

SECOND REGULAR SESSION

# HOUSE BILL NO. 2038

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DEGROOT.

3787H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 620, RSMo, by adding thereto one new section relating to the entertainment industry jobs act, with a delayed effective date.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 620, RSMo, is amended by adding thereto one new section, to be known as section 620.1631, to read as follows:

**620.1631. 1. This section shall be known and may be cited as the "Entertainment Industry Jobs Act".**

**2. As used in this section, the following terms mean:**

**(1) "Base investment", the aggregate funds actually invested and expended by a qualified taxpayer as a rehearsal expense or tour expense under this section;**

**(2) "Concert", a ticketed live performance of music in the physical presence of at least one thousand individuals who view the performance live. As used in this subdivision, "ticketed" means a concert for which individual tickets for attendance are offered for sale to the public;**

**(3) "Concert tour equipment", the stage, set, scenery, design elements, automation, rigging, trusses, spotlights, lighting, sound equipment, video equipment, special effects, cases, communication devices, power distribution equipment, backline, and other miscellaneous equipment or supplies used during a concert or rehearsal;**

**(4) "Department", the department of economic development;**

**(5) "Expense", any expense, expenditure, cost, charge, or other disbursement or spending of funds;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           **(6) "Facility full-time equivalent employee", either an employee who is**  
18 **scheduled to work, on average, at least thirty-five hours per week and who is located at**  
19 **the qualified rehearsal facility or two or more employees who combined work an**  
20 **average of at least thirty-five hours per week and who are located at the qualified**  
21 **rehearsal facility. An employee shall be considered located at a qualified rehearsal**  
22 **facility if:**

23           **(a) The employee spends fifty percent or more of the employee's work time at**  
24 **either the qualified rehearsal facility or a nearby facility serving as the qualified**  
25 **rehearsal facility, such as a warehouse, that is located in Missouri and owned by the**  
26 **same owner or operator, as applicable, of the qualified rehearsal facility; or**

27           **(b) The employee spends less than fifty percent of the employee's work time at**  
28 **the qualified rehearsal facility or a nearby facility serving the qualified rehearsal facility**  
29 **but the employee receives his or her directions and control from such a facility and is on**  
30 **the facility's payroll;**

31           **(7) "Minimum rehearsal and tour requirements", all of the following that shall**  
32 **occur during a rehearsal or tour:**

33           **(a) Purchasing or renting of at least five hundred thousand dollars of concert**  
34 **tour equipment from a Missouri vendor for use in rehearsal, on tour, or both;**

35           **(b) Holding a rehearsal at a qualified rehearsal facility for at least ten days; and**

36           **(c) Holding a concert in at least one location in this state;**

37           **(8) "Missouri vendor", an individual or entity located in and maintaining a place**  
38 **of business in this state. Only transactions through a Missouri location of a Missouri**  
39 **vendor shall constitute a transaction with a Missouri vendor for purposes of this section;**

40           **(9) "Nonresident", the same definition as in section 143.101;**

41           **(10) "Pass-through entity", any incorporated or unincorporated entity that has**  
42 **or elects pass-through taxation under federal law including, but not limited to, a**  
43 **partnership, S corporation, or unincorporated entity that has or elects pass-through**  
44 **taxation;**

45           **(11) "Qualified amount", for any qualified taxpayer in a given tax year, an**  
46 **amount equal to thirty percent of such qualified taxpayer's base investment, subject to**  
47 **the limitations provided under this section;**

48           **(12) "Qualified rehearsal facility", a facility primarily used for rehearsals**  
49 **located in this state that:**

50           **(a) Has a minimum of twelve thousand five hundred square feet of column-free,**  
51 **unobstructed floor space in each studio used for rehearsals;**

52           **(b) Has a minimum of eight million dollars invested in the rehearsal facility, in**  
53 **land or structure or a combination of land and structure;**

54 (c) Has a permanent grid system with a capacity of at least five hundred  
55 thousand pounds in each studio used for rehearsals;

56 (d) Has a height from floor to permanent grid of at least fifty feet in each studio  
57 used for rehearsals;

58 (e) Has at least one sliding or roll-up access door with a minimum height of  
59 fourteen feet in each studio used for rehearsals;

60 (f) Has a security system that includes security cameras recording twenty-four  
61 hours a day, seven days a week and that uses access control identification badges;

62 (g) Has a service area of at least five thousand square feet with production  
63 offices, catering, and dressing rooms; and

64 (h) Is owned or operated by an entity that employs an average of at least eighty  
65 facility full-time equivalent employees on an annual basis.

