

1 HB268  
2 136564-1  
3 By Representative Galliher  
4 RFD: State Government  
5 First Read: 09-FEB-12

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8 SYNOPSIS: Under existing law, the Child Labor Division  
9 of the Alabama Department of Labor is responsible  
10 for implementing child labor laws, which prohibit  
11 children from working in occupations or places of  
12 employment, which could be harmful to their health  
13 or moral well being.

14 This bill would clarify certain terms in  
15 existing law.

16 This bill would specify which documents  
17 satisfy proof of age.

18 This bill would require the public display  
19 of the Child Labor Certificate.

20 This bill would further define adult  
21 establishment and would further limit employment of  
22 children in adult establishments.

23 This bill would provide for the assessment  
24 of civil penalties for violations.

25 This bill would also define production and  
26 would clarify the role of the department in

1 regulating the employment of children in theatrical  
2 productions.

3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT

7  
8 To amend Sections 25-8-32.1, 25-8-33, 25-8-38,  
9 25-8-44, 25-8-52, 25-8-59, and 25-8-60, Code of Alabama 1975,  
10 relating to the Child Labor Division of the Alabama Department  
11 of Labor; to clarify certain terms in existing law; to specify  
12 which documents satisfy proof of age requirements; to require  
13 public display of Child Labor Certificates; to further define  
14 adult establishment and limit employment of children in adult  
15 establishments; to authorize the assessment of civil penalties  
16 for violations; and to define production and clarify the role  
17 of the department in regulating the employment of children in  
18 theatrical productions.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 25-8-32.1, 25-8-33, 25-8-38,  
21 25-8-44, 25-8-52, 25-8-59, and 25-8-60 of the Code of Alabama  
22 1975, are amended to read as follows:

23 "§25-8-32.1.

24 "For purposes of this chapter, the following words  
25 and phrases shall have the following meanings:

26 "(1) COMMISSIONER. The Commissioner of the  
27 Department of Labor.

1                   "(2) DEPARTMENT. The Department of Labor.

2                   "(3) ELIGIBILITY TO WORK FORM. A form issued by the  
3 head administrator, counselor, or, if home schooled an  
4 instructor of the school which a 14- or 15-year-old minor  
5 attends certifying satisfactory grades and attendance of the  
6 minor in order for a 14- or 15-year-old minor to be employed.

7                   "(4) EMPLOY. To employ, permit, or suffer to work  
8 with or without compensation.

9                   "(5) EMPLOYEE. Any ~~individual employed or permitted~~  
10 ~~to work by a person, entity, franchise, corporation, or~~  
11 ~~division of a corporation~~ person employed by an employer, but  
12 shall not include an individual engaged in the activities of  
13 an educational, charitable, religious, scientific, historical,  
14 literary, or nonprofit organization where the  
15 employer-employee relationship does not in fact exist or where  
16 the services rendered are on a voluntary basis.

17                   "(6) EMPLOYER. Any owner or any person, entity,  
18 franchise, corporation, or division of a corporation,  
19 government agency, or association of persons acting directly  
20 as, or in behalf of, or in the interest of any employer in  
21 relation to employees, including the state and any political  
22 subdivision thereof.

23                   "(7) VIOLATION. A failure by an employer, officer,  
24 agent, or any other person to comply with any applicable  
25 provision of the child labor law.

26                   "§25-8-33.

1            "No person under 16 years of age shall be employed,  
2 ~~permitted, or suffered to work in any gainful occupation,~~  
3 except in agricultural service, and except as otherwise  
4 provided in this chapter. Any person 14 or 15 years of age may  
5 be employed outside school hours and during school vacation  
6 periods, so long as the person is not employed, ~~permitted, or~~  
7 ~~suffered to work~~ in, about, or in connection with, any  
8 manufacturing or mechanical establishment, cannery, mill,  
9 workshop, warehouse, or machine shop or in any occupation or  
10 place of employment otherwise prohibited by law. The presence  
11 of any person under 18 years of age in any restricted business  
12 establishment or restricted occupation shall be prima facie  
13 evidence of his or her employment therein.

14            "§25-8-38.

15            "(a) Every employer shall keep posted in a  
16 conspicuous place where any person under 19 years of age is  
17 employed, ~~permitted, or suffered to work,~~ a printed notice  
18 stating the maximum number of hours persons under 19 may be  
19 permitted to work on each day of the week as set out in  
20 Section 25-8-36. The printed form of the notice shall be  
21 furnished by the department. The employment of any person for  
22 a longer time period in any day so stated, or at any time  
23 other than as stated in the printed form of notice, shall be  
24 deemed a violation of this chapter.

25            "(b) Each employer shall keep on ~~or about~~ the  
26 premises at which any person under 19 years of age is employed  
27 a separate file for each employee under 19 years of age. The

1 file shall contain the employee's name, home address, date of  
2 birth, date of hire, proof of age, school of attendance, and  
3 time records which shall state the number of hours worked each  
4 day, starting and ending times, break times as listed in  
5 subsection (c), and any other information the department may  
6 require. ~~The employer shall verify each minor's age using~~  
7 ~~documents recognized by the Federal Employees Identification~~  
8 ~~Laws.~~ The employer shall keep these records on file for not  
9 less than three years.

