

SENATE No. 1865

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to child performer protection.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02001 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CHILD PERFORMER PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Said chapter 149 is hereby amended by inserting after section 105, as
2 appearing in the 2004 Official Edition, the following section:-

3 Section 105 ½. (a) For purposes of this section “Entertainment production” means and
4 includes the following activities performed in the commonwealth: motion pictures of any kind
5 using any format distributed in any medium, photography, recording, modeling, motion picture,
6 theatrical or stage production, television production, commercial production, voice-overs,
7 publicity, rodeos, circuses, musical performances, or any other performance where minors
8 perform to entertain the public.

9 (b) Notwithstanding any other general or special law to the contrary, a child under 18 years of
10 age may be employed in entertainment production, provided the hours of work do not exceed the
11 following:

12 (1) for a child at least 15 days but less than 6 months of age, 3 hours at the place of employment
13 with no more than 20 minutes of consecutive work, excluding meal breaks;

14 (2) for a child at least 6 months but less than 2 years of age, 6 hours at the place of employment
15 with no more than 2 hours of work and no more than 30 minutes of consecutive work, excluding
16 meal breaks;

17 (3) for a child at least 2 years of age but less than 6 years of age, 6 hours at the place of
18 employment with no more than 3 hours of work, excluding meal breaks;

19 (4) or a child at least 6 years of age but less than 9 years of age, 8 hours at the place of
20 employment with no more than 5 hours of work, excluding meal breaks;

21 (5) for a child at least 9 years of age but less than 16 years of age, 9 hours at the place of
22 employment with no more than 6 hours of work, excluding meal breaks.

23 (6) for a child at least 16 years of age but less than 18 years of age, 12 hours at the place of
24 employment with no more than 9 hours of work, excluding meal breaks.

25 (c) The work day for a child under 18 years of age employed under this section shall begin no
26 earlier than 5:00 a.m. and shall end not later than 10:00 p.m. on evenings preceding school days;
27 but a child performer at least 8 years of age in a theatrical or stage production, circus, musical
28 performance or other performance with a live audience may continue a performance until 12:00
29 midnight on an evening preceding a school day if the performance began before 10:00 p.m.. On
30 evenings preceding non-school days, the child's work day shall end no later than 12:30 a.m. on
31 the morning of the non-school day. A child shall have a 12-hour break between the end of work

32 on one day and the beginning of the next work day. A child shall not work more than 6
33 consecutive days.

34 (d) Child performers shall be held to the hour requirements of subsections (b) and (c) and shall
35 not be restricted by any other hour requirements.

36 (e) A child shall fulfill the educational requirements set forth by the department of education or
37 by the state or country of his residence, if he is not a resident of the commonwealth. A child who
38 has not completed the requirements and who is employed in entertainment production when
39 school is in session shall be subject to the following requirements:

40 (1) An employer employing a child for 2 or more school days in a 30 day period shall provide a
41 state certified teacher who has credentials issued by the department of education or recognized
42 by the department of education. This requirement shall apply beginning on the second day that
43 the child performer renders services for that employer and shall continue on each day thereafter
44 that school is in session and the child is rendering services; but if the child has executed a
45 contract with the employer to work for 2 or more school days in the next 30-day period, the
46 requirement shall apply beginning on the first day of the child performer's employment. A child
47 receiving instruction from a teacher as required by this section shall not be declared absent from
48 school. The requirements of this section shall be applicable only when school is in session and
49 the child performer is not receiving educational instruction due to his employment
50 schedule. Local school districts shall retain the power to determine that a minor is meeting
51 applicable educational standards.

52 (2) For any child performer under 16 years old employed under this section, a parent or legal
53 guardian shall be present with and accompany the performer on the set or location of the
54 entertainment production. A parent or legal guardian may designate in writing any person over
55 21 years old to serve as an accompanying guardian for purposes of this section.

