

By Senator Joyner

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1 A bill to be entitled
2 An act relating to employment of children by the
3 entertainment industry; amending s. 450.132, F.S.;
4 providing definitions; providing regulations for the
5 employment of children in the entertainment industry;
6 providing responsibilities of employers and parents or
7 legal guardians of such children; providing duties of
8 the Division of Regulation within the Department of
9 Business and Professional Regulation; providing
10 limitations on the working hours of child performers;
11 providing certification requirements and duties of
12 teachers of child performers; requiring a trust
13 account for certain children employed in the
14 entertainment industry; providing safety requirements
15 for child performers; providing criteria for wage
16 claims; providing grounds for refusal to issue or
17 renew a preauthorization certificate and procedures
18 for challenging such a determination; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 450.132, Florida Statutes, is amended to
24 read:

25 Substantial rewording of section. See
26 s. 450.132, F.S., for present text.)
27 450.132 Employment of children by the entertainment
28 industry; rules; procedures; trust accounts.-

29 (1) DEFINITIONS.-As used in this section, the term:

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30 (a) "Certified teacher" means any person who holds a valid
31 and current Florida teaching certificate issued by the
32 Department of Education or its equivalent issued by any state,
33 territory, possession, or other jurisdiction of the United
34 States.

35 (b) "Child" or "minor" has the same meaning as in s.
36 450.012(3), and includes minors under the age of 6.

37 (c) "Child performer" means a minor employed to act or
38 otherwise participate in the performing arts, including, but not
39 limited to, motion pictures, theatrical, radio, or television
40 products.

41 (d) "Division" means the Division of Regulation within the
42 Department of Business and Professional Regulation.

43 (e) "Employ" includes suffer or permit to work.

44 (f) "Employee" means a person whose work is controlled by
45 an employer as to how and when to perform the task.

46 (g) "Entertainment industry" has the same meaning as in s.
47 450.012(5).

48 (h) "Exempt" means an employee who is exempt from minimum
49 wage or overtime provisions. In order for an employee to be
50 exempt under the executive category, the employee must meet all
51 of the following requirements:

52 1. The employee's primary duty is to perform nonmanual work
53 related to business management.

54 2. The employee exercises discretion.

55 3. The employee regularly assists executives or performs
56 specialized work or special assignments.

57 4. The employee performs less than 20 percent nonexempt
58 work.

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59 (i) "Hazardous occupation" means any occupation determined
60 to be hazardous by the Federal Fair Labor Standards Act.

61 (j) "Independent contractor" means a person who works free
62 from the control of the employer as defined by the Internal
63 Revenue Service.

64 (k) "Legal guardian" means a person appointed as a guardian
65 by a court.

66 (l) "Overtime" means hours worked after 40 hours in a 7-day
67 work week. Overtime shall be computed at time and one-half of
68 the employee's regular rate of pay.

69 (m) "Pay periods" means the days between paydays.

70 (n) "Paydays" means designated days on which employees
71 shall be paid. Paydays may not be more than 16 days apart,
72 except for professional, administrative, or executive employees
73 or employees employed in the capacity of outside salesman, as
74 those terms are defined under the Federal Fair Labor Standards
75 Act.

76 (o) "Place of employment," "work location," "movie set,"
77 "set," and "location" mean the actual worksite where any person
78 provides services, whether paid or unpaid, in this state as a
79 performer.

80 (p) "Safety" means the condition of being protected from
81 any situation that is detrimental to the child's health and
82 well-being.

83 (q) "Travel time" means time spent by an employee in travel
84 as part of his or her principal activity, such as travel from
85 job site to job site, which must be counted as hours worked.

86 (r) "Wage claim" means a document signed by an employee
87 that gives the Agency for Workforce Innovation authority to

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88 investigate a complaint of unpaid wages.

89 (s) "Wages" means all amounts at which the labor or service
90 rendered is paid, whether the amount is fixed or on a time,
91 task, piece, or commission basis.

92 (t) "Work permit" means a permit that is issued by a
93 designated school official or an agent of the Agency for
94 Workforce Innovation and that allows a child under the age of 16
95 to work under certain conditions.

96 (u) "Written authorization" means a document an employee
97 signs at the time of hiring which gives the employer permission
98 to deduct certain items from the employee's pay. A written
99 authorization is not needed for an employer to deduct an advance
100 or overpayment of wages, but the employer must pay the employee
101 at least minimum wage times the hours worked.

