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

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 450.132, Florida Statutes, is amended

29 | to read:

30 | (Substantial rewording of section. See
 31 | s. 450.132, F.S., for present text.)

32 | 450.132 Employment of children by the entertainment
 33 | industry; rules; procedures; trust accounts.-

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

35 | (a) "Agency" means the Agency for Workforce Innovation.

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

41 | (c) "Child" or "minor" has the same meaning as in s.
 42 | 450.012.

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

47 | (e) "Division" means the Division of Regulation within the
 48 | Department of Business and Professional Regulation.

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

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

52 | (h) "Entertainment industry" has the same meaning as in s.
 53 | 450.012.

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

57 (j) "Legal guardian" means a person appointed as a
 58 guardian by a court.

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

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

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

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

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

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

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85 hazardous materials or substances. A signature is required from
86 the employer certifying compliance with all requirements of the
87 preauthorization certificate.

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

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

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

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

110 (e) The child performer preauthorization certificate is
111 valid for 1 year after the date it is issued or until the
112 specific project for which the child is employed by the employer

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113 ceases, whichever occurs first.

114 (f) A signature is required from the child performer if
115 the child is 14 years of age or older.

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

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

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

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

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

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141 (a) All child performers who are at least 6 years of age
142 but younger than 18 years of age must be provided with a
143 certified teacher for each group of 10 or fewer child performers
144 when school is in session.

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

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

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

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

168 (d)1. When school is in session, each child performer who

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169 is at least 6 years of age but younger than 9 years of age may
170 be at the place of employment for up to 8 hours; the sum of 4
171 hours of work, 3 hours of school, and 1 hour of rest and
172 recreation. If school is not in session, work time may be
173 increased up to 6 hours, with the remaining time reserved for
174 the child performer's rest and recreation.

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

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

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

195 1. Written notification is provided which includes a list
196 of specific dates and times that the child performer shall be

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197 employed or present at the place of employment.

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

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

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

212 (4) CERTIFICATION AND DUTIES OF CERTIFIED TEACHERS.-

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

222 (b) A certified teacher has, in addition to teaching and
223 in conjunction with the parent or legal guardian, the
224 responsibility of monitoring and protecting the health, safety,

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225 and well-being of each child performer who the teacher has been
226 hired to teach during the time that the teacher is required to
227 be present.

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

243 (5) TRUST ACCOUNT FOR CHILD PERFORMERS.—

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

248 (b) The parent, legal guardian, or trustee is responsible
249 for establishing a trust account for the child performer in the
250 child performer's state of residence for the sole benefit of the
251 child performer within 7 business days after the child
252 performer's employment contract is signed. The child performer

253 shall not have access to the trust account until the child
 254 performer is 18 years of age or becomes legally emancipated.

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

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

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

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

277 (6) SAFETY REQUIREMENTS FOR CHILD PERFORMERS.—

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

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

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

290 (7) WAGE CLAIMS.—

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

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

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

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

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309 established by the agency.

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

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

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

318 (h) The agency may file complaints in any court in the
319 state in order to resolve wage disputes or correct violations
320 arising under this section.

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

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

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

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

335 (b) The director shall notify the employer within 10 days
336 after the dates requested of a nonissuance or nonrenewal of a

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337 preauthorization certificate.

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

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

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

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

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

355 450.021 Minimum age; general.—

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

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

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

363 562.13 Employment of minors or certain other persons by
364 certain vendors prohibited; exceptions.—

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365 (2) This section shall not apply to:

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

370

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

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