

Protecting Children Act

Section 1. Short Title

This Act may be cited as the "Protecting Children Act."

Section 2. Table of contents.

The bill is organized by four titles.

Section 3. Effective date.

This section sets the effective date for 60 days after the date of enactment.

TITLE I—IMPROVING ENFORCEMENT

Section 101. Adjusting civil monetary penalties.

Penalty levels: The bill increases maximum civil monetary penalties (CMPs) for violations of the child labor provisions of the *Fair Labor Standards Act of 1938* (FLSA) to approximately 10 times the 2023 inflation-adjusted penalty levels, establishes new minimum penalties, and adds a new provision to double penalties in cases of willful or repeat violations that do not result in death or serious injury to a child:

Category of Violation	Current Statutory Level	2023 Inflation-Adjusted Level	Revision
Violation of child labor standards	Max - \$11,000	Max - \$15,138	Max - \$150,000 Min - \$1,500
- Willful or repeat	—	—	Double [\$3K-300K]
Violation of child labor standards that causes death or serious injury	Max - \$50,000	Max - \$68,801	Max - \$700,000 Min - \$7,000
- Willful or repeat	Double [max \$100K]	Double [max \$137,602]	Double [\$14K-\$1.4M]

The bill also increases maximum CMPs for violations of the *Occupational Safety and Health Act of 1970* (OSH Act) to approximately 4.5 times the current inflation-adjusted levels and establishes new minimum penalties, as summarized in this chart:

Category of Violation	Current Statutory Level	2023 Inflation-Adjusted Level	Revision
Willful/repeat, max	\$70,000	\$156,259	\$700,000
Willful, min	\$5,000	\$11,162	\$50,000
Repeat, min	—	—	\$50,000
Failure to abate, max	\$7,000	\$15,625	\$70,000
min	—	—	\$7,000
Serious, max	\$7,000	\$15,625	\$70,000
min	—	—	\$7,000

It then adds a new enhancement for significant OSH Act violations that result in harm to children or death. In cases of significant violations (defined as willful, repeat, or serious violations, or failure to correct a previously-cited willful, repeat, or serious violation) that cause or contribute to serious physical harm to an employee under the age of 18, the minimum and maximum allowable CMPs are doubled. In cases of significant violations that cause or contribute to the death of an employee, the minimum and maximum allowable CMPs are also doubled, but if the fatality befalls an employee under the age of 18 they are tripled.

Penalty considerations: When agencies are weighing the appropriate level for a CMP in specific cases, both FLSA and the OSH Act have lists of considerations such as the size of the employer and good faith. The bill adds to each list of considerations the requirement to weigh the economic benefit of noncompliance. This requirement executes a GAO [recommendation](#) that CMPs for labor standards violations should, as is the case with environmental violations, be set at the level that eliminates economic incentives to violate the law.

Section 102. Enhancing criminal penalties.

This section enhances the criminal penalty provisions for violations of the FLSA child labor provisions and the OSH Act.

Child labor violations: FLSA’s criminal penalties provision currently provides only that conviction for a willful violation can lead to a fine of no more than \$10,000, imprisonment for no more than 6 months, or both. This section expands that provision with additional criminal penalties for particularly serious criminal child labor violations:

- (1) An employer that knowingly or willfully violates child labor provisions and *negligently* places a child in imminent danger of death or serious bodily injury can, upon conviction, be punished by a fine in accordance with Title 18 of the U.S. Code, imprisonment up to one year, or both.
- (2) An employer that knowingly or willfully violates child labor provisions and *knowingly* places a child in imminent danger of death or serious bodily injury can, upon conviction, be punished by a fine in accordance with Title 18 of the U.S. Code, imprisonment up to 15 years, or both. For an employer that is an organization, the punishment shall be a fine of not more than \$5 million for each violation.
- (3) For a violation described in paragraph (2) above that results in the death of a child, the employer can be punished by a fine in accordance with Title 18 of the U.S. Code and imprisonment for any term or years or for life. For an employer that is an organization, the punishment shall be a fine of not more than \$10 million for each violation.

In the case of repeat convictions, the maximum fines and terms of imprisonment set out above are doubled.