102 (2) EMPLOYMENT OF CHILDREN IN THE ENTERTAINMENT INDUSTRY.-

103 (a) Any person who employs an actor or performer 17 years
104 of age or younger in the entertainment industry must obtain a
105 preauthorization certificate issued by the division prior to the
106 start of work. The preauthorization certificate shall include
107 the project name; the estimated dates and length of the project;
108 the employer's name and Florida address; contact information for
109 at least three individuals, including name, address, and
110 telephone numbers; and the child performer's information,
111 including name, address, date of birth, where the child is
112 registered to attend school, grade level of the child, special
113 educational needs, anticipated length of employment on the
114 project, nature of work on the project, and a list of any
115 possible exposure to potentially hazardous materials or
116 substances. A signature shall be required from the child

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117 performer if the child is 14 years of age or older. A signature
118 shall be required from the parent or legal guardian giving the
119 child permission to be employed in the entertainment industry. A
120 signature shall be required from the employer certifying
121 compliance with all requirements of the preauthorization
122 certificate.

123 (b) It is the responsibility of the employer to obtain a
124 child performer preauthorization certificate before the
125 employment begins. The employer must be able to provide a copy
126 at the worksite when requested to do so. The division shall
127 retain a copy of the preauthorization certificate.

128 (c) The child performer preauthorization certificate is
129 valid for 1 year after the date it was issued or until the
130 specific project for which the child is employed by the employer
131 who makes the application for the preauthorization ceases,
132 whichever occurs first.

133 (d) The parent or legal guardian of the child performer may
134 contact the division to renew the preauthorization certificate
135 30 days prior to its expiration.

136 (e) A preauthorization certificate for a child performer
137 may be issued only by the division.

138 (f) No preauthorization certificate shall be given or
139 issued without a signature of a parent or legal guardian
140 indicating his or her permission for his or her child to work on
141 the specific project. A parent or legal guardian must be within
142 eyesight and earshot of the child performer at all times other
143 than the time periods in which certified teachers are teaching
144 school.

145 (g) Prior to issuance of the preauthorization certificate,

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146 the employer must provide to the division a certification of
147 compliance for the certified teacher with appropriate teaching
148 credentials to teach grade levels kindergarten through 12 or to
149 teach the level of education required for the child performer at
150 the place of employment.

151 (h) It is the responsibility of the employer to provide a
152 certified trainer or technician accredited in a United States
153 Department of Labor occupational safety and health administered
154 and certified safety program at the place of employment at all
155 times when a child performer may be exposed to potentially
156 hazardous conditions. Hazardous conditions include, but are not
157 limited to, special effects that could potentially be physically
158 dangerous to the child performer.

159 (i) The employer must provide to the division a written
160 criminal history check on all certified teachers and certified
161 trainers and technicians on the movie set. It is the
162 responsibility of the employer, parent, legal guardian, and
163 certified teacher, trainer, or technician to report any arrest
164 or conviction record and any other information that may present
165 a possible danger to the health, safety, and well-being of the
166 child performer.

167 (3) LIMITATIONS ON CHILD PERFORMERS' WORKING HOURS,
168 INCLUDING SCHOOL TIME.—

169 (a) All child performers at least 6 years of age but less
170 than 18 years of age must be provided with a certified teacher
171 for each group of 10 or fewer child performers when school is in
172 session.

173 (b) Child performers may not begin work before 5 a.m. or
174 continue work after 10 p.m. on evenings preceding school days.

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175 Child performers may not work later than midnight on days
176 preceding nonschool days. The time the child performer may be
177 permitted at the place of employment may be extended by one-half
178 hour for a meal period.

179 (c) Infants at least 15 days of age but less than 7 months
180 of age may not be employed as child performers unless a
181 physician who is board-certified in pediatrics provides a
182 written certification that the infant is at least 15 days old
183 and is physically capable of handling the stress of filmmaking.
184 With the physician's approval, the infant performer may be at
185 the place of employment a maximum of 2 hours and may not work
186 more than 20 minutes. Infants may work up to 2 cumulative hours
187 in any 24-hour period.

188 (d) Child performers at least 7 months of age but less than
189 3 years of age may be at the place of employment for up to 4
190 hours and may work up to 2 hours. The remaining time must be
191 reserved for the child performer's rest and recreation.

192 (e) Child performers at least 3 years of age but less than
193 6 years of age may be at the place of employment for up to 6
194 hours and may work up to 3 hours. The remaining time must be
195 reserved for the child performer's rest and recreation.