56 (3) A child performer employed in an entertainment production under this section shall obtain a
57 permit issued in accordance with this section and sections 86 to 88, inclusive. A child performer
58 who resides in and attends school in the commonwealth shall obtain said permit from the
59 attorney general, from the superintendent of schools in the town where the student resides or by a
60 party authorized by the school committee of the town. A child performer who resides in, but
61 does not attend school in the commonwealth shall obtain the permit from the attorney general
62 once the attorney general receives, examines, approves and files all of the documents required by
63 section 87 with the exception of a school record. A child performer who does not reside in or
64 attend school in the commonwealth shall obtain the permit from the attorney general or from the
65 appropriate issuing authority in the student's state or country of residence. If a child performer
66 resides in a state or country that does not require child actors to obtain work permits, then the
67 child performer shall obtain a work permit from the attorney general. The attorney general shall
68 promulgate regulations pertaining to the application process for expedited or emergency permits
69 to enable eligible performers to receive permits within 24 hours of submitting an application. A
70 permit issued under this section shall be valid for employment by multiple employers and shall
71 be valid for the longer of (i) the full duration of a child performer's service with an employer, or
72 (ii) 6 months.

73 (f) (1) Every contract executed by or on behalf of a minor rendering artistic or creative services
74 for compensation in this state shall require that fifteen percent of the gross earnings for the minor
75 under the contract be placed in a trust fund created for the benefit of the minor and, except as
76 provided in Subsection (l) of this section, that the trust fund be created in a financial institution
77 authorized to transact business in this state and which institution is federally insured by the
78 Federal Deposit Insurance Corporation, or its successor or by the National Credit Union Share
79 Insurance Fund, or its successor.

80 (2) Monies placed in a trust fund pursuant to the provisions of this Chapter shall be placed in a
81 blocked account and no funds shall be withdrawn prior to the date the minor attains the age of
82 eighteen unless the minor is determined to be in necessitous circumstances by a court of
83 competent jurisdiction.

84 (3) All monies deposited in trust pursuant to the provisions of this Chapter shall be administered
85 by the financial institution as a fiduciary for the benefit of the minor. No fees shall be charged
86 the trust until the minor reaches the age of eighteen.

87 (g) Funds may be withdrawn from the trust fund by the beneficiary only after the beneficiary
88 provides a certified copy of his birth certificate to the is at least eighteen years of age.

89 (h). Both parents of a minor on whose behalf monies are placed in trust pursuant to this Section
90 shall serve as trustees of the trust unless otherwise provided in writing by both parents or in the
91 case of divorce or death of a parent by the person appointed by the state.

92 (I). Prior to execution of a contract subject to the provisions of this Chapter, the trustee or
93 trustees shall establish the trust required under this Section, unless an account has been

94 previously established, and no contract subject to the provisions of this Chapter shall be executed
95 until the trustee or trustees provide a written statement to the employer which shall include the
96 name, address, and telephone number of the financial institution holding the trust account, the
97 name of the account, the number of the account, the name of the minor beneficiary, the name of
98 the trustee or trustees of the account and such additional information as may be required by the
99 employer to make the deposit required under 1 this Section. The trustee or trustees shall attach to
100 this written statement a true and accurate photocopy of any information received from the
101 financial institution confirming the creation and existence of the trust account on behalf of the
102 minor, and may include a copy of the account agreement, account terms, passbook, or other
103 similar writings required by the employer.

104 (j). In the event that a trust account is not established on behalf of a minor performer within
105 thirty days of the last day of employment, the employer shall forward the fifteen percent of the
106 minor's gross earnings, accompanied by the name of the minor, and if known, the minor's
107 address and social security number, to the treasurer of the state of Massachusetts, who shall hold
108 such funds in trust to be tendered to a trust account that is subsequently established on behalf of
109 the minor, or if no such trust account is established, then to the minor upon reaching the age of
110 majority.

111 (k). Once the employer has transferred monies pursuant to this Section to either the minor's trust
112 account or the treasurer's office in those circumstances where a trust account has not been
113 established, the employer has no further duty or obligation with respect to the transferred monies.

114 (l). If a trust account is already established on behalf of the minor in another state, all monies
115 required to be deposited in a trust fund under the provisions of this Section, may be deposited
116 into the trust account already established in another state for the benefit of the minor.

117 SECTION 2. Section 85P ½ of chapter 231 of the General Laws, as so appearing, is
118 hereby amended by striking out, in lines 42 and 43, the words “and occurs during hours when
119 attendance for instruction is not required in accordance with law”.”