

HB 237

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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 resolving such claims; providing grounds under which
19 the division may refuse to issue or renew a
20 preauthorization certificate and procedures for
21 challenging such a determination; reenacting ss.
22 450.021(1)(b) and 562.13(2)(b), F.S., relating to the
23 employment of minors in this state, to incorporate the
24 amendments made to s. 450.132, F.S., in references
25 thereto; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Section 450.132, Florida Statutes, is amended
 30 to read:

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

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

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

36 (a) "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 (b) "Child" or "minor" has the same meaning as in s.
 42 450.012.

43 (c) "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 performances, or radio
 46 or television broadcasts.

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

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

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

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

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

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

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

66 (l) "Wage claim" means a document signed by the attorney
67 for a child performer giving the Department of Economic
68 Opportunity authority to investigate a complaint of unpaid
69 wages.

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

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

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

85 project, and a list of any possible exposure to potentially
 86 hazardous materials or substances. A signature is required from
 87 the employer certifying compliance with all requirements of the
 88 preauthorization certificate.

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

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

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

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

111 (e) The child performer preauthorization certificate is
 112 valid for 1 year after the date it is issued or until the

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113 specific project for which the child is employed by the employer
114 ceases, whichever occurs first.

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

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

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

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

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

140 (3) LIMITATIONS ON CHILD PERFORMERS' WORKING HOURS,

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141 INCLUDING SCHOOL TIME.—

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

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

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

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

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

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

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

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

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

196 1. Written notification is provided which includes a list

197 of specific dates and times that the child performer shall be
 198 employed or present at the place of employment.

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

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

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

225 in 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
 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 performer are being protected. A certified
 237 teacher shall be present during the time reserved for school,
 238 except that a child performer younger than 16 years of age does
 239 not require the presence of a certified teacher for up to 1 hour
 240 for wardrobe, makeup, hairdressing, promotional publicity,
 241 personal appearances, or audio recording if these activities are
 242 not located on the actual site of filming or at the theatre or
 243 if school is not in session, and if the parent or legal guardian
 244 is 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

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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.

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 performer has performed. If the account is not
271 established, the employer shall withhold 15 percent of the gross
272 income until a trust account is established or until the court
273 orders otherwise. After the employer deposits 15 percent of the
274 gross 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

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281 a child performer and an adult performer or by children of the
282 opposite sex.

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

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

292 (7) WAGE CLAIMS.—

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

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

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

308 (d) The division may schedule an administrative hearing

309 if, in its judgment, it would facilitate resolution of the
310 complaint. The conduct of the hearing is not governed by the
311 Administrative Procedures Act, but rather by procedures
312 established by the division.

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

316 (f) The division may issue written findings whenever it
317 has sufficient evidence upon which to base its determination.

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

321 (h) The division may file complaints in any court in the
322 state in order to resolve wage disputes or correct violations
323 arising under this section.

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

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

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

335 (a) The division director may, for cause, refuse to issue
336 or renew a preauthorization certificate to any project that has

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337 violated any provision of this section within a 2-year period.

338 (b) The director shall notify the employer within 10 days
339 after the date the employer requests the issuance or renewal of
340 a preauthorization certificate of the director's refusal to
341 issue or renew such certificate.

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

344 (d) The director may schedule an administrative hearing
345 if, in his or her judgment, it would facilitate resolution of
346 the complaint. The conduct of the hearing is not governed by the
347 Administrative Procedures Act, but rather by procedures
348 established by the division.

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

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

355 Section 2. For the purpose of incorporating the amendment
356 made by this act to section 450.132, Florida Statutes, in a
357 reference thereto, paragraph (b) of subsection (1) of section
358 450.021, Florida Statutes, is reenacted to read:

359 450.021 Minimum age; general.—

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

361 (b) By the entertainment industry as prescribed in ss.
362 450.012 and 450.132.

363 Section 3. For the purpose of incorporating the amendment
364 made by this act to section 450.132, Florida Statutes, in a

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365 reference thereto, paragraph (b) of subsection (2) of section
366 562.13, Florida Statutes, is reenacted to read:

367 562.13 Employment of minors or certain other persons by
368 certain vendors prohibited; exceptions.—

369 (2) This section shall not apply to:

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

374

375 However, a minor to whom this subsection otherwise applies may
376 not be employed if the employment, whether as a professional
377 entertainer or otherwise, involves nudity, as defined in s.
378 847.001, on the part of the minor and such nudity is intended as
379 a form of adult entertainment.

380 Section 4. This act shall take effect July 1, 2012.