196 (f) When school is in session, child performers at least 6
197 years of age but less than 9 years of age may be at the place of
198 employment for up to 8 hours, the sum of 4 hours of work, 3
199 hours of school, and 1 hour of rest and recreation. When school
200 is not in session, work time may be increased up to 6 hours,
201 with the remaining time reserved for the child performer's rest
202 and recreation.

203 (g) When school is in session, child performers at least 9

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204 years of age but less than 16 years of age may be at the place
205 of employment for up to 9 hours, the sum of 5 hours of work, 3
206 hours of school, and 1 hour of rest and recreation. When school
207 is not in session, work time may be increased up to 7 hours,
208 with the remaining time reserved for the child performer's rest
209 and recreation.

210 (h) When school is in session, child performers at least 16
211 years of age but less than 18 years of age may be at the place
212 of employment for up to 10 hours, the sum of 6 hours of work, 3
213 hours of school, and 1 hour of rest and recreation. When school
214 is not in session, work time may be increased up to 8 hours,
215 with the remaining time reserved for the child performer's rest
216 and recreation.

217 (i) In exceptional circumstances due to unusual performance
218 requirements, the division may grant a temporary waiver of the
219 mandatory hours and start-to-finish times. Such waiver must be
220 granted prior to the performances of the work that is the
221 subject of the waiver. The division may grant a waiver only
222 under the following circumstances:

223 1. Written notification is provided which includes a list
224 of specific dates and times that the child performer shall be
225 employed or present at the place of employment.

226 2. Written acknowledgement is provided that the child
227 performer's parent or legal guardian has been fully informed of
228 the circumstances and has granted advance consent.

229 (j) The child performer must be provided with a 12-hour
230 rest and recreation break at the end of each workday.

231 (k) All time spent traveling from a studio to a location or
232 from a location to a studio shall count as part of the minor's

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233 workday. When a minor is with a company on a location that is
234 sufficiently distant and requires an overnight stay, and the
235 minor is required to travel daily between living quarters and
236 the place where the company is actually working, the time the
237 minor spends traveling shall not count as work time, provided
238 the company does not spend more than 45 minutes traveling each
239 way and furnishes the necessary transportation.

240 (4) CERTIFICATION AND DUTIES OF CERTIFIED TEACHERS.—

241 (a) A certified teacher of a resident student who attends a
242 public school must possess a valid and current teaching
243 certificate issued by the Department of Education. A certified
244 teacher of a resident student of a private school or a
245 nonresident student must possess a valid and current teaching
246 certificate from another state, territory, possession, or other
247 jurisdiction of the United States to teach grade levels
248 kindergarten through 12 or to teach the level of education
249 required for the child performer at the place of employment.

250 (b) A certified teacher shall, in addition to teaching and
251 in conjunction with the parent or legal guardian, also have the
252 responsibility of monitoring and protecting the health, safety,
253 and well-being of each child performer that teacher has been
254 hired to teach during the time that teacher is required to be
255 present.

256 (c) The certified teacher, parent, or legal guardian may
257 refuse to allow the engagement of the child performer at the
258 place of employment. Any party may report to the division
259 conditions threatening the health, safety, and well-being of the
260 child performer. It is the ultimate responsibility of the parent
261 or legal guardian to ensure that the safety, health, and well-

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262 being of the child are being protected. A certified teacher must
263 be present during the time reserved for school, except that
264 child performers under the age of 16 do not require the presence
265 of a certified teacher for up to 1 hour for wardrobe, makeup,
266 hairdressing, promotional publicity, personal appearances, or
267 audio recording if these activities are not located on the
268 actual site of filming or at the theatre or if school is not in
269 session, and if the parent or legal guardian is present within
270 earshot or eyesight of the child performer.

271 (5) TRUST ACCOUNT FOR CHILD PERFORMERS.—

272 (a) Each time a child performer is employed in the
273 entertainment industry in this state with a contract equal or
274 greater than \$1,000, a trust account shall be created for the
275 child performer.

276 (b) It is the responsibility of the parent, legal guardian,
277 or trustee to set up a trust account for the child performer in
278 the child performer's state of residence for the sole benefit of
279 the child performer within 7 business days after the child
280 performer's employment contract is signed. The child performer
281 shall not have access to the trust account until the child
282 performer is 18 years of age or becomes legally emancipated.

283 (c) The parent, legal guardian, or trustee shall provide
284 the employer with a trustee statement within 15 days after the
285 start of employment. Upon receiving the trustee statement, the
286 employer shall provide the parent, legal guardian, or trustee
287 with a written acknowledgement of receipt.

