

# SENATE . . . . . No. 1865

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to child performer protection..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Said chapter 149 is hereby amended by inserting after section 105, as  
2     appearing in the 2004 Official Edition, the following section:-

3                   Section 105 ½. (a) For purposes of this section “Entertainment production”  
4     means and includes the following activities performed in the commonwealth: motion pictures of  
5     any kind using any format distributed in any medium, photography, recording, modeling, motion  
6     picture, theatrical or stage production, television production, commercial production, voice-  
7     overs, publicity, rodeos, circuses, musical performances, or any other performance where minors  
8     perform to entertain the public.

9           (b) Notwithstanding any other general or special law to the contrary, a child under 18  
10    years of age may be employed in entertainment production, provided the hours of work do not  
11    exceed the following:

12           (1) for a child at least 15 days but less than 6 months of age, 3 hours at the place of  
13    employment with no more than 20 minutes of consecutive work, excluding meal breaks;

(2) for a child at least 6 months but less than 2 years of age, 6 hours at the place of employment with no more than 2 hours of work and no more than 30 minutes of consecutive work, excluding meal breaks;

(3) for a child at least 2 years of age but less than 6 years of age, 6 hours at the place of employment with no more than 3 hours of work, excluding meal breaks;

(4) or a child at least 6 years of age but less than 9 years of age, 8 hours at the place of employment with no more than 5 hours of work, excluding meal breaks;

(5) for a child at least 9 years of age but less than 16 years of age, 9 hours at the place of employment with no more than 6 hours of work, excluding meal breaks.

(6) for a child at least 16 years of age but less than 18 years of age, 12 hours at the place of employment with no more than 9 hours of work, excluding meal breaks.

(c) The work day for a child under 18 years of age employed under this section shall begin no earlier than 5:00 a.m. and shall end not later than 10:00 p.m. on evenings preceding school days; but a child performer at least 8 years of age in a theatrical or stage production, circus, musical performance or other performance with a live audience may continue a performance until 12:00 midnight on an evening preceding a school day if the performance began before 10:00 p.m.. On evenings preceding non-school days, the child's work day shall end no later than 12:30 a.m. on the morning of the non-school day. A child shall have a 12-hour break between the end of work on one day and the beginning of the next work day. A child shall not work more than 6 consecutive days.

(d) Child performers shall be held to the hour requirements of subsections (b) and (c) and shall not be restricted by any other hour requirements.

(e) A child shall fulfill the educational requirements set forth by the department of education or by the state or country of his residence, if he is not a resident of the commonwealth. A child who has not completed the requirements and who is employed in entertainment production when school is in session shall be subject to the following requirements:

(1) An employer employing a child for 2 or more school days in a 30 day period shall provide a state certified teacher who has credentials issued by the department of education or recognized by the department of education. This requirement shall apply beginning on the second day that the child performer renders services for that employer and shall continue on each day thereafter that school is in session and the child is rendering services; but if the child has executed a contract with the employer to work for 2 or more school days in the next 30-day period, the requirement shall apply beginning on the first day of the child performer's employment. A child receiving instruction from a teacher as required by this section shall not be declared absent from school. The requirements of this section shall be applicable only when school is in session and the child performer is not receiving educational instruction due to his employment schedule. Local school districts shall retain the power to determine that a minor is meeting applicable educational standards.

(2) For any child performer under 16 years old employed under this section, a parent or legal guardian shall be present with and accompany the performer on the set or location of the

entertainment production. A parent or legal guardian may designate in writing any person over 21 years old to serve as an accompanying guardian for purposes of this section.