10 "(c) For the purposes of this section, documentation  
11 of proof of age may include a copy of a birth certificate, a  
12 copy of a driver's license, or an identification card issued  
13 by a federal, state, or local government agency provided the  
14 identification card contains the name and date of birth of the  
15 employee.

16 "(d) Any employer required to obtain a Child Labor  
17 Certificate from the department shall keep the certificate  
18 posted at a public and conspicuous location at all times.

19 ~~"(c)~~ (e) No person 14 or 15 years of age shall be  
20 employed for more than five hours continuously without a  
21 documented interval of at least 30 minutes for a meal or rest  
22 period. Any meal or rest period of less than 30 minutes shall  
23 not be considered to interrupt a continuous period of work.

24 "§25-8-44.

25 "(a) No person under the state legal drinking age  
26 shall be employed, ~~permitted, or suffered~~ to serve or dispense  
27 alcoholic beverages in any establishment where alcoholic

1 beverages are sold, served, or dispensed for consumption on  
2 the premises.

3 "(b) No person under ~~18~~ (16) years of age shall ~~work~~  
4 be employed in that part of an any establishment where  
5 alcoholic beverages are sold, served, or dispensed for  
6 consumption on the premises. Notwithstanding the foregoing,  
7 this section shall not prohibit the employment of persons 16  
8 years of age or older as busboys, dishwashers, janitors,  
9 cooks, hostesses, or seaters restricted to leading patrons to  
10 seats; nor the employment of persons under 18 years of age as  
11 professional entertainers.

12 "(c) Members of the immediate family of the owner or  
13 operator who are 14 or 15 years of age may be employed in such  
14 establishments provided they do not serve, sell, dispense, or  
15 handle alcoholic beverages.

16 "(d) No person under 18 years of age shall ~~work~~ be  
17 employed in any adult establishment or perform in any  
18 establishment, nude or nearly nude, in a manner or attire as  
19 to expose any portion of the pubic area, buttocks, anus, anal  
20 cleft, vulva, or genitals, or any simulation thereof, or show  
21 the covered male genitals in a discernible turgid state, or be  
22 attired in a manner as to expose to view the portion of the  
23 breast below the top of the areola or any simulation thereof.  
24 For the purposes of this subsection, an adult establishment  
25 includes, but is not limited to, an adult live entertainment  
26 business, an adult arcade, an adult bookstore, an adult  
27 cabaret, an adult movie theater, an adult toy store, an adult

1 video store, a body shampooing business, an escort agency, a  
2 massage parlor, a nude model studio, a lingerie modeling  
3 studio, or any combination of the foregoing.

4 "§25-8-52.

5 "The department shall have the right to enter,  
6 without prior notice or warrant, any business establishment  
7 for the purpose of routine inspections. These visits shall be  
8 conducted as frequently as needed to insure that minors are  
9 employed in compliance with this chapter. The department shall  
10 enforce this chapter and ~~shall~~ may assess civil penalties or  
11 institute criminal prosecution for any violation of this  
12 chapter.

13 "§25-8-59.

14 "(a) Any ~~person, entity, franchise, corporation, or~~  
15 ~~division of a corporation~~ employer who violates this chapter,  
16 or who fails or refuses to obey within a reasonable time any  
17 lawful order or direction given by the state officials charged  
18 with the enforcement of this chapter, and any parent,  
19 guardian, or custodian who suffers or permits a person under  
20 his or her care or control who is under 19 years of age to  
21 work in violation of this chapter, shall be subject to civil  
22 penalties in addition to other penalties provided in this  
23 chapter.

24 "(b) The department may impose a civil penalty of  
25 three hundred dollars (\$300) upon the following determination:  
26 An employer has violated a statutory provision of Section  
27 25-8-35(17), 25-8-36, 25-8-37, 25-8-38, 25-8-39, 25-8-40,



1 25-8-41, ~~25-8-44~~ 25-8-44(a), 25-8-44(b), 25-8-45, 25-8-54,  
2 25-8-57, 25-8-60, or 25-8-61.

3 "(c) The department may impose a civil penalty of  
4 one thousand dollars (\$1,000) to five thousand dollars  
5 (\$5,000) upon the following determination: An employer has  
6 violated a statutory provision of Section 25-8-33,  
7 25-8-35(1)-(16), inclusive, ~~or~~ 25-8-43(a), or 25-8-44.

8 "(d) In determining the number of violations  
9 committed by an employer, the department shall assess a  
10 separate civil penalty for each individual employee affected  
11 by the employer's violation.

12 "(e) In addition, the department may assess more  
13 than one civil penalty against an employer with respect to the  
14 same adversely affected employee if the employer has violated  
15 more than one statutory provision in Act 2009-565.