OSH Act violations: This section also increases criminal penalties under the OSH Act and provides for enhancements in cases in which children are harmed.

First, it increases the maximum criminal penalties for giving advance notice of inspections or making false statements or representations, from (A) a fine of not more than \$1,000 and imprisonment of not more than 6 months to (B) a fine under title 18 of the U.S. Code and imprisonment for not more than 5 years.

Second, it creates a new scale of penalties for criminal violations of OSHA standards and regulations. The current criminal provision, which applies only in cases of willful violations that result in a fatality, allows maximum penalties of a fine of not more than \$10,000 and imprisonment of not more than 6 months, which are doubled for repeat convictions. This section replaces that provision with the following:

- (1) For a negligent violation that results in negligently placing an employee in imminent danger of death or serious bodily injury, the maximum criminal penalties are a fine under title 18 of the U.S. Code and imprisonment for not more than 1 year.
- (2) For a knowing or willful violation that results in placing an employee in imminent danger of death or serious bodily injury, the maximum criminal penalties are a fine under title 18 of the U.S. Code and imprisonment for not more than 15 years. Organizational defendants are subject to a fine of not more than \$5 million for each violation.
- (3) For a knowing or willful violation that results in the death of an employee, the maximum criminal penalties are a fine under title 18 and imprisonment for any term of years or life. Organizational defendants are subject to a fine of not more than \$10 million for each violation.
- (4) The maximum penalties above are doubled for repeat convictions and in cases in which the employee endangered or killed is under the age of 18.

Section 103. Expanding use of hot goods injunctions.

FLSA allows for “hot goods” injunctions that stop goods from moving in interstate commerce if they have been produced in violation of the Act. FLSA currently allows hot goods injunctions for goods produced within the last 90 days in cases of minimum wage and overtime violations and within the last 30 days in cases of child labor violations. This section aligns the child labor reach-back provision with the minimum wage and overtime reach-back provision so that both will cover 90 days.

Section 104. Enabling private enforcement.

FLSA currently allows for “private enforcement” (enforcement by workers themselves in litigation) for violations of the minimum wage, overtime, tip, equal pay, and breast milk pump break requirements, but child labor violations can be enforced only by the Department of Labor (DOL). This section would extend private enforcement to child labor violations in cases in which children are harmed in the course of a child labor violation.

TITLE II—STRENGTHENING CAPACITY TO PROTECT CHILDREN

Section 201. Increasing expertise for protecting children from unsafe employment and oppressive child labor.

This section establishes a new National Advisory Committee on Child Labor, to advise both DOL and the Department of Health and Human Services (HHS) on matters related to child labor, the occupational safety and health of young workers, and child placement decisions that could expose children to the risk of child labor.

Section 202. Supporting implementation and interagency collaboration.

This section establishes an account in which DOL would deposit CMPs for FLSA child labor violations and OSH Act enhanced CMPs for violations causing endangerment or harm to young workers. Funds from the account would be available to DOL to use for enforcement of FLSA child labor provisions and protecting young workers from OSH Act violations, supporting research on child labor and occupational illness and injury risks experienced by young workers, and funding grants to support victims and train employers and young workers.

TITLE III—UPDATING STANDARDS TO PROTECT CHILDREN

Section 301. Improving process for updating standards on conditions of oppressive child labor.

This section improves the process for DOL to develop the hazardous occupation orders that prohibit children from being employed in conditions of oppressive child labor:

- It charges the Secretary of Labor with periodically reviewing hazardous occupation orders to ensure that children are adequately protected from hazardous work.
- It requires DOL, when developing hazardous occupation orders, to place preeminent value on the assuring the safety, health, and well-being of children; take into consideration the particular vulnerabilities of childhood; adopt reasonable precautionary assumptions to assure that children are not exposed at work to hazards that may reasonably be anticipated to cause serious harm or long-term health effects (including health effects from toxic substances); and take into consideration any recommendations received from the Advisory Committee established by section 201, the National Institute for Occupational Safety and Health (NIOSH), or other authoritative experts.
- It establishes mandatory time frames for development of recommendations for orders by the Advisory Committee, when it is tasked to do so by DOL, and deadlines for DOL to consider such recommendations and act on them. It likewise establishes mandatory time frames for DOL to consider and act upon recommendations from NIOSH on hazardous occupation orders.
- It requires transparency for changes to draft hazardous occupation orders made during the interagency review process coordinated by the White House Office of Management and Budget pursuant to Executive Order 12,866.
- It permits DOL to rely on recommendations, research, or findings from NIOSH, the National Academies of Sciences, Engineering, and Medicine, and certain experts on toxic hazards.

