

HB429 ENGROSSED



1 AAMXQ7-2
2 By Representatives Kiel, Moore (P), Pringle, Underwood,
3 Colvin, Woods, Baker, Wilcox, Brown, Stadthagen
4 RFD: Ways and Means Education
5 First Read: 03-May-23
6 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to the Entertainment Industry Incentive Act of 2009; to amend Sections 41-7A-40, 41-7A-41, 41-7A-42, 41-7A-45, and 41-7A-48, Code of Alabama 1975, to expand the incentive by renaming it the Film and Music Incentive Act of 2023, to increase the cap on incentives to fifty million dollars annually, and to allow for the inclusion of music and virtual reality as qualified production companies.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-7A-40, 41-7A-41, 41-7A-42, 41-7A-45, and 41-7A-48, Code of Alabama 1975, are amended to read as follows:

"§41-7A-40

This article may be cited as the "~~Entertainment Industry Incentive Act of 2009~~. Film and Music Incentive Act of 2023."

"§41-7A-41

The following is hereby found and declared by the Legislature of Alabama:

(1) Although Alabama is filled with attractive natural resources, a growing workforce, and other resources



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29 attractive to the ~~entertainment~~film and music industry,
30 Alabama has not developed its potential in terms of
31 attracting the ~~entertainment~~film and music industry to the
32 state by offering production incentives for qualified
33 productions not previously offered in Alabama.

34 (2) ~~Entertainment~~Film and music industry incentives
35 offered by other states attract valuable projects to their
36 states which stimulate local economies, use local manpower
37 and suppliers, offer other employment and entrepreneurial
38 opportunities for state residents, and provide public
39 awareness of the natural resources available in their
40 states.

41 (3) Because Alabama does not currently offer a
42 sufficiently viable incentive package to the industry,
43 Alabama cannot effectively compete with other states for
44 attracting industry projects in such a volume to cause the
45 development of adequate industry infrastructure and those
46 projects locate elsewhere.

47 (4) For Alabama to compete nationally or
48 internationally for the location and production of more
49 projects in Alabama and to foster a growing ~~entertainment~~
50 film and music industry in Alabama, an increase in industry
51 specific production incentives are immediately necessary.

52 (5) The Legislature recognizes and confirms the
53 planning and promotion of the ~~entertainment~~film and music
54 industry are of vital importance to the economic development
55 of Alabama as are the recruitment, expansion, and retention
56 of industrial development within the state, and the



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57 promotion of the ~~entertainment~~film and music industry should
58 be included as an integral part of any comprehensive
59 economic development strategy plan promoted by the state and
60 state agencies.

61 (6) Since Act 2009-144 was passed in 2009, the State
62 of Georgia has attracted a number of film and music
63 productions and established successful film production
64 facilities, whereas Alabama has enjoyed less success and has
65 yet to establish a successful film production facility.

66 (7) The film and music industry has been significantly
67 disrupted since Act 2009-144 was passed in 2009, and, to be
68 competitive in attracting such projects, Alabama must devote
69 more financial resources to the effort."

70 "§41-7A-42

71 For purposes of this article, the following terms
72 shall have the following meanings:

73 (1) COMPANY. A corporation, partnership, limited
74 liability company, or any other business entity.

75 (2) DEPARTMENT. The Alabama Department of Revenue.

76 ~~(3) ENTERTAINMENT INDUSTRY. Those persons or entities~~
77 ~~engaged in the production of entertainment content as~~
78 ~~defined under paragraph a. of subdivision (8).~~

79 ~~(4)~~ (3) EXPENDED IN ALABAMA. In the case of tangible
80 property, property which is acquired or leased from a source
81 within the State of Alabama; in the case of services,
82 services performed for a qualified production project in the
83 State of Alabama.

84 (4) FILM AND MUSIC INDUSTRY. Those persons or entities



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85 engaged in the production of qualified products with
86 entertainment content as defined under paragraph a. of
87 subdivision (8).

88 (5) OFFICE. The Alabama Film Office.

89 (6) PAYROLL. All salary, wages, and other
90 compensation, including related benefits, including
91 specifically, but not limited to, compensation and benefits
92 provided to resident and nonresident producers, directors,
93 writers, actors, and other personnel involved in qualified
94 production projects in Alabama.

95 (7) PRODUCTION EXPENDITURES.

96 a. The term includes preproduction, production, and
97 postproduction expenditures incurred in the State of Alabama
98 that are directly used in a state-certified production,
99 including, but not limited to, the following: Set
100 construction and operation, wardrobe, makeup, set
101 accessories, and related services; costs associated with
102 photography and sound synchronization, lighting, and related
103 services and materials; editing and related services; rental
104 of facilities and equipment; leasing of vehicles; costs of
105 food and lodging; costs of catering; digital or tape
106 editing, film processing, transfer of film to tape or
107 digital format; transfer direct to DVD, cable, or satellite
108 for distribution; sound mixing, special and visual effects
109 including duplication, film processing digital, DVD, music
110 composition, and satellite distribution; total aggregate
111 payroll; music; airfare; insurance costs of bonding; or
112 other similar production expenditures as determined by rule



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113 or regulation.

114 b. The term includes financial contributions or
115 educational or workforce development in partnership with
116 related educational institutions, or local industry
117 organizations, or both, contributed toward the furtherance
118 of the local ~~entertainment media~~film and music industries.

119 c. The term does not include postproduction
120 expenditures for marketing or any amounts that are paid to
121 persons or entities as a result of their participation in
122 profits from the exploitation of a motion picture
123 production.

124 (8) QUALIFIED PRODUCTION.

125 a. The term means ~~entertainment~~film and music content
126 created in whole or in part within the state, including
127 motion pictures; soundtracks for motion pictures;
128 documentaries; long-form, specials, miniseries, series,
129 sound recordings, videos and music videos, and interstitials
130 television programming; interactive television; interactive
131 games; video games; music albums; entertainment and
132 educational content that incorporates virtual reality or
133 augmented reality, or virtual reality film production;
134 commercials; infomercials; any format of digital media,
135 including an interactive website that is intended for
136 national or international distribution or exhibition to the
137 general public; and any trailer, pilot, video teaser, or
138 demo created primarily to stimulate the sale, marketing,
139 promotion, or exploitation of future investment in either a
140 product or a qualified production via any means and media in



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141 any digital media format, film, or videotape, provided such
142 program meets all the underlying criteria of a qualified
143 production.

144 b. The term does not include any ongoing television
145 program created primarily as news, weather, or financial
146 market reports, a production featuring current events,
147 sporting events, an awards show or other gala event, a
148 production whose sole purpose is fund-raising, a long-form
149 production that primarily markets a product or service, a
150 production used for corporate training or in-house corporate
151 advertising or other similar productions; nor does the term
152 include any production for which records are required to be
153 maintained under 18 U.S.C. § 2257 with respect to sexually
154 explicit content; nor does the term mean or include any form
155 of gambling, gaming, wagering, or pari-mutuel wagering
156 activity or enterprise.

157 (9) QUALIFIED PRODUCTION COMPANY.

158 a. The term means a company engaged in the business of
159 producing a qualified production, as that term is defined.

160 b. The term does not mean or include any company
161 owned, affiliated, or controlled, in whole or in part, by
162 any company or person which is in default on a loan.

163 (10) RESIDENT OF ALABAMA. A natural person and, for
164 the purpose of determining eligibility for the incentives
165 provided by this article, any person domiciled in the State
166 of Alabama and any other person who maintains a permanent
167 place of abode within the state and spends in the aggregate
168 more than six months of each year within the State of



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169 Alabama.

170 (11) STATE-CERTIFIED PRODUCTION. A qualified
171 production approved by the office, produced by a qualified
172 production company."

173 "§41-7A-43

174 (a) Beginning January 1, 2009, a qualified production
175 company shall be entitled to a rebate for production
176 expenditures, as defined in subdivision (7) of Section
177 41-7A-42, related to a state-certified production. The
178 rebate shall be equal to 25 percent of the state-certified
179 production's production expenditures excluding payroll paid
180 to residents of Alabama plus 35 percent of all payroll paid
181 to residents of Alabama for the state-certified production,
182 provided the total production expenditures for a project
183 must equal or exceed at least five hundred thousand dollars
184 (\$500,000), but no rebate shall be available for production
185 expenditures incurred after the first ~~twenty million dollars~~
186 ~~(\$20,000,000)~~ fifty million dollars (\$50,000,000).

187 (b) A single episode in a television series or
188 miniseries may be considered a single production project for
189 purposes of this section. However, in determining the total
190 production expenditures incurred by a qualified production
191 company on a qualified production, the total production
192 expenditures of a television series or miniseries, whether a
193 single season or multiple seasons thereof, to be filmed
194 within a period of 12 consecutive months, each individual
195 episode of which separately and independently meets the



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196 definition of a qualified production, may be aggregated to
197 meet the monetary requirements set forth in subsection (a)
198 as long as each individual episode within the series
199 pertains to the same subject as the other episodes in the
200 series.

201 (c) A single commercial may be considered a single
202 production project for purposes of this section. However, in
203 determining the total production expenditures incurred by a
204 qualified production company on a qualified production, the
205 total production expenditures of a series of commercials to
206 be filmed within a period of 12 consecutive months, each of
207 which separately and independently meets the definition of a
208 qualified production, may be aggregated to meet the monetary
209 requirements set forth in subsection (a) as long as each
210 individual commercial within the series pertains to the same
211 subject as the other commercials in the series and was
212 planned as part of a series of commercials to be filmed
213 within a period of 12 consecutive months at the time the
214 qualified production company applied for the incentives.

