

By Senator Joyner

18-00417-11

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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 defining terms; providing requirements for the
5 employment of children in the entertainment industry;
6 providing responsibilities of employers and parents or
7 legal guardians of such children; requiring a
8 preauthorization certificate for each child; providing
9 duties of the Division of Regulation within the
10 Department of Business and Professional Regulation;
11 providing limitations on the working hours of child
12 performers; providing certification requirements and
13 duties of teachers and trainers of child performers;
14 requiring a trust account for certain children
15 employed in the entertainment industry; providing
16 safety requirements for child performers; providing
17 criteria for wage claims; providing requirements for
18 the Agency for Workforce Innovation in resolving such
19 claims; providing grounds under which the Division of
20 Regulation may refuse to issue or renew a
21 preauthorization certificate and procedures for
22 challenging such a determination; reenacting ss.
23 450.021(1)(b) and 562.13(2)(b), F.S., relating to the
24 employment of minors in this state, to incorporate the
25 amendments made to s. 450.132, F.S., in references
26 thereto; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 450.132, Florida Statutes, is amended to
31 read:

32 (Substantial rewording of section. See
33 s. 450.132, F.S., for present text.)

34 450.132 Employment of children by the entertainment
35 industry; rules; procedures; trust accounts.-

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

37 (a) "Agency" means the Agency for Workforce Innovation.

38 (b) "Certified teacher" means any person who holds a valid
39 and current Florida teaching certificate issued by the
40 Department of Education or its equivalent issued by any state,
41 territory, possession, or other jurisdiction of the United
42 States.

43 (c) "Child" or "minor" has the same meaning as in s.
44 450.012.

45 (d) "Child performer" means a child employed to act or
46 otherwise participate in the performing arts, including, but not
47 limited to, motion pictures, theatrical, radio, or television
48 products.

49 (e) "Division" means the Division of Regulation within the
50 Department of Business and Professional Regulation.

51 (f) "Employ" includes suffer or permit to work.

52 (g) "Employee" means a person whose work is controlled by
53 an employer as to how and when to perform the task.

54 (h) "Entertainment industry" has the same meaning as in s.
55 450.012.

56 (i) "Hazardous condition" means, but is not limited to,
57 special effects that could potentially be physically dangerous
58 to the child performer.

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59 (j) "Legal guardian" means a person appointed as a guardian
60 by a court.

61 (k) "Place of employment," including the "movie set,"
62 "worksite," "set," and "location," means the actual location in
63 this state where a person provides his or her services, whether
64 paid or unpaid, as a performer.

65 (l) "Safety" means the condition of being protected from
66 any situation that is detrimental to the child's health and
67 well-being.

68 (m) "Wage claim" means a document signed by the attorney
69 for a child performer giving the Agency for Workforce Innovation
70 authority to investigate a complaint of unpaid wages.

71 (n) "Wages" means all amounts at which the labor or service
72 rendered is paid, whether the amount is fixed or on a time,
73 task, piece, or commission basis.

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

75 (a) Any person who employs a child performer in the
76 entertainment industry must obtain a preauthorization
77 certificate issued by the division before the start of work. The
78 preauthorization certificate must include the project name; the
79 estimated dates and length of the project; the employer's name
80 and Florida address; contact information for at least three
81 individuals, including name, address, and telephone numbers; and
82 the child performer's information, including name, address, date
83 of birth, where the child is registered to attend school, grade
84 level of the child, special educational needs, anticipated
85 length of employment on the project, nature of work on the
86 project, and a list of any possible exposure to potentially
87 hazardous materials or substances. A signature is required from

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88 the employer certifying compliance with all requirements of the
89 preauthorization certificate.

90 (b) A preauthorization certificate for a child performer
91 may be issued only by the division.

92 (c)1. Before issuing a preauthorization certificate, the
93 employer shall provide to the division a certification of
94 teaching compliance for each certified teacher employed to teach
95 the child performer. The certificate of teaching compliance must
96 state the certified teacher's appropriate teaching credentials
97 to teach grade levels kindergarten through 12 or to teach the
98 level of education required for the child performer at the place
99 of employment.

