

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 the  
 8           Division of Regulation within the Department of Business  
 9           and Professional Regulation; providing limitations on the  
 10          working hours of child performers; providing certification  
 11          requirements and duties of teachers of child performers;  
 12          requiring a trust account for certain children employed in  
 13          the entertainment industry; providing safety requirements  
 14          for child performers; providing criteria for wage claims;  
 15          providing grounds for refusal to issue or renew a  
 16          preauthorization certificate and procedures for  
 17          challenging such a determination; providing an effective  
 18          date.

19  
 20   Be It Enacted by the Legislature of the State of Florida:

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

24           Substantial rewording of section. See  
 25           s. 450.132, F.S., for present text.)  
 26           450.132   Employment of children by the entertainment  
 27           industry; rules; procedures; trust accounts.—  
 28           (1)   DEFINITIONS.—As used in this section, the term:

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

33 (b) "Child" or "minor" has the same meaning as in s.  
 34 450.012(3), and includes minors under the age of 6.

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

39 (d) "Division" means the Division of Regulation within the  
 40 Department of Business and Professional Regulation.

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

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

44 (g) "Entertainment industry" has the same meaning as in s.  
 45 450.012(5).

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

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

52 2. The employee exercises discretion.

53 3. The employee regularly assists executives or performs  
 54 specialized work or special assignments.

55 4. The employee performs less than 20 percent nonexempt  
 56 work.

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

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

62 (k) "Legal guardian" means a person appointed as a  
63 guardian by a court.

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

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

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

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

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

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

85 (r) "Wage claim" means a document signed by an employee  
86 that gives the Agency for Workforce Innovation authority to  
87 investigate a complaint of unpaid wages.

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

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

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

101 (2) EMPLOYMENT OF CHILDREN IN THE ENTERTAINMENT INDUSTRY.—

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

113 project, nature of work on the project, and a list of any  
114 possible exposure to potentially hazardous materials or  
115 substances. A signature shall be required from the child  
116 performer if the child is 14 years of age or older. A signature  
117 shall be required from the parent or legal guardian giving the  
118 child permission to be employed in the entertainment industry. A  
119 signature shall be required from the employer certifying  
120 compliance with all requirements of the preauthorization  
121 certificate.

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

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

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

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

137 (f) No preauthorization certificate shall be given or  
138 issued without a signature of a parent or legal guardian  
139 indicating his or her permission for his or her child to work on  
140 the specific project. A parent or legal guardian must be within

141 eyesight and earshot of the child performer at all times other  
 142 than the time periods in which certified teachers are teaching  
 143 school.

144 (g) Prior to issuance of the preauthorization certificate,  
 145 the employer must provide to the division a certification of  
 146 compliance for the certified teacher with appropriate teaching  
 147 credentials to teach grade levels kindergarten through 12 or to  
 148 teach the level of education required for the child performer at  
 149 the place of employment.

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

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

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

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

172        (b) Child performers may not begin work before 5 a.m. or  
173 continue work after 10 p.m. on evenings preceding school days.  
174 Child performers may not work later than midnight on days  
175 preceding nonschool days. The time the child performer may be  
176 permitted at the place of employment may be extended by one-half  
177 hour for a meal period.

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

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

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

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

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

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

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



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

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

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

230 (k) All time spent traveling from a studio to a location  
231 or from a location to a studio shall count as part of the  
232 minor's workday. When a minor is with a company on a location  
233 that is sufficiently distant and requires an overnight stay, and  
234 the minor is required to travel daily between living quarters  
235 and the place where the company is actually working, the time  
236 the minor spends traveling shall not count as work time,  
237 provided the company does not spend more than 45 minutes  
238 traveling each way and furnishes the necessary transportation.

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

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

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

255 (c) The certified teacher, parent, or legal guardian may  
256 refuse to allow the engagement of the child performer at the  
257 place of employment. Any party may report to the division  
258 conditions threatening the health, safety, and well-being of the  
259 child performer. It is the ultimate responsibility of the parent  
260 or legal guardian to ensure that the safety, health, and well-  
261 being of the child are being protected. A certified teacher must  
262 be present during the time reserved for school, except that  
263 child performers under the age of 16 do not require the presence  
264 of a certified teacher for up to 1 hour for wardrobe, makeup,  
265 hairdressing, promotional publicity, personal appearances, or  
266 audio recording if these activities are not located on the  
267 actual site of filming or at the theatre or if school is not in  
268 session, and if the parent or legal guardian is present within  
269 earshot or eyesight of the child performer.

270 (5) TRUST ACCOUNT FOR CHILD PERFORMERS.—

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

275 (b) It is the responsibility of the parent, legal  
276 guardian, or trustee to set up a trust account for the child

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277 performer in the child performer's state of residence for the  
278 sole benefit of the child performer within 7 business days after  
279 the child performer's employment contract is signed. The child  
280 performer shall not have access to the trust account until the  
281 child performer is 18 years of age or becomes legally  
282 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  
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.—

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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  
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  
 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.

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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  
364 the director's actions, in writing, within 10 days.

365        (d) The director may schedule an administrative hearing  
366 if, in his or her judgment, it would facilitate resolution of  
367 the 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  
371 compel the production of records he or she believes are  
372 necessary for 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.