

STATE OF NEW YORK

4696--B

Cal. No. 1211

2003-2004 Regular Sessions

IN SENATE

April 14, 2003

Introduced by Sens. VELELLA, HOFFMANN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the estates, powers and trusts law, in relation to establishment of child performer trust accounts for child performers; to amend the labor law, in relation to the employment and education of child performers; to amend the arts and cultural affairs law, in relation to permits issued to child performers; and to amend the state finance law, in relation to establishing the child performer's protection fund and the child performer's holding fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. It is the intention of this legislature  
2 to ensure that child performers who work in the state of New York and  
3 child performers who reside in the state of New York are provided with  
4 adequate education, and that a portion of the child performers' earnings  
5 are kept in trust until the age of majority. Through the comprehensive  
6 permit requirements of child performers, and certification of employers,  
7 the department of labor will be able to monitor and enforce violations  
8 of child performers' rights to education provided under the laws of the  
9 state of New York. Additionally, the department of labor will enforce  
10 the requirement of a child performer trust account to be established  
11 pursuant to this act for the purpose of protecting child performers'  
12 earnings.

13 § 2. This act shall be known and may be cited as the "Child performer  
14 education and trust act of 2003".

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 § 3. Part 6 and section 7-6.1 of article 7 of the estates, powers and  
2 trusts law, as added by chapter 159 of the laws of 1996, are renumbered  
3 part 8 and section 7-8.1.

4 § 4. Article 7 of the estates, powers and trusts law is amended by  
5 adding a new part 7 to read as follows:

6 PART 7. CHILD PERFORMER TRUST ACCOUNT

7 Section 7-7.1 Child performer trust account.

8 § 7-7.1 Child performer trust account

9 1. Scope. This section applies to contracts pursuant to which a child  
10 performer:

11 (a) is employed or agrees to render artistic or creative services for  
12 a fee, either directly or through a third-party individual or personal  
13 services corporation (loan-out company), or through an agency or service  
14 that provides artistic or creative services (casting agency); and

15 (b) agrees to purchase, or otherwise secure, sell, lease, or otherwise  
16 dispose of literary, musical, or dramatic properties, or use of a  
17 person's likeness, voice recording, performance, or story of or inci-  
18 dents in his or her life, either tangible or intangible, or any other  
19 rights therein for use in motion pictures, television, the production of  
20 sound recordings in any format now known or hereafter devised, the  
21 legitimate or living stage, or otherwise in the entertainment field.

22 2. Establishment of child performer trust account. (a) Employer.  
23 Within thirty days following the final day of employment, except when  
24 the performance contract is a period longer than thirty days, a child  
25 performer's employer is required to transfer fifteen percent of gross  
26 earnings to the custodian of the child performer's child performer trust  
27 account. When the employment is longer than thirty days, the employer  
28 shall make the required transfer every payroll period. Transfers must  
29 conform with part six of this article. The use of an instrument to make  
30 the transfer which substantially conforms with section 7-6.9 is suffi-  
31 cient. If the child performer's employer has not been notified within  
32 fifteen days of the commencement of employment of the existence of a  
33 child performer trust account, or no such account has been established,  
34 then the child performer's employer shall transfer such monies together  
35 with the child performer's name and last known address to the state  
36 comptroller for placement into the child performer's holding fund estab-  
37 lished in section ninety-nine-k of the state finance law and such monies  
38 shall be administered by the state comptroller. Once transfers have  
39 been made to the child performer's trust account or the child perform-  
40 er's holding fund, as required by this subdivision, the child perform-  
41 er's employer has no further duty under this section.