288 (d) If the trustee statement is not provided to the
289 employer within 90 days after the start of employment, the
290 employer shall refer the matter to district court. The district

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291 court shall have continuing jurisdiction over the trust.

292 (e) The employer shall deposit not less than 15 percent of
293 the child performer's gross earnings directly into the child
294 performer's trust account within 15 business days after the work
295 performance. If the account is not established, the employer
296 shall withhold 15 percent of the gross income until a trust
297 account is established or until the court orders otherwise.
298 After the employer deposits 15 percent of the gross earnings in
299 the trust account, the employer shall have no further obligation
300 to monitor the funds.

301 (f) After the funds are deposited in the trust account,
302 only the trustee is obligated to monitor and account for the
303 funds.

304 (6) SAFETY REQUIREMENTS FOR CHILD PERFORMERS.—

305 (a) No dressing room is to be occupied simultaneously by a
306 minor and an adult performer or by minors of the opposite sex.

307 (b) It is the responsibility of the employer to provide a
308 safe, secure shelter for child performers 17 years of age or
309 younger to rest when required to be at the place of employment
310 during nonperformance times.

311 (c) No employer may cause, induce, entice, or permit a
312 child performer to engage in or be used for sexually exploitive
313 material for the purpose of producing a performance. No child
314 performer may be depicted in any media as appearing to
315 participate in a sex act.

316 (7) WAGE CLAIMS.—

317 (a) Determination of employees who may file a wage claim
318 because of inability to afford legal counsel shall be based on
319 the employee's earnings. An employee earning less than one and

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320 one-half times the state's average weekly wages, as determined
321 by the Agency for Workforce Innovation, shall be considered
322 financially unable to employ counsel.

323 (b) Wage claim forms must be completed in duplicate,
324 signed, and notarized.

325 (c) The agency shall notify the affected employer of any
326 wage claim filed against him or her and allow at least 10 days
327 for him or her to file a written response. If the employer
328 disputes the claim, his or her written response shall be given
329 to the employee, who shall be allowed 10 days in which to rebut
330 the claim in writing.

331 (d) The agency may schedule an administrative hearing if,
332 in its judgment, it would facilitate resolution of the
333 complaint. The conduct of the hearing is not governed by the
334 Administrative Procedures Act, but rather by procedures
335 established by the agency.

336 (e) The agency may issue a subpoena duces tecum to compel
337 the production of records it believes are necessary for the
338 resolution of the complaint.

339 (f) The agency may issue written findings whenever it has
340 sufficient evidence upon which to base its determination.

341 (g) The agency may accept a notarized acknowledgment of
342 indebtedness from the employer if the agency believes it is the
343 best way to resolve the complaint.

344 (h) The agency may file complaints in any court in the
345 state in order to resolve wage disputes or correct violations
346 arising under this chapter.

347 (i) The agency shall obtain a written assignment form
348 signed by the employee and notarized before initiating any legal

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349 action in any court of any jurisdiction after a thorough
350 investigation and determination that the claim is valid.

351 (j) The agency may file a proof of claim on behalf of any
352 employee in any United States bankruptcy court if an employee
353 files a wage claim and if, in the agency's judgment, it is
354 appropriate for the resolution of the claim.

355 (8) NONISSUANCE OR NONRENEWAL OF PREAUTHORIZATION
356 CERTIFICATE; REDETERMINATION REQUEST AND PROCEDURES.-

357 (a) The division director may for cause refuse to issue or
358 renew a preauthorization certificate to any project that has
359 violated any provision of this section within a 2-year period.

360 (b) The director shall notify the employer within 10 days
361 after the dates requested of a nonissuance or nonrenewal of a
362 preauthorization certificate.

363 (c) Any affected party may request a reconsideration of the
364 director's actions, in writing, within 10 days.

365 (d) The director may schedule an administrative hearing if,
366 in his or her judgment, it would facilitate resolution of the
367 complaint. The conduct of the hearing is not governed by the
368 Administrative Procedures Act, but rather by procedures
369 established by the Agency for Workforce Innovation.

370 (e) The director may issue a subpoena duces tecum to compel
371 the production of records he or she believes are necessary for
372 the resolution of the complaint.

373 (f) The director may issue written findings whenever he or
374 she has sufficient evidence upon which to base his or her
375 determination.

376 Section 2. This act shall take effect July 1, 2010.