

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           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 of child performers; requiring a  
14          trust account for certain children employed in the  
15          entertainment industry; providing safety requirements  
16          for child performers; providing criteria for wage  
17          claims; providing requirements for the Department of  
18          Economic Opportunity in resolving such claims;  
19          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) "Certified teacher" means any person who holds a valid  
38 and current Florida teaching certificate issued by the  
39 Department of Education or its equivalent issued by any state,  
40 territory, possession, or other jurisdiction of the United  
41 States.

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

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

48 (d) "Department" means the Department of Economic  
49 Opportunity.

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

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

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

55 (h) "Entertainment industry" has the same meaning as in s.  
56 450.012.

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

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59 to the child performer.

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

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

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

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

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

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

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

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88 hazardous conditions, materials, or substances. A signature is  
89 required from the employer certifying compliance with all  
90 requirements of the preauthorization certificate.

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

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

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

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

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

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

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

126 (h) The parent or legal guardian of the child performer may  
127 contact the division to renew the preauthorization certificate  
128 30 days before its expiration.

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

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

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

144 (a) All child performers who are at least 6 years of age  
145 but younger than 18 years of age must be provided with a

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146 certified teacher for each group of 10 or fewer child performers  
147 when school is in session.

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

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

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

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

171 (d)1. When school is in session, each child performer who  
172 is at least 6 years of age but younger than 9 years of age may  
173 be at the place of employment for up to 8 hours, for the sum of  
174 4 hours of work, 3 hours of school, and 1 hour of rest and

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175 recreation. If school is not in session, work time may be  
176 increased up to 6 hours, with the remaining time reserved for  
177 the child performer's rest and recreation.

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

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

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

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

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

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

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

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

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

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

231 (c) The certified teacher, parent, or legal guardian may  
232 refuse to allow the engagement of the child performer at the

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

246 (5) TRUST ACCOUNT FOR CHILD PERFORMERS.—

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

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

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

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262 with a written acknowledgement of receipt.

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

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

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

280 (6) SAFETY REQUIREMENTS FOR CHILD PERFORMERS.—

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

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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 in filing a wage  
295 claim shall be based on the child's earnings. A child performer  
296 earning less than one and one-half times the state's average  
297 weekly wages, as determined by the department, shall be  
298 considered financially unable to employ an attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

348 (e) The director may issue a subpoena duces tecum to compel

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349 the production of records he or she believes are necessary for  
350 the resolution of the complaint.

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

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

358 450.021 Minimum age; general.—

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

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

362 Section 3. For the purpose of incorporating the amendments  
363 made by this act to section 450.132, Florida Statutes, in a  
364 reference thereto, paragraph (b) of subsection (2) of section  
365 562.13, Florida Statutes, is reenacted to read:

366 562.13 Employment of minors or certain other persons by  
367 certain vendors prohibited; exceptions.—

368 (2) This section shall not apply to:

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

373

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

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378 a form of adult entertainment.

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