66

67 The term "qualified rehearsal facility" shall not be construed to include a facility at  
68 which concerts are regularly held;

69 (13) "Qualified taxpayer", any individual or entity subject to the state income  
70 tax imposed under chapter 143, excluding the withholding tax imposed under sections  
71 143.191 to 143.265, who incurs rehearsal expenses or tour expenses and meets the  
72 minimum rehearsal and tour requirements;

73 (14) "Rehearsal", an event or series of events that occur in preparation for a  
74 tour prior to the start of the tour or during a tour when additional preparation is  
75 needed;

76 (15) "Rehearsal expenses" include, but are not limited to, the following when  
77 incurred during a rehearsal or incurred before a rehearsal if to secure goods or services  
78 rendered during the rehearsal:

79 (a) Total aggregate payroll;

80 (b) Payment to a personal service corporation representing individual talent;

81 (c) Payment to a pass-through entity representing individual talent;

82 (d) The expense of construction, operations, editing, photography, staging,  
83 lighting, wardrobe, and accessories;

84 (e) The expense of leasing vehicles from a Missouri vendor;

85 (f) The expense of transporting people or concert tour equipment to or from a  
86 train station, bus depot, airport, or other transportation facility or from a residence or  
87 business entity;

88 (g) The expense of insurance coverage for an entire tour if the insurance  
89 coverage is purchased or will be purchased through an insurance agent who is a  
90 Missouri vendor;

- 91           **(h) The expense of food and lodging from a Missouri vendor;**
- 92           **(i) The expense of purchasing or renting concert tour equipment from a**  
93 **Missouri vendor;**
- 94           **(j) The expense of renting a qualified rehearsal facility; or**
- 95           **(k) The expense of emergency or medical support services required to conduct a**  
96 **rehearsal;**
- 97           **(16) "Resident", the same definition as in section 143.101;**
- 98           **(17) "Tax credit", a credit against the tax otherwise due under chapter 143,**  
99 **excluding withholding tax imposed under sections 143.191 to 143.265;**
- 100           **(18) "Total aggregate payroll", the total sum expended on salaries paid to**  
101 **residents, regardless of whether such residents are working within or outside of this**  
102 **state, or nonresident employees working within this state in a tour or rehearsal**  
103 **including, but not limited to, payments to a loan-out company as described in subsection**  
104 **4 of this section;**
- 105           **(19) "Tour", a series of concerts or other performances performed or that will**  
106 **be performed by a musical or other live performer in one or more locations over**  
107 **multiple days including, but not limited to, at least one rehearsal;**
- 108           **(20) "Tour expenses", include, but are not limited to, the following for venues**  
109 **located in this state when incurred during a tour or incurred before a tour if to secure**  
110 **goods or services rendered during the tour:**
- 111           **(a) Total aggregate payroll;**
- 112           **(b) The expense of transporting people or concert tour equipment to or from a**  
113 **train station, bus depot, airport, or other transportation facility or from a residence or**  
114 **business entity located in this state, or such expense that is purchased or will be**  
115 **purchased from a Missouri vendor;**
- 116           **(c) The expense of leasing vehicles provided by a Missouri vendor;**
- 117           **(d) The expense of purchasing or renting facilities and equipment from or**  
118 **through a Missouri vendor;**
- 119           **(e) The expense of food and lodging that is incurred or will be incurred from a**  
120 **facility located in this state;**
- 121           **(f) Expenses that are incurred or will be incurred in marketing or advertising a**  
122 **tour at venues located within this state;**
- 123           **(g) The expense of merchandise that is purchased or will be purchased from a**  
124 **Missouri vendor and used on the tour;**
- 125           **(h) A payment that is made or will be made to a personal service corporation**  
126 **representing individual talent if income tax under the laws of this state will be paid or**  
127 **accrued on the net income of the corporation for the tax year; and**

128 (i) A payment that is made or will be made to a pass-through entity representing  
129 individual talent for which withholding will be made by the pass-through entity on the  
130 payment as required under the income tax laws of this state.

