

1 SB174
2 135789-4
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 07-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.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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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.