It also prevents DOL from embarking upon rulemaking that would roll back child labor standards and leave children less protected.

Section 302. Judicial review of rulemaking.

This section establishes a judicial review process for FLSA rulemakings that parallels the process in the OSH Act and the Mine Act. Petitioners may, within 60 days of a rulemaking, seek review of rulemakings such as hazardous occupation orders in the D.C. Circuit Court of Appeals or the federal appeals courts in which the petitioner resides or has a principal place of business. The filing of a petition for review does not operate automatically as a stay. Rulemaking challenges are focused on the petition process and cannot be brought in enforcement actions.

By allowing for petitions of FLSA rulemakings to be filed directly in the courts of appeals, this provision would align with the judicial review provisions of the OSH Act (29 U.S.C. § 660) and the *Federal Mine Safety and Health Act of 1977* (Mine Act) (22 U.S.C. § 811(d)). By limiting most such reviews to petitions for review in a short period of time following rulemaking, this provision aligns with the Mine Act as well as major environmental laws, such as the *Clean Air Act* (42 U.S.C. § 7607(b)(2)).

TITLE IV—INCREASING RESEARCH AND PUBLIC EDUCATION

Section 401. Coordinating research on child labor

This section creates a new section of FLSA focused on research, including research relevant to child labor. It requires DOL to conduct reviews every 10 years of the exemptions in the Act from minimum wage, overtime, and child labor standards. It also charges NIOSH with being the lead agency on research related to child labor, the occupational safety and health of young workers, and the exposure or risk of exposure of vulnerable children to child labor. NIOSH is tasked with developing recommendations on data and statistical efforts across the federal government to ensure adequate data on child labor and occupational illness and injury of young workers.

NIOSH is also required to develop, based on data and research, recommendations to DOL for criteria for hazardous occupation orders. NIOSH is also expected to support DOL's rulemaking efforts by developing precautionary criteria or models for identifying conditions of oppressive child labor when there are data gaps about risks specific to children. NIOSH will also, from time-to-time, conduct research relevant to providing evidence-based guidance to DOL on other matters related to the child labor provisions of FLSA, such as strategic enforcement and assessing the economic benefit of noncompliance.

NIOSH is also charged with conducting research relevant to creating evidence-based guidance to agencies and programs responsible for the welfare, placement, and custody of children to prevent vulnerable children from being exposed to child labor.

Finally, NIOSH's responsibilities under the OSH Act for conducting research on occupational illness and injury hazards are expanded to ensure additional research on hazards specific to young workers. NIOSH is also required to develop model-based estimates of the incidence, prevalence, and total economic cost of occupational illness and injury, including illnesses and injuries experienced by working children.

Section 402. Developing a comprehensive statistical program.

This section requires DOL to develop a robust statistical program on matters related to FLSA, including child labor, and to the extent feasible develop statistics comparable to the program DOL maintains under the OSH Act.

DOL is required to produce an annual report on youth employment and child labor, with data and estimates of the incidence and prevalence of child labor violations. DOL will coordinate Federal statistical programs with data on youth employment and undertake periodic special surveys on child labor and particularly vulnerable young people.

DOL is also required under an OSH Act amendment to report occupational illness and injury statistics annually with demographic data and disaggregation of data by the age groups of relevance to the child labor provisions of FLSA.

Section 403. Enabling training and public information.

This section authorizes DOL to develop grant programs under FLSA for training, victim support, and identification of violations. It also requires annual reports on child labor and the occupational illness and injury of young workers. Finally, it requires DOL to publish annual statements of its capacity to enforce FLSA and the OSH Act.