100 2. The employer must provide to the division a written
101 criminal history check on all certified teachers on the movie
102 set or at the place of employment. It is the responsibility of
103 the employer, parent, legal guardian, and certified teacher to
104 report any arrest or conviction record and any other information
105 that may present a possible danger to the health, safety, or
106 well-being of the child performer.

107 (d) It is the responsibility of the employer to obtain a
108 child performer preauthorization certificate before the
109 employment begins. The employer must be able to provide a copy
110 at the worksite when requested to do so. The division shall
111 retain a copy of the preauthorization certificate.

112 (e) The child performer preauthorization certificate is
113 valid for 1 year after the date it is issued or until the
114 specific project for which the child is employed by the employer
115 ceases, whichever occurs first.

116 (f) A signature is required from the child performer if the

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117 child is 14 years of age or older.

118 (g) A preauthorization certificate may not be given or
119 issued without the signature of a parent or legal guardian
120 indicating his or her permission for his or her child to work on
121 a specific project. A parent or legal guardian must be within
122 eyesight and earshot of the child performer at all times other
123 than the time periods in which the child is with a certified
124 teacher when the teacher is teaching school.

125 (h) The parent or legal guardian of the child performer may
126 contact the division to renew the preauthorization certificate
127 30 days before its expiration.

128 (i)1. It is the responsibility of the employer to provide a
129 certified trainer or technician accredited in a United States
130 Department of Labor occupational safety and health administered
131 and certified safety program at the place of employment at all
132 times when a child performer may be exposed to a potentially
133 hazardous condition.

134 2. The employer must provide to the division a written
135 criminal history check on all certified trainers and technicians
136 on the movie set. It is the responsibility of the employer,
137 parent, legal guardian, and certified trainer or technician to
138 report any arrest or conviction record and any other information
139 that may present a possible danger to the health, safety, or
140 well-being of the child performer.

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

143 (a) All child performers who are at least 6 years of age
144 but younger than 18 years of age must be provided with a
145 certified teacher for each group of 10 or fewer child performers

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146 when school is in session.

147 (b) A child performer may not begin work before 5 a.m. or
148 continue work after 10 p.m. on evenings preceding a school day.
149 A child performer may not work later than midnight on a day
150 preceding a nonschool day. The time that a child performer may
151 be permitted at the place of employment may be extended by one-
152 half hour for a meal period.

153 (c)1. An infant who is at least 15 days of age but younger
154 than 7 months of age may not be employed as a child performer
155 unless a physician, who is a board-certified pediatrician,
156 provides a written certification that the infant is physically
157 capable of handling the stress of filmmaking. With the
158 physician's approval, the infant performer may be at the place
159 of employment a maximum of 2 hours and may not work more than 20
160 minutes. Infants may work up to 2 cumulative hours in any 24-
161 hour period.

162 2. A child performer who is at least 7 months of age but
163 younger than 3 years of age may be at the place of employment
164 for up to 4 hours and may work up to 2 hours. The remaining time
165 must be reserved for the child performer's rest and recreation.

166 3. A child performer who is at least 3 years of age but
167 younger than 6 years of age may be at the place of employment
168 for up to 6 hours and may work up to 3 hours. The remaining time
169 must be reserved for the child performer's rest and recreation.

170 (d)1. When school is in session, each child performer who
171 is at least 6 years of age but younger than 9 years of age may
172 be at the place of employment for up to 8 hours; the sum of 4
173 hours of work, 3 hours of school, and 1 hour of rest and
174 recreation. If school is not in session, work time may be

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175 increased up to 6 hours, with the remaining time reserved for
176 the child performer's rest and recreation.

