) weeks at the normal number of hours worked per  
 17 week, but not less than thirty (30) hours per week) and not more  
 18 than two thousand eighty (2,080) hours of employment for which  
 19 the employee shall receive compensation for all hours guaranteed  
 20 or worked at rates not less than those applicable under the  
 21 agreement to the work performed and for all hours in excess of  
 22 the guaranty which are also in excess of the maximum workweek  
 23 applicable to the employee under subsection (a) or two thousand  
 24 eighty (2,080) in that period at rates not less than one and  
 25 one-half (1.5) times the regular rate at which the employee is  
 26 employed. or  
 27 (m) No employer shall be considered to have violated subsection (j)  
 28 by employing any employee for a workweek in excess of the maximum  
 29 workweek applicable to the employee under subsection (a) if the  
 30 employee is employed pursuant to a bona fide individual contract, or  
 31 pursuant to an agreement made as a result of collective bargaining by  
 32 representatives of employees, if the duties of the employee necessitate  
 33 irregular hours of work, and the contract or agreement includes the  
 34 following:  
 35 (1) Specifies a regular rate of pay of not less than the minimum  
 36 hourly rate provided in subsections (c), (f), (g), and (i) (whichever  
 37 is applicable) and compensation at not less than one and one-half  
 38 (1.5) times that rate for all hours worked in excess of the  
 39 maximum workweek.  
 40 (2) Provides a weekly guaranty of pay for not more than sixty  
 41 hours based on the rates so specified.  
 42 (n) No employer shall be considered to have violated subsection (j)

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1 by employing any employee for a workweek in excess of the maximum  
2 workweek applicable to the employee under that subsection if, pursuant  
3 to an agreement or understanding arrived at between the employer and  
4 the employee before performance of the work, the amount paid to the  
5 employee for the number of hours worked by him in the workweek in  
6 excess of the maximum workweek applicable to the employee under  
7 that subsection:

8 (1) in the case of an employee employed at piece rates, is  
9 computed at piece rates not less than one and one-half (1.5) times  
10 the bona fide piece rates; applicable to the same work when  
11 performed during nonovertime hours; ~~or~~

12 (2) in the case of an employee performing two (2) or more kinds  
13 of work for which different hourly or piece rates have been  
14 established, is computed at rates not less than one and one-half  
15 (1.5) times those bona fide rates; applicable to the same work  
16 when performed during nonovertime hours; or

17 (3) is computed at a rate not less than one and one-half (1.5) times  
18 the rate established by the agreement or understanding as the  
19 basic rate to be used in computing overtime compensation  
20 thereunder, provided that the rate so established shall be  
21 substantially equivalent to the average hourly earnings of the  
22 employee, exclusive of overtime premiums, in the particular work  
23 over a representative period of time;

24 and if the employee's average hourly earnings for the workweek  
25 exclusive of payments described in this section are not less than the  
26 minimum hourly rate required by applicable law, and extra overtime  
27 compensation is properly computed and paid on other forms of  
28 additional pay required to be included in computing the regular rate.

29 (o) Extra compensation paid as described in this section shall be  
30 creditable toward overtime compensation payable pursuant to this  
31 section.

32 (p) No employer shall be considered to have violated subsection (j)  
33 by employing any employee of a retail or service establishment for a  
34 workweek in excess of the applicable workweek specified therein, if:

35 (1) the regular rate of pay of the employee is in excess of one and  
36 one-half (1.5) times the minimum hourly rate applicable to the  
37 employee under section 2 of this chapter; and

38 (2) more than half of the employee's compensation for a  
39 representative period (not less than one (1) month) represents  
40 commissions on goods or services.

41 In determining the proportion of compensation representing  
42 commissions, all earnings resulting from the application of a bona fide

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1 commission rate shall be considered commissions on goods or services  
2 without regard to whether the computed commissions exceed the draw  
3 or guarantee.

4 (q) No employer engaged in the operation of a hospital or an  
5 establishment which is an institution primarily engaged in the care of  
6 the sick, the aged, or the mentally ill or defective who reside on the  
7 premises shall be considered to have violated subsection (j) if, pursuant  
8 to an agreement or understanding arrived at between the employer and  
9 the employee before performance of the work, a work period of  
10 fourteen (14) consecutive days is accepted in lieu of the workweek of  
11 seven (7) consecutive days for purposes of overtime computation and  
12 if, for his employment in excess of eight (8) hours in any workday and  
13 in excess of eighty (80) hours in that fourteen (14) day period, the  
14 employee receives compensation at a rate not less than one and  
15 one-half (1.5) times the regular rate at which the employee is  
16 employed.

17 (r) No employer shall employ any employee in domestic service in  
18 one (1) or more households for a workweek longer than forty (40)  
19 hours unless the employee receives compensation for that employment  
20 in accordance with subsection (j).

21 (s) In the case of an employee of an employer engaged in the  
22 business of operating a street, suburban or interurban electric railway,  
23 or local trolley or motorbus carrier (regardless of whether or not the  
24 railway or carrier is public or private or operated for profit or not for  
25 profit), in determining the hours of employment of such an employee  
26 to which the rate prescribed by subsection (j) applies there shall be  
27 excluded the hours the employee was employed in charter activities by  
28 the employer if both of the following apply:

29 (1) The employee's employment in the charter activities was  
30 pursuant to an agreement or understanding with the employer  
31 arrived at before engaging in that employment.

32 (2) If employment in the charter activities is not part of the  
33 employee's regular employment.

34 (t) Any employer may employ any employee for a period or periods  
35 of not more than ten (10) hours in the aggregate in any workweek in  
36 excess of the maximum workweek specified in subsection (j) without  
37 paying the compensation for overtime employment prescribed in  
38 subsection (j), if during that period or periods the employee is receiving  
39 remedial education that:

40 (1) is provided to employees who lack a high school diploma or  
41 educational attainment at the eighth grade level;

42 (2) is designed to provide reading and other basic skills at an

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1 eighth grade level or below; and  
2 (3) does not include job specific training.  
3 (u) Subsection (j) does not apply to an employee of a motion picture  
4 theater.  
5 (v) **Subsection (j) does not apply to an employee of a seasonal**  
6 **amusement or recreational establishment, an organized camp, or**  
7 **a religious or nonprofit educational conference center that is**  
8 **exempt under the federal Fair Labor Standards Act of 1938, as**  
9 **amended (29 U.S.C. 213).**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 432, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 432 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 432 be amended to read as follows:

Page 2, line 6, delete "work".

Page 2, line 7, after "(1)" insert "**work**".

Page 2, line 8, after "(2)" insert "**work**".

Page 2, line 8, delete "or".

Page 2, line 9, after "(3)" insert "**work**".

Page 2, line 9, delete "." and insert "; **or**".

Page 2, between lines 9 and 10, begin a new line block indented and insert:

"**(4) begin a work day before 6:00 a.m. on a school day.**".

(Reference is to SB 432 as printed February 12, 1999.)

HARRISON

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y



SENATE MOTION

Mr. President: I move that Senator Howard be added as coauthor of Senate Bill 432.

HARRISON

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 432, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 432 as reprinted February 17, 1999.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 0.

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