215 (d) A qualified production company shall be entitled
216 to the rebate for production expenditures as provided in
217 subsection (a) for a qualified project that is limited only
218 to the production of a soundtrack used in a motion picture
219 or documentary, provided that the production expenditures
220 for the soundtrack project must equal or exceed at least
221 fifty thousand dollars (\$50,000), but no rebate shall be
222 available for production expenditures incurred after the
223 first three hundred thousand dollars (\$300,000) of



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224 production expenditures expended in Alabama under this
225 subsection.

226 (e) A qualified production company shall be entitled
227 to the rebate for production expenditures as provided in
228 subsection (a) for a qualified project that is limited only
229 to the production of a music album or music video, provided
230 that the production expenditures for the music album equal
231 or exceed twenty thousand dollars (\$20,000) and the
232 production expenditures for the music video equal or exceed
233 fifty thousand dollars (\$50,000), but no rebate shall be
234 available for production expenditures incurred after the
235 first two hundred thousand dollars (\$200,000) of production
236 expenditures expended in Alabama under this subsection.
237 Rebates received under this subsection may not, in the
238 aggregate, exceed five percent of the funding available each
239 year under Section 41-7A-43(a) for all qualified production
240 companies.

241 (f) The rebate described in this section may be
242 applied to offset any income tax liability applicable to a
243 qualified production company for the tax year in which
244 production activity in Alabama on the state-certified
245 production concludes.

246 (g) If the rebate available under this section exceeds
247 a qualified production company's Alabama income tax
248 liability for the tax year in which production activity in
249 Alabama concludes on the state-certified production, the
250 excess of the rebate over a qualified production company's
251 Alabama income tax liability shall be rebated to the



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252 qualified production company.

253 (h) The Commissioner of the Department of Revenue and
254 the office shall ~~promulgate~~adopt rules necessary to
255 administer this section.

256 "§41-7A-45

257 A qualified production company that intends to expend
258 in the aggregate one hundred fifty thousand dollars
259 (\$150,000) or more in connection with a qualified production
260 in the State of Alabama within a consecutive 12-month
261 period, upon making application for, meeting the
262 requirements of, and receiving written certification of that
263 designation from the office, shall be exempted from the
264 payment of the state portion, but not the local portion of
265 sales, use, and lodging taxes levied pursuant to Sections
266 40-23-2, 40-23-61, and 40-26-1, respectively, on production
267 expenditures expended in Alabama in connection with the
268 state-certified productions. The exemption provided by this
269 section shall not be available for production expenditures
270 incurred by a qualified production company after the first
271 ~~twenty million dollars (\$20,000,000)~~ fifty million dollars
272 (\$50,000,000) of production expenditures expended in Alabama
273 on a state-certified project."

274 "§41-7A-48

275 For the fiscal year ending September 30, 2009, the
276 aggregate cap of incentives granted under this article shall
277 not exceed five million dollars (\$5,000,000) for all
278 qualified production companies. For the fiscal year ending
279 September 30, 2010, the aggregate cap of incentives granted



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280 under this article shall not exceed seven million five
281 hundred thousand dollars (\$7,500,000) for all qualified
282 production companies. For fiscal years ending September 30,
283 2011, and September 30, 2012, the aggregate cap of
284 incentives granted under this article shall not exceed ten
285 million dollars (\$10,000,000) for all qualified production
286 companies. For the fiscal year ending September 30, 2013,
287 the aggregate cap of incentives granted under this article
288 shall not exceed fifteen million dollars (\$15,000,000). For
289 the fiscal year ending September 30, 2014, the aggregate cap
290 of incentives granted under this article shall not exceed
291 fifteen million dollars (\$15,000,000) and for all subsequent
292 fiscal years thereafter, through September 30, 2023, the
293 aggregate cap of incentives granted under this article shall
294 not exceed twenty million dollars (\$20,000,000) for all
295 qualified production companies. For the fiscal year ending
296 September 30, 2024, the aggregate cap of incentives granted
297 under this article shall not exceed fifty million dollars
298 (\$50,000,000) and for all subsequent fiscal years thereafter
299 for all qualified production companies."

300 Section 2. If a court of competent jurisdiction
301 adjudges invalid or unconstitutional any clause, sentence,
302 paragraph, section, or part of this act, such judgment or
303 decree shall not affect, impair, invalidate, or nullify the
304 remainder of this act, but the effect of the decision shall
305 be confined to the clause, sentence, paragraph, section, or
306 part of this act adjudged to be invalid or unconstitutional.

307 Section 3. All laws or parts of laws which conflict



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308 with this act are repealed.

309 Section 4. This act shall become effective
310 immediately following its passage and approval by the
311 Governor, or its otherwise becoming law.



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House of Representatives

315 Read for the first time and referred03-May-23
316 to the House of Representatives
317 committee on Ways and Means
318 Education
319
320 Read for the second time and placed11-May-23
321 on the calendar:
322 2 amendments
323
324 Read for the third time and passed23-May-23
325 as amended
326 Yeas 100
327 Nays 1
328 Abstains 1
329
330

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John Treadwell
Clerk