131

132 "Tour expenses" shall not be construed to include any expenses claimed by a taxpayer  
133 as rehearsal expenses or any development expenses including, but not limited to, the  
134 writing of music or lyrics.

135 3. For all tax years beginning on or after January 1, 2023, a qualified taxpayer  
136 shall be allowed a tax credit in the amount described in this section for all qualified  
137 amounts allowed under this section.

138 4. For purposes of determining the total aggregate payroll:

139 (1) (a) With respect to a single employee, the portion of any salary that exceeds  
140 two million dollars in the aggregate for a single tour shall not be included when  
141 calculating total aggregate payroll; and

142 (b) All payments to a single employee and any legal entity in which the employee  
143 has any direct or indirect ownership interest shall be considered as having been paid to  
144 the employee and shall be aggregated regardless of the means of payment or  
145 distribution;

146 (2) Total aggregate payroll includes, but is not limited to, payments to a loan-out  
147 company that has met its withholding tax obligations as described in this subdivision.  
148 The qualified taxpayer claiming the tax credit under this section shall withhold Missouri  
149 income tax at the rate imposed by section 143.071 on all payments to loan-out companies  
150 for services performed in this state. Any amounts so withheld shall be deemed to have  
151 been withheld by the loan-out company on wages paid to its employees for services  
152 performed in this state notwithstanding any exclusions under Missouri law for short-  
153 term employment of nonresident workers, out-of-state businesses, or otherwise. The  
154 amounts so withheld shall be allocated to the loan-out company's employees based on  
155 the payments made to the loan-out company's employees for services performed in this  
156 state. Notwithstanding any other provision of law to the contrary and for purposes of  
157 this section, loan-out company nonresident employees performing services in this state  
158 shall be considered taxable nonresidents and the loan-out company shall be subject to  
159 income taxation in the tax year in which the loan-out company's employees perform  
160 services in this state. Such withholding liability shall be subject to penalties and interest  
161 in the same manner as the employee withholding taxes imposed under state law. The  
162 department of revenue shall provide by regulation the manner in which such liability  
163 shall be assessed and collected.

164           **5. Any tax credits earned under this section and previously claimed but not used**  
165 **by such qualified taxpayer against such qualified taxpayer's income tax may be**  
166 **transferred or sold in whole or in part by such qualified taxpayer to another Missouri**  
167 **taxpayer, subject to the following conditions:**

168           **(1) A qualified taxpayer may make one or more transfers or sales of tax credits**  
169 **earned in a tax year. Such transfers or sales may involve one or more transferees;**

170           **(2) The qualified taxpayer shall submit to the department and to the department**  
171 **of revenue a written notification of any transfer or sale of tax credits within thirty days**  
172 **after the transfer or sale of such tax credits. The notification shall include such**  
173 **qualified taxpayer's tax credit balance prior to transfer, the tax credit identifying**  
174 **certificate number or other relevant identifying information, the remaining balance**  
175 **after transfer, all tax identification numbers for each transferee, the date of transfer, the**  
176 **amount transferred, and any other information required by the department or the**  
177 **department of revenue;**

178           **(3) Failure to comply with this subsection shall result in the disallowance of the**  
179 **tax credit until the qualified taxpayer is in full compliance;**

180           **(4) The transfer or sale of such tax credit shall not extend the time in which such**  
181 **tax credit can be used. The carry-forward period for a tax credit that is transferred or**  
182 **sold shall begin on the date on which the tax credit was originally granted;**

183           **(5) A transferee shall have only such rights to claim and use the tax credit that**  
184 **was available to such qualified taxpayer at the time of the transfer, except for the**  
185 **transfer use of the tax credit in subdivision (1) of this subsection. To the extent that such**  
186 **qualified taxpayer did not have rights to claim or use the tax credit at the time of the**  
187 **transfer, the department of revenue shall either disallow the tax credit claimed by the**  
188 **transferee or recapture the tax credit from the transferee. The transferee's recourse**  
189 **shall be against such qualified taxpayer; and**

190           **(6) The transferee shall acquire the tax credits in this section for a minimum of**  
191 **sixty percent of the amount of the tax credits so transferred.**

192           **6. The tax credits granted under this section shall be subject to the following**  
193 **conditions and limitations:**