42 (b) Custodian and guardian. Within fifteen days of the commencement of  
43 employment the child performer's guardian or custodian must establish a  
44 child performer trust account in accordance with part six of this arti-  
45 cle, unless an account has previously been established. Once the child  
46 performer trust account has been established the child performer's guar-  
47 dian or custodian shall notify the child performer's employer of the  
48 existence of the account and any additional information required to make  
49 transfers. The custodian of the account shall promptly notify the child  
50 performer's employer of any change in facts which affect the employer's  
51 obligation to set aside funds under this section. Upon request of the  
52 parent, legal guardian or the child performer's guardian ad litem, the  
53 custodian may require the child performer's employer to transfer more  
54 than fifteen percent of the gross earnings to the child performer trust  
55 account. The child performer's parent or legal guardian may serve as  
56 custodian. Once the child performer trust account balance reaches two

1 hundred fifty thousand dollars or more a trust company shall be  
 2 appointed as custodian of the account.

3 (c) Termination of child performer trust account. The child performer  
 4 may terminate the child performer trust account upon reaching the age of  
 5 eighteen.

6 3. Standard for child performer trust accounts. Custodian management  
 7 of funds which are required to be placed into a child performer trust  
 8 account shall be subject to part six of this article, in all respects  
 9 except as provided in this section.

10 § 5. The labor law is amended by adding a new article 4-A to read as  
 11 follows:

12 ARTICLE 4-A

13 EMPLOYMENT AND EDUCATION OF CHILD PERFORMERS

14 Section 150. Definitions.

15 151. Employment requirements.

16 152. Educational requirement.

17 153. Enforcement of violations; civil penalties.

18 § 150. Definitions. For the purpose of this article:

19 1. "Artistic or creative services" shall include, but are not limited  
 20 to, services as an actor, actress, dancer, musician, comedian, singer,  
 21 stunt-person, voice-over artist, or other performer or entertainer, or  
 22 as a songwriter, musical producer or arranger, writer, director, produc-  
 23 er, production executive, choreographer, composer, conductor, or design-  
 24 er.

25 2. "Child performer" shall mean any child under the age of eighteen  
 26 who (a) resides in the state of New York and who agrees to render artis-  
 27 tic or creative services; or

28 (b) agrees to render artistic or creative services in the state of New  
 29 York.

30 3. "Child performer's employer" shall mean a person or entity which  
 31 employs a child performer to furnish artistic or creative services for a  
 32 fee either directly or through a third-party provider (loan-out company)  
 33 or an agency or service that provides artistic or creative services  
 34 (casting agency).

35 4. "Child performer trust account" shall mean an account established  
 36 for the benefit of a child performer in accordance with part seven of  
 37 article seven of the estates, powers and trusts law.

38 5. "Gross earnings" shall mean the total compensation prior to taxes,  
 39 deductions, or commissions payable to a child performer pursuant to a  
 40 contract or in the case of a third-party individual or personal services  
 41 corporation (loan-out company), the total compensation paid to the  
 42 third-party for the services of the child performer. However, where the  
 43 child performer is employed as a musician, singer, songwriter, musical  
 44 producer, or arranger it means the total compensation under the contract  
 45 including advances but excluding deductions to offset those advances or  
 46 other expenses incurred by the employer pursuant to the contract.

47 6. "Permit" shall refer to the documentation issued by the department  
 48 to a child performer pursuant to this article.

49 7. "Certificate of eligibility" shall refer to the documentation  
 50 issued by the department to an employer of a child performer pursuant to  
 51 this article.

52 8. "Employment schedule" shall mean the time that a child performer is  
 53 required to be present at the actual place of employment, excluding  
 54 travel.

55 § 151. Employment requirements. 1. Employment permits for child  
 56 performers shall be valid for six months from the date of issuance. To

