

1 SB174
2 135789-5
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 07-FEB-12

1 SB174

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3
4 ENROLLED, An Act,

5 To amend Sections 25-8-32.1, 25-8-33, 25-8-38,
6 25-8-44, 25-8-52, 25-8-59, and 25-8-60, Code of Alabama 1975,
7 relating to the Child Labor Division of the Alabama Department
8 of Labor; to clarify certain terms in existing law; to specify
9 which documents satisfy proof of age requirements; to require
10 public display of Child Labor Certificates; to further define
11 adult establishment and limit employment of children in adult
12 establishments; to authorize the assessment of civil penalties
13 for violations; and to define production and clarify the role
14 of the department in regulating the employment of children in
15 theatrical productions.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 25-8-32.1, 25-8-33, 25-8-38,
18 25-8-44, 25-8-52, 25-8-59, and 25-8-60 of the Code of Alabama
19 1975, are amended to read as follows:

20 "§25-8-32.1.

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

23 "(1) COMMISSIONER. The Commissioner of the
24 Department of Labor.

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

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

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

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

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

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

23 "§25-8-33.

24 "No person under 16 years of age shall be employed,
25 except in agricultural service, and except as otherwise

1 provided in this chapter. Any person 14 or 15 years of age may
2 be employed outside school hours and during school vacation
3 periods, so long as the person is not employed in, about, or
4 in connection with, any manufacturing or mechanical
5 establishment, cannery, mill, workshop, warehouse, or machine
6 shop or in any occupation or place of employment otherwise
7 prohibited by law. The presence of any person under 18 years
8 of age in any restricted business establishment or restricted
9 occupation shall be prima facie evidence of his or her
10 employment therein.

11 "§25-8-38.

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

21 "(b) Subject to subsection (c), each employer shall
22 keep on the premises at which any person under 19 years of age
23 is employed a completed Employee Information Form and proof of
24 age. Each employer shall also keep on the premises at which
25 any person under 19 years of age is employed, in electronic or

1 photostatic form, time records for the 60 days preceding the
2 last day of the last work period recorded for each employee
3 under 19 years of age, which shall state the number of hours
4 worked each day, starting and ending times, and break times.
5 Each employer shall also maintain, either on the premises
6 where the employee under 19 years of age is employed or at a
7 centralized location, the records required by this section for
8 not less than 1 year preceding the last day of the last work
9 period recorded for each employee under 19 years of age.

10 "(c) For the purposes of this section, the Employee
11 Information Form shall be provided by the department and shall
12 include the employee's name, home address, telephone number,
13 date of birth, date of hire, and school of attendance. Any
14 employer who does not utilize the Employee Information form
15 shall maintain on the premises documents containing the
16 employee's name, home address, telephone number, date of
17 birth, date of hire, and school of attendance for each
18 employee under 19 years of age.

19 "(d) For the purposes of this section, documentation
20 of proof of age may include a copy of a birth certificate, a
21 copy of a driver's license, or an identification card issued
22 by a federal, state, or local government agency provided the
23 identification card contains the name and date of birth of the
24 employee.

1 "(e) No person 14 or 15 years of age shall be
2 employed for more than five hours continuously without a
3 documented interval of at least 30 minutes for a meal or rest
4 period. Any meal or rest period of less than 30 minutes shall
5 not be considered to interrupt a continuous period of work.

6 "(f) Any employer required to obtain a Child Labor
7 Certificate from the department shall keep the certificate
8 posted at a public and conspicuous location at all times.

9 "§25-8-44.

10 "(a) No person under the state legal drinking age
11 shall be employed to serve or dispense alcoholic beverages in
12 any establishment where alcoholic beverages are sold, served,
13 or dispensed for consumption on the premises.

14 "(b) No person under (16) years of age shall be
15 employed in any establishment where alcoholic beverages are
16 sold, served, or dispensed for consumption on the premises.
17 Notwithstanding the foregoing, this section shall not prohibit
18 the employment of persons 16 years of age or older as busboys,
19 dishwashers, janitors, cooks, hostesses, or seaters restricted
20 to leading patrons to seats; nor the employment of persons
21 under 18 years of age as professional entertainers.

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

1 "(d) No person under 18 years of age shall be
2 employed in any adult establishment or perform in any
3 establishment, nude or nearly nude, in a manner or attire as
4 to expose any portion of the pubic area, buttocks, anus, anal
5 cleft, vulva, or genitals, or any simulation thereof, or show
6 the covered male genitals in a discernible turgid state, or be
7 attired in a manner as to expose to view the portion of the
8 breast below the top of the areola or any simulation thereof.
9 For the purposes of this subsection, an adult establishment
10 includes, but is not limited to, an adult live entertainment
11 business, an adult arcade, an adult bookstore, an adult
12 cabaret, an adult movie theater, an adult toy store, an adult
13 video store, a body shampooing business, an escort agency, a
14 massage parlor, a nude model studio, a lingerie modeling
15 studio, or any combination of the foregoing.