177 2. When school is in session, Each child performer who is
178 at least 9 years of age but younger than 16 years of age may be
179 at the place of employment for up to 9 hours, the sum of 5 hours
180 of work, 3 hours of school, and 1 hour of rest and recreation.
181 If school is not in session, work time may be increased up to 7
182 hours, with the remaining time reserved for the child
183 performer's rest and recreation.

184 3. If school is in session, a child performer who is at
185 least 16 years of age but younger than 18 years of age may be at
186 the place of employment for up to 10 hours, the sum of 6 hours
187 of work, 3 hours of school, and 1 hour of rest and recreation.
188 If school is not in session, work time may be increased up to 8
189 hours, with the remaining time reserved for the child
190 performer's rest and recreation.

191 (e) In exceptional circumstances due to unusual performance
192 requirements, the division may grant a temporary waiver of the
193 mandatory hours and start-to-finish times. The waiver must be
194 granted before the performances of the work that is the subject
195 of the waiver. The division may grant a waiver only under the
196 following circumstances:

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

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

203 (f) The child performer must be provided with a 12-hour

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204 rest and recreation break at the end of each workday.

205 (g) All time spent traveling from a studio to a location or
206 from a location to a studio counts as part of the child's
207 workday. When a child is with a company on a location that is
208 sufficiently distant and requires an overnight stay, and the
209 child is required to travel daily between the living quarters
210 and the place where the company is actually working, the time
211 the child spends traveling does not count as work time, provided
212 the company does not spend more than 45 minutes traveling each
213 way and furnishes the necessary transportation.

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

215 (a) A certified teacher of a child performer who attends a
216 public school must possess a valid and current teaching
217 certificate issued by the Department of Education. A certified
218 teacher of a child performer who attends a private school or of
219 a nonresident child performer must possess a valid and current
220 teaching certificate from another state, territory, possession,
221 or other jurisdiction of the United States to teach grade levels
222 kindergarten through 12 or to teach the level of education
223 required for the child performer at the place of employment.

224 (b) A certified teacher has, in addition to teaching and in
225 conjunction with the parent or legal guardian, the
226 responsibility of monitoring and protecting the health, safety,
227 and well-being of each child performer who the teacher has been
228 hired to teach during the time that the teacher is required to
229 be present.

230 (c) The certified teacher, parent, or legal guardian may
231 refuse to allow the engagement of the child performer at the
232 place of employment. Any party may report to the division

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233 conditions threatening the health, safety, or well-being of the
234 child performer. It is the ultimate responsibility of the parent
235 or legal guardian to ensure that the safety, health, and well-
236 being of the child are being protected. A certified teacher
237 shall be present during the time reserved for school, except
238 that a child performer younger than 16 years of age does not
239 require the presence of a certified teacher for up to 1 hour for
240 wardrobe, makeup, hairdressing, promotional publicity, personal
241 appearances, or audio recording if these activities are not
242 located on the actual site of filming or at the theatre or if
243 school is not in session, and if the parent or legal guardian is
244 present within earshot or eyesight of the child performer.

245 (5) TRUST ACCOUNT FOR CHILD PERFORMERS.—

246 (a) Each time a child performer is employed in the
247 entertainment industry in this state under a contract in an
248 amount equal to or greater than \$1,000, a trust account shall be
249 created for the child performer.

250 (b) The parent, legal guardian, or trustee is responsible
251 for establishing a trust account for the child performer in the
252 child performer's state of residence for the sole benefit of the
253 child performer within 7 business days after the child
254 performer's employment contract is signed. The child performer
255 shall not have access to the trust account until the child
256 performer is 18 years of age or becomes legally emancipated.

257 (c) The parent, legal guardian, or trustee shall provide
258 the employer with a trustee statement within 15 days after the
259 start of employment. Upon receiving the trustee statement, the
260 employer shall provide the parent, legal guardian, or trustee
261 with a written acknowledgement of receipt.

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262 (d) If the trustee statement is not provided to the
263 employer within 90 days after the start of employment, the
264 employer shall refer the matter to the circuit court. The
265 circuit court shall have continuing jurisdiction over the trust
266 account.