194           **(1) The tax credit may be taken beginning with the tax year in which the**  
195 **qualified taxpayer earning the tax credit has met the applicable investment**  
196 **requirements under this section. For each tax year in which such qualified taxpayer**  
197 **either claims or transfers the tax credit, the qualified taxpayer shall attach a schedule to**  
198 **the qualified taxpayer's Missouri income tax return that, at a minimum, sets forth the**  
199 **following information:**

200           **(a) A description of the qualifying activities and expenses;**

- 201           (b) A detailed listing of the employee names, Social Security numbers, and  
202 Missouri wages if salaries are included in the base investment;
- 203           (c) The amount of the tax credit claimed for the tax year;
- 204           (d) Any tax credit previously taken by the qualified taxpayer against Missouri  
205 income tax liabilities;
- 206           (e) The amount of tax credit carried over from prior years;
- 207           (f) The amount of tax credit used by the qualified taxpayer claiming the tax  
208 credit in the current tax year; and
- 209           (g) The amount of tax credit to be carried over to subsequent tax years;
- 210           (2) In the initial year in which the qualified taxpayer claims the tax credit  
211 granted under this section, the qualified taxpayer shall demonstrate that the minimum  
212 rehearsal and tour requirements are met by including a description of the qualifying  
213 activities and expenses; and
- 214           (3) In no event shall the amount of the tax credit under this section for a tax year  
215 exceed the qualified taxpayer's income tax liability. Any unused tax credit amount may  
216 be carried forward for five years from the close of the tax year in which the rehearsal  
217 expense or tour expense occurred. No such tax credit shall be allowed the qualified  
218 taxpayer against prior years' tax liability.
- 219           7. (1) The aggregate amount of tax credits awarded in a fiscal year under this  
220 section shall not exceed eight million dollars. In a fiscal year, the department may, in the  
221 department's discretion, advance the award of tax credits up to two million dollars of  
222 the tax credits available to be awarded in the succeeding fiscal year, provided that the  
223 advance award shall count against the total amount of tax credits that the department  
224 awards under this section in the next succeeding fiscal year.
- 225           (2) The following limitations shall apply:
- 226           (a) If a qualified taxpayer's base investment is less than four million dollars, the  
227 qualified taxpayer shall not be awarded more than one million dollars of tax credits  
228 under this section in a fiscal year;
- 229           (b) If a qualified taxpayer's base investment is at least four million dollars but  
230 less than eight million dollars, the qualified taxpayer shall not be awarded more than  
231 two million dollars of tax credits under this section in a fiscal year; and
- 232           (c) If a qualified taxpayer's base investment is at least eight million dollars, the  
233 qualified taxpayer shall not be awarded more than three million dollars of tax credits  
234 under this section in a fiscal year.
- 235           8. Any qualified taxpayer claiming, transferring, or selling the tax credit shall  
236 reimburse the department of revenue for any department-initiated audits relating to the

237 **tax credit. This section shall not apply to routine tax audits of a qualified taxpayer that**  
238 **may include the review of the tax credit provided in this section.**

239 **9. The department and the department of revenue shall promulgate all necessary**  
240 **rules and regulations for the implementation and administration of this section. Any**  
241 **rule or portion of a rule, as that term is defined in section 536.010, that is created under**  
242 **the authority delegated in this section shall become effective only if it complies with and**  
243 **is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This**  
244 **section and chapter 536 are nonseverable, and if any of the powers vested with the**  
245 **general assembly pursuant to chapter 536 to review, to delay the effective date, or to**  
246 **disapprove and annul a rule are subsequently held unconstitutional, then the grant of**  
247 **rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be**  
248 **invalid and void.**

249 **10. Under section 23.253 of the Missouri sunset act:**

250 **(1) The provisions of the new program authorized under this section shall**  
251 **automatically sunset on December thirty-first six years after the effective date of this**  
252 **section unless reauthorized by an act of the general assembly;**

253 **(2) If such program is reauthorized, the program authorized under this section**  
254 **shall automatically sunset on December thirty-first twelve years after the effective date**  
255 **of the reauthorization of this section; and**

256 **(3) This section shall terminate on September first of the calendar year**  
257 **immediately following the calendar year in which the provisions authorized under this**  
258 **section is sunset.**

Section B. The enactment of section 620.1631 of Section A of this act shall become  
2 effective on July 1, 2023.

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