1 possess a child permit in good standing, a child performer shall provide  
2 evidence each semester to the department demonstrating that such child  
3 is maintaining satisfactory academic performance as determined by the  
4 child performer's school of enrollment pursuant to state law. At the  
5 time a child performer applies for an employment permit, the commission-  
6 er shall inform the child performer of the child performer trust  
7 requirements. The commissioner shall provide a notice in bold twelve  
8 point type to read as follows: "NEW YORK STATE LAW REQUIRES FIFTEEN  
9 PERCENT OF A CHILD PERFORMER'S EARNINGS TO BE PLACED IN TRUST IN ACCORD-  
10 ANCE WITH PART 7 OF ARTICLE 7 OF THE ESTATES, POWERS AND TRUSTS LAW. THE  
11 CHILD PERFORMER'S PARENTS OR GUARDIAN MUST ESTABLISH THE CHILD PERFORMER  
12 TRUST ACCOUNT TO COMPLY WITH THIS REQUIREMENT. THE CHILD'S PARENTS OR  
13 GUARDIAN MUST PROVIDE THE CHILD PERFORMER'S EMPLOYER WITH THE INFORMA-  
14 TION NECESSARY TO TRANSFER THESE MONIES TO THE ACCOUNT. FAILURE TO  
15 COMPLY WITH THIS REQUIREMENT WILL PREVENT THE DEPARTMENT OF LABOR FROM  
16 RENEWING THE CHILD'S PERMIT TO WORK AS A CHILD PERFORMER."

17 2. Prior to employment of a child performer, every person, or agent or  
18 officer of any entity employing a child performer shall receive a  
19 certificate of eligibility to employ a child performer from the depart-  
20 ment. Each application for initial registration shall be accompanied by  
21 a fee determined by the commissioner in an amount sufficient in the  
22 aggregate to defray the department's costs of administering the regis-  
23 tration program, provided, that such fee shall not exceed three hundred  
24 fifty dollars for initial registration or two hundred dollars for regis-  
25 tration renewal. Companies that operate theaters of four hundred nine-  
26 ty-nine seats or fewer shall pay no more than two hundred dollars for an  
27 initial and renewal certificates. An employers' certificate of eligi-  
28 bility shall be renewed every three years.

29 3. Every person, or agent or officer, employing child performers,  
30 either directly or indirectly through third persons, shall keep on file  
31 all permits and certificates, either to work or to employ, issued under  
32 this article or pursuant to the education law. The files shall be open  
33 at all times to the inspection of the school attendance and probation  
34 officers, the state board of education, and the department. No such  
35 authority shall be denied entrance to such place of employment of child  
36 performers. If such authority is denied entrance to such place of  
37 employment, or if any violations of laws relating to the employment of  
38 child performers are found to exist, such authority shall report the  
39 violation to the department. Such report shall be made within forty-  
40 eight hours and shall be in writing, setting forth the fact that he or  
41 she has good cause to believe that such laws are being violated in such  
42 place of employment and describing the nature of the violation.

43 4. (a) The work permit of a child performer in the entertainment  
44 industry shall not be renewed, nor shall a subsequent work permit be  
45 issued, unless the parent or guardian demonstrates to the department  
46 that a child performer trust account in accordance with part seven of  
47 article seven of the estates, powers and trusts law has been established  
48 for the benefit of the child performer.

49 (b) The limitation set forth in paragraph (a) of this subdivision  
50 shall not apply to the issuance of an employer's certificate of eligi-  
51 bility or to a child performer covered by an employer's certificate of  
52 eligibility who subsequently seeks to obtain an initial individual  
53 permit to work.

54 5. Failure to produce any permit or certificate either to work or to  
55 employ is prima facie evidence of the illegal employment of any child  
56 performer whose permit or certificate is not produced. Proof that any

1 person was the manager or superintendent of any place of employment  
2 subject to the provisions of this article at the time any child perform-  
3 er is alleged to have been employed therein in violation thereof, is  
4 prima facie evidence that the person employed or permitted the child  
5 performer to work. The sworn statement of the commissioner, or his or  
6 her deputy or agents, as to the age of any child performer affected by  
7 this article is prima facie evidence of the age of such child.

8 § 152. Educational requirement. 1. A child performer shall fulfill  
9 educational requirements as set forth in part one of article sixty-five  
10 of the education law. If a child performer is unable to meet such educa-  
11 tional requirements due to his or her employment schedule, the employer  
12 shall be required to comply with subdivision two of this section.