(3) A child performer employed in an entertainment production under this section shall obtain a permit issued in accordance with this section and sections 86 to 88, inclusive. A child performer who resides in and attends school in the commonwealth shall obtain said permit from the attorney general, from the superintendent of schools in the town where the student resides or by a party authorized by the school committee of the town. A child performer who resides in, but does not attend school in the commonwealth shall obtain the permit from the attorney general once the attorney general receives, examines, approves and files all of the documents required by section 87 with the exception of a school record. A child performer who does not reside in or attend school in the commonwealth shall obtain the permit from the attorney general or from the appropriate issuing authority in the student's state or country of residence. If a child performer resides in a state or country that does not require child actors to obtain work permits, then the child performer shall obtain a work permit from the attorney general. The attorney general shall promulgate regulations pertaining to the application process for expedited or emergency permits to enable eligible performers to receive permits within 24 hours of submitting an application. A permit issued under this section shall be valid for employment by multiple employers and shall be valid for the longer of (i) the full duration of a child performer's service with an employer, or (ii) 6 months.

(f) (1) Every contract executed by or on behalf of a minor rendering artistic or creative services for compensation in this state shall require that fifteen percent of the gross earnings for the minor under the contract be placed in a trust fund created for the benefit of the minor and, except as provided in Subsection (l) of this section, that the trust fund be created in a financial

institution authorized to transact business in this state and which institution is federally insured by the Federal Deposit Insurance Corporation, or its successor or by the National Credit Union Share Insurance Fund, or its successor.

(2) Monies placed in a trust fund pursuant to the provisions of this Chapter shall be placed in a blocked account and no funds shall be withdrawn prior to the date the minor attains the age of eighteen unless the minor is determined to be in necessitous circumstances by a court of competent jurisdiction.

(3) All monies deposited in trust pursuant to the provisions of this Chapter shall be administered by the financial institution as a fiduciary for the benefit of the minor. No fees shall be charged the trust until the minor reaches the age of eighteen.

(g) Funds may be withdrawn from the trust fund by the beneficiary only after the beneficiary provides a certified copy of his birth certificate to the is at least eighteen years of age.

(h). Both parents of a minor on whose behalf monies are placed in trust pursuant to this Section shall serve as trustees of the trust unless otherwise provided in writing by both parents or in the case of divorce or death of a parent by the person appointed by the state.

(I). Prior to execution of a contract subject to the provisions of this Chapter, the trustee or trustees shall establish the trust required under this Section, unless an account has been previously established, and no contract subject to the provisions of this Chapter shall be executed until the trustee or trustees provide a written statement to the employer which shall include the name, address, and telephone number of the financial institution holding the trust account, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account and such additional information as may be required by the

100 employer to make the deposit required under 1 this Section. The trustee or trustees shall attach to  
101 this written statement a true and accurate photocopy of any information received from the  
102 financial institution confirming the creation and existence of the trust account on behalf of the  
103 minor, and may include a copy of the account agreement, account terms, passbook, or other  
104 similar writings required by the employer.

105 (j). In the event that a trust account is not established on behalf of a minor performer  
106 within thirty days of the last day of employment, the employer shall forward the fifteen percent  
107 of the minor's gross earnings, accompanied by the name of the minor, and if known, the minor's  
108 address and social security number, to the treasurer of the state of Massachusetts, who shall hold  
109 such funds in trust to be tendered to a trust account that is subsequently established on behalf of  
110 the minor, or if no such trust account is established, then to the minor upon reaching the age of  
111 majority.

112 (k). Once the employer has transferred monies pursuant to this Section to either the  
113 minor's trust account or the treasurer's office in those circumstances where a trust account has not  
114 been established, the employer has no further duty or obligation with respect to the transferred  
115 monies.

116 (l). If a trust account is already established on behalf of the minor in another state, all  
117 monies required to be deposited in a trust fund under the provisions of this Section, may be  
118 deposited into the trust account already established in another state for the benefit of the minor.

119 SECTION 2. Section 85P ½ of chapter 231 of the General Laws, as so appearing, is  
120 hereby amended by striking out, in lines 42 and 43, the words “and occurs during hours when  
121 attendance for instruction is not required in accordance with law”.”