267 (e) The employer shall deposit not less than 15 percent of
268 the child performer's gross earnings directly into the child
269 performer's trust account within 15 business days after the
270 child has performed. If the account is not established, the
271 employer shall withhold 15 percent of the gross income until a
272 trust account is established or until the court orders
273 otherwise. After the employer deposits 15 percent of the gross
274 earnings in the trust account, the employer shall have no
275 further obligation to monitor the funds.

276 (f) After the funds are deposited in the trust account,
277 only the trustee is obligated to monitor and account for the
278 funds.

279 (6) SAFETY REQUIREMENTS FOR CHILD PERFORMERS.—

280 (a) A dressing room may not be occupied simultaneously by a
281 child and an adult performer or by children of the opposite sex.

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

286 (c) An employer may not cause, induce, entice, or permit a
287 child performer to engage in or be used for sexually exploitive
288 material for the purpose of producing a performance. A child
289 performer may not be depicted in any media as appearing to
290 participate in a sex act.

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291 (7) WAGE CLAIMS.—

292 (a) A determination of which child performer may have an
293 attorney appointed in order to assist the child in filing a wage
294 claim shall be based on the child's earnings. A child performer
295 earning less than one and one-half times the state's average
296 weekly wages, as determined by the agency, shall be considered
297 financially unable to employ an attorney.

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

300 (c) The agency shall notify the affected employer of any
301 wage claim filed against him or her and allow at least 10 days
302 for the employer to file a written response. If the employer
303 disputes the claim, his or her written response shall be given
304 to the child employee's attorney, who shall be allowed 10 days
305 in which to rebut the claim in writing.

306 (d) The agency may schedule an administrative hearing if,
307 in its judgment, it would facilitate resolution of the
308 complaint. The conduct of the hearing is not governed by the
309 Administrative Procedures Act, but rather by procedures
310 established by the agency.

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

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

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

319 (h) The agency may file complaints in any court in the

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320 state in order to resolve wage disputes or correct violations
321 arising under this section.

322 (i) The agency shall obtain a written assignment form
323 signed by the child performer or his or her attorney and
324 notarized before initiating any legal action in any court of any
325 jurisdiction after a thorough investigation and determination
326 that the claim is valid.

327 (j) The agency may file a proof of claim on behalf of any
328 child performer in any United States bankruptcy court if a child
329 performer files a wage claim and if, in the agency's judgment,
330 it is appropriate for the resolution of the claim.

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

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

336 (b) The director shall notify the employer within 10 days
337 after the dates requested of a nonissuance or nonrenewal of a
338 preauthorization certificate.

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

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

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

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

352 Section 2. For the purpose of incorporating the amendment
353 made by this act to section 450.132, Florida Statutes, in a
354 reference thereto, paragraph (b) of subsection (1) of section
355 450.021, Florida Statutes, is reenacted to read:

356 450.021 Minimum age; general.—

357 (1) Minors of any age may be employed:

358 (b) By the entertainment industry as prescribed in ss.
359 450.012 and 450.132.

360 Section 3. For the purpose of incorporating the amendment
361 made by this act to section 450.132, Florida Statutes, in a
362 reference thereto, paragraph (b) of subsection (2) of section
363 562.13, Florida Statutes, is reenacted to read:

364 562.13 Employment of minors or certain other persons by
365 certain vendors prohibited; exceptions.—

366 (2) This section shall not apply to:

367 (b) Minors employed in the entertainment industry, as
368 defined by s. 450.012(5), who have either been granted a waiver
369 under s. 450.095 or employed under the terms of s. 450.132 or
370 under rules adopted pursuant to either of these sections.

371
372 However, a minor to whom this subsection otherwise applies may
373 not be employed if the employment, whether as a professional
374 entertainer or otherwise, involves nudity, as defined in s.
375 847.001, on the part of the minor and such nudity is intended as
376 a form of adult entertainment.

377 Section 4. This act shall take effect July 1, 2011.