13 2. (a) Any person, or agent or officer employing, either directly or  
14 indirectly through a third person, a child performer certified pursuant  
15 to this article shall provide a teacher, who is either certified or has  
16 credentials recognized by the state of New York, to such child performer  
17 to fulfill educational requirements pursuant to the education law. Such  
18 child performer shall not be declared absent from school while working  
19 pursuant to the permit requirement in accordance with this article. The  
20 requirements of this section shall only be applicable when the child  
21 performer is not receiving educational instruction due to his or her  
22 employment schedule.

23 (b) A child performer receiving educational instruction pursuant to  
24 this subdivision, and such child's parents or guardians, shall work with  
25 the certified teacher provided to the child performer and the child's  
26 school of enrollment to fulfill such educational requirements.

27 3. No minor having a permit to work issued by the department and no  
28 minor under eighteen years of age, who is otherwise required by law to  
29 be enrolled and attend school, shall be without educational instruction  
30 and unemployed for a period longer than ten consecutive days while the  
31 school of enrollment is in session.

32 § 153. Enforcement of violations; civil penalties. If the commissioner  
33 finds that a child performer's employer has violated any provision of  
34 this article or of a rule or regulation promulgated thereunder, the  
35 commissioner may by an order which shall describe particularly the  
36 nature of the violation, assess such employer a civil penalty of not  
37 more than one thousand dollars for the first violation, not more than  
38 two thousand dollars for a second violation and not more than three  
39 thousand dollars for a third or subsequent violation. Such penalty shall  
40 be paid to the commissioner and placed into the child performer's  
41 protection fund established in section ninety-nine-j of the state  
42 finance law and administered by the department. Monies accredited to the  
43 child performer's protection fund shall be utilized for the purpose of  
44 this article. The department shall promulgate rules and regulations for  
45 the administration of the child performer's protection fund.

46 § 6. Subdivision 4 of section 35.01 of the arts and cultural affairs  
47 law is amended to read as follows:

48 4. A child performer permit shall be issued by the [mayer or other  
49 chief executive officer of the city, town or village where the exhibi-  
50 tion, rehearsal or performance will take place] state department of  
51 labor.

52 § 7. The state finance law is amended by adding two new sections 99-j  
53 and 99-k to read as follows:

54 § 99-j. Child performer's protection fund. 1. There is hereby estab-  
55 lished in the joint custody of the state comptroller and the commission-

1 er of taxation and finance a special revenue fund known as the "child  
2 performer's protection fund".

3 2. Such fund shall consist of the revenues received pursuant to arti-  
4 cle four-A of the labor law, part seven of article seven of the estates,  
5 powers and trusts law, and all other monies appropriated, credited, or  
6 transferred thereto from any other fund or source pursuant to law.

7 3. Monies of the fund shall be expended by the commissioner of labor  
8 solely for the purpose of administering article four-A of the labor law.

9 § 99-k. Child performer's holding fund. 1. There is hereby established  
10 in the joint custody of the state comptroller and the commissioner of  
11 taxation and finance a special revenue fund known as the "child perform-  
12 er's holding fund".

13 2. Such fund shall consist of revenues received and interest accrued  
14 pursuant to part seven of article seven of the estates, powers and  
15 trusts law, and all other monies appropriated, credited, or transferred  
16 thereto from any other fund or source pursuant to law.

17 3. Monies of the fund shall be distributed to the child performer upon  
18 receipt of the child performer trust fund pursuant to part seven of  
19 article seven of the estates, powers and trusts law. The comptroller  
20 shall notify the commissioner of the department of labor within thirty  
21 days of receipt of the funds and the child performer's name and last  
22 known address. Within thirty days of receipt of the funds, the comp-  
23 troller shall give notice to the parent or guardian about funds and the  
24 procedures to transfer funds from the comptroller to the child performer  
25 trust fund account in the name of the child performer. Monies not  
26 claimed shall be used solely to fund programs for the health, education  
27 and welfare of child performers. The comptroller shall submit a report  
28 about the child performer's holding fund to the governor, the temporary  
29 president of the senate and the speaker of the assembly concerning the  
30 implementation of this section.

31 § 8. This act shall take effect on the one hundred eightieth day after  
32 it shall have become a law.

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