16 "(f) The employer shall be notified of a civil  
17 penalty assessment by the Notice of Violation and Opportunity  
18 to Show Cause which shall be sent to the employer.

19 "(g) The Notice of Violation and Opportunity to Show  
20 Cause shall provide all of the following:

21 "(1) The total civil penalty assessed.

22 "(2) The right of the employer to request in writing  
23 a hearing to show cause why the civil penalty should not be  
24 assessed.

25 "(3) An advisement that no hearing shall be granted  
26 unless a written request for a hearing is received by the

1 department within 30 days from the date of issue of the  
2 notice.

3 "(4) The right of the employer to waive the right to  
4 request a hearing and to respond in writing to the notice  
5 within 30 days of the issue date of the notice.

6 "(h) Any employer who seeks to contest a civil  
7 penalty assessment shall file, within 30 days from the date  
8 the Notice of Violation and Opportunity to Show Cause was  
9 issued, a written request for an opportunity to be heard which  
10 shall clearly state the reasons for such request, including  
11 facts to demonstrate that no violation has occurred.

12 "(i) If the commissioner or his or her designee  
13 determines that the employer has stated adequate facts or  
14 legal grounds to warrant a hearing, the commissioner or his or  
15 her designee shall provide written notice of the hearing to  
16 show cause why a civil penalty should not be assessed and  
17 shall mail written notice to the employer of the date, time,  
18 and place of the hearing. Such determination shall be within  
19 the discretion of the commissioner or his or her designee. The  
20 notice shall inform the employer of its rights in the hearing  
21 including the following:

22 "(1) The right to be represented by any person,  
23 including an attorney.

24 "(2) The right to present documentary evidence and a  
25 written argument in support of the employer's position.

26 "(j) A request for postponement of a hearing so  
27 scheduled shall only be granted where the rights of an

1 employer would be substantially prejudiced by the denial of  
2 the request or in a medical emergency. Only the commissioner  
3 or his or her designee has discretion to grant such requests.

4 "(k) Following a hearing or after the employer has  
5 waived the right to request a hearing, the commissioner or his  
6 or her designee may uphold or modify the civil penalty  
7 assessment. Such determination shall be within the sole  
8 discretion of the commissioner or his or her designee.

9 "(l) If the employer requests a hearing but the  
10 commissioner or his or her designee denies the request for a  
11 hearing, the total civil penalty assessed in the notice shall  
12 be the final civil penalty.

13 "(m) If the employer does not request a hearing or  
14 respond in writing to the notice, the total civil penalty  
15 assessed in the notice shall be the final civil penalty unless  
16 otherwise modified by the commissioner or his or her designee.

17 "(n) All moneys received from the assessment of any  
18 penalty pursuant to this section shall accrue to the State  
19 General Fund.

20 "(o) In addition to the civil penalties provided for  
21 in subsection (b), an employer who violates Act 2009-565 may  
22 be deemed guilty of a Class B or Class C misdemeanor. A first  
23 conviction shall be deemed a Class C misdemeanor. A second or  
24 subsequent conviction shall be deemed a Class B misdemeanor.

25 "(p) In addition to civil penalties provided for in  
26 subsection (c), an employer who is found in violation of  
27 subsection (c) involving serious physical injury to or death

1 of a minor may be deemed guilty of a Class A misdemeanor or  
2 Class C felony. A first conviction shall be deemed a Class A  
3 misdemeanor. A second or subsequent conviction shall be deemed  
4 a Class C felony.

5 "§25-8-60.

6 "~~(a) Time and hour restrictions shall be under the~~  
7 ~~authority of the department for persons~~ Persons under 18 years  
8 of age ~~who are employed as actors and performers.~~ may be  
9 employed and appear for the purpose of singing, acting, or  
10 performing in any ~~studio or movie set of a motion picture~~  
11 production approved and coordinated by the Alabama Film Office  
12 in conjunction with and under the jurisdiction and supervision  
13 of the department. Time and hour restrictions, for persons  
14 under 18 years of age employed in a production, shall be  
15 established by the department. For the purposes of this  
16 section, a production includes, but is not limited to, motion  
17 pictures, documentaries, and reality television films.

18 "(b) A person under 18 years of age may be employed  
19 as provided in this section only under the following  
20 conditions and with the written consent of the Alabama Film  
21 Office, the department, and the parent, legal guardian, or  
22 responsible adult of the person:

23 "(1) The activities enumerated shall not be  
24 detrimental to the life, health, safety, welfare, or morals of  
25 the person.

26 "(2) The activities enumerated shall not interfere  
27 with the schooling of the person and provisions shall be made

1 for education equivalent to full-time school attendance in the  
2 public schools for persons under 16 years of age.

3 "(3) A parent, guardian, or a responsible adult so  
4 designated by the parent or guardian, shall accompany each  
5 person under 16 years of age at all rehearsals, appearances,  
6 and performances."

7 Section 2. This act shall become effective on the  
8 first day of the third month following its passage and  
9 approval by the Governor, or its otherwise becoming law.