16 "§25-8-52.

17 "The department shall have the right to enter,
18 without prior notice or warrant, any business establishment
19 for the purpose of routine inspections. These visits shall be
20 conducted as frequently as needed to insure that minors are
21 employed in compliance with this chapter. The department shall
22 enforce this chapter and may assess civil penalties or
23 institute criminal prosecution for any violation of this
24 chapter.

25 "§25-8-59.

1 "(a) Any employer who violates this chapter, or who
2 fails or refuses to obey within a reasonable time any lawful
3 order or direction given by the state officials charged with
4 the enforcement of this chapter, and any parent, guardian, or
5 custodian who suffers or permits a person under his or her
6 care or control who is under 19 years of age to work in
7 violation of this chapter, shall be subject to civil penalties
8 in addition to other penalties provided in this chapter.

9 "(b) The department may impose a civil penalty of
10 three hundred dollars (\$300) upon the following determination:
11 An employer has violated a statutory provision of Section
12 25-8-35(17), 25-8-36, 25-8-37, 25-8-38, 25-8-39, 25-8-40,
13 25-8-41, 25-8-44(a), 25-8-44(b), 25-8-45, 25-8-54, 25-8-57,
14 25-8-60, or 25-8-61.

15 "(c) The department may impose a civil penalty of
16 one thousand dollars (\$1,000) to five thousand dollars
17 (\$5,000) upon the following determination: An employer has
18 violated a statutory provision of Section 25-8-33,
19 25-8-35(1)-(16), inclusive, 25-8-43(a), or 25-8-44(d).

20 "(d) In determining the number of violations
21 committed by an employer, the department may assess a separate
22 civil penalty for each individual employee affected by the
23 employer's violation.

24 "(e) In addition, the department may assess more
25 than one civil penalty against an employer with respect to the

1 same adversely affected employee if the employer has violated
2 more than one statutory provision in Act 2009-565.

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

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

8 "(1) The total civil penalty assessed.

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

12 "(3) An advisement that no hearing shall be granted
13 unless a written request for a hearing is received by the
14 department within 30 days from the date of issue of the
15 notice.

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

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

1 "(i) If the commissioner or his or her designee
2 determines that the employer has stated adequate facts or
3 legal grounds to warrant a hearing, the commissioner or his or
4 her designee shall provide written notice of the hearing to
5 show cause why a civil penalty should not be assessed and
6 shall mail written notice to the employer of the date, time,
7 and place of the hearing. Such determination shall be within
8 the discretion of the commissioner or his or her designee. The
9 notice shall inform the employer of its rights in the hearing
10 including the following:

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

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

15 "(j) A request for postponement of a hearing so
16 scheduled shall only be granted where the rights of an
17 employer would be substantially prejudiced by the denial of
18 the request or in a medical emergency. Only the commissioner
19 or his or her designee has discretion to grant such requests.

20 "(k) Following a hearing or after the employer has
21 waived the right to request a hearing, the commissioner or his
22 or her designee may uphold or modify the civil penalty
23 assessment. Such determination shall be within the sole
24 discretion of the commissioner or his or her designee.

1 "(l) If the employer requests a hearing but the
2 commissioner or his or her designee denies the request for a
3 hearing, the total civil penalty assessed in the notice shall
4 be the final civil penalty.

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

9 "(n) All moneys received from the assessment of any
10 penalty pursuant to this section shall accrue to the State
11 General Fund.

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

17 "(p) In addition to civil penalties provided for in
18 subsection (c), an employer who is found in violation of
19 subsection (c) involving serious physical injury to or death
20 of a minor may be deemed guilty of a Class A misdemeanor or
21 Class C felony. A first conviction shall be deemed a Class A
22 misdemeanor. A second or subsequent conviction shall be deemed
23 a Class C felony.

24 "§25-8-60.

1 "(a) Persons under 18 years of age may be employed
2 and appear for the purpose of singing, acting, or performing
3 in any production approved and coordinated by the Alabama Film
4 Office in conjunction with and under the jurisdiction and
5 supervision of the department. Time and hour restrictions, for
6 persons under 18 years of age employed in a production, shall
7 be established by the department. For the purposes of this
8 section, a production includes, but is not limited to, motion
9 pictures, documentaries, and reality television films.

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

15 "(1) The activities enumerated shall not be
16 detrimental to the life, health, safety, welfare, or morals of
17 the person.

18 "(2) The activities enumerated shall not interfere
19 with the schooling of the person and provisions shall be made
20 for education equivalent to full-time school attendance in the
21 public schools for persons under 16 years of age.

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB174
Senate 28-FEB-12
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 17-APR-12

Senate concurred in House amendment 19-APR-12

By: Senator Holley