

ARTICLE 4-A
EMPLOYMENT AND EDUCATION OF CHILD PERFORMERS

Section

- 150. Definitions.
- 151. Employment requirements.
- 152. Educational requirement.
- 153. Enforcement of violations; civil penalties.
- 154. Child performer advisory board to prevent eating disorders.
- 154-a. Regulations.

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

1. "Artistic or creative services" shall include, but are not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, runway or print model, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

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

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

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

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

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

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

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

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

§ 151. Employment requirements.

1. (a) Notwithstanding the provisions of section 35.01 of the arts and cultural affairs law, a child performer may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in subdivision one of section 35.01 of the arts and cultural affairs law if a child performer permit has been issued in accordance with the provisions of this section.

(b) A child performer shall be required to have an employment permit. Employment permits for child performers shall be valid for one year from the date of issuance.

(c) An application for a child performer permit shall be made on a form prescribed by the department and shall contain such matters as the department may deem to be necessary, including the following:

(i) the true and stage name and the age of the child, and the name and address of his parent or guardian;

(ii) the written consent of the parent or guardian;

(iii) the evidence provided by the child performer each semester to the department demonstrating that such child is maintaining satisfactory academic performance as determined by the child performer's school of enrollment pursuant to state law.

(d) At the time a child performer applies for an employment permit, the commissioner shall inform the child performer of the child performer trust requirements. The commissioner shall provide a notice in bold twelve point type to read as follows: "NEW YORK STATE LAW REQUIRES FIFTEEN PERCENT OF A CHILD PERFORMER'S EARNINGS TO BE PLACED IN TRUST IN ACCORDANCE WITH PART 7 OF ARTICLE 7 OF THE ESTATES, POWERS AND TRUSTS LAW. THE CHILD PERFORMER'S PARENTS OR GUARDIAN MUST ESTABLISH THE CHILD PERFORMER TRUST ACCOUNT TO COMPLY WITH THIS REQUIREMENT. THE CHILD'S PARENTS OR GUARDIAN MUST PROVIDE THE CHILD PERFORMER'S EMPLOYER WITH THE INFORMATION NECESSARY TO TRANSFER THESE MONIES TO THE ACCOUNT. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL PREVENT THE DEPARTMENT OF LABOR FROM RENEWING THE CHILD'S PERMIT TO WORK AS A CHILD PERFORMER."

(e) No permit shall allow a child to participate in an exhibition, rehearsal or performance which is harmful to the welfare, development or proper education of such child. A permit may be revoked by the department for good cause.

2. Prior to employment of a child performer, every person, or agent or officer of any entity employing a child performer shall receive a certificate of eligibility to employ a child performer from the department. Each application for initial registration shall be accompanied by a fee determined by the commissioner in an amount sufficient in the aggregate to defray the department's costs of administering the registration program, provided, that such fee shall not exceed three hundred fifty dollars for initial registration or two hundred dollars for registration renewal. Companies that operate theaters of four hundred ninety-nine seats or fewer shall pay no more than two hundred dollars for an initial and renewal certificates. An employers' certificate of eligibility shall be renewed every three years.

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

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

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

5. Failure to produce any permit or certificate either to work or to employ is prima facie evidence of the illegal employment of any child performer whose permit or certificate is not produced. Proof that any person was the manager or superintendent of any place of employment subject to the provisions of this article at the time any child performer is alleged to have been employed therein in violation thereof, is prima facie evidence that the person employed or permitted the child performer to work. The sworn statement of the commissioner, or his or her deputy or agents, as to the age of any child performer affected by this article is prima facie evidence of the age of such child.

§ 152. Educational requirement.

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

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

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

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

§ 153. Enforcement of violations; civil penalties.

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

§ 154. Child performer advisory board to prevent eating disorders.

1. The commissioner, in consultation with the commissioner of health and the commissioner of mental health, shall establish a child performer advisory board for the purpose of recommending guidelines for the employment of child performers and models under the age of eighteen and preventing eating disorders such as anorexia nervosa and bulimia nervosa amongst such persons. The advisory board shall consist of at least sixteen but no more than twenty members appointed by the commissioner, and shall include: representatives of professional organizations or unions representing child performers or models; employers representing child performers or models; physicians, nutritionists and mental health professionals with demonstrated expertise in treating patients with eating disorders; at least one representative from each of the comprehensive care centers for eating disorders established pursuant to article twenty-seven-J of the public health law; advocacy organizations working to prevent and treat eating disorders; and other members deemed necessary by the commissioner. In addition, the commissioner of health and the commissioner of mental health, or their designees, shall serve on the advisory board. The members of the advisory board shall receive no compensation for their services but shall be reimbursed their actual and necessary expenses incurred in the performance of their duties.

2. The advisory board is authorized to develop recommendations to the commissioner establishing guidelines relating to the employment of child performers and models under the age of eighteen for purposes of preventing and accessing treatment for eating disorders such as anorexia nervosa and bulimia nervosa amongst such child performers and models. When developing such guidelines, the advisory board shall consider (a) body mass index standards or weight and height standards, (b) employment restrictions for persons diagnosed with or suspected of having an eating disorder, (c) requiring medical or mental health screenings, by medical or mental health professionals with demonstrated expertise in the diagnosis and treatment of eating disorders, for persons suspected of having an eating disorder, and (d) requiring referrals for treatment of eating disorders.

3. The advisory board shall further develop recommendations for educational and informational materials for such child performers and models, their parents and/or guardians and their employers regarding awareness and recognition of eating disorders, and referral and treatment information of eating disorders such as anorexia nervosa and bulimia nervosa.

4. The commissioner shall consider the recommendations developed by the advisory board, which include employment guidelines and the development of educational and informational materials pursuant to this section, when adopting, promulgating, amending and rescinding the rules and regulations necessary to carry out the provisions of this section. The advisory board shall report to the commissioner regarding its recommendations, including the guidelines, programs and findings developed pursuant to this section.

§ 154-a. Regulations.

The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes and provisions of this article, including but not limited to the promulgation of regulations determining the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers.