

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement**

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Child Performer Services Permits

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
Sections 11770 et seq.**

NOTICE IS HEREBY GIVEN that the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, pursuant to the authority vested in her by Labor Code sections 59, 95, and 1706 proposes to adopt sections 11770, 11771, 11771.1, 11771.2, 11772, and 11773 within proposed Subchapter 2.2 of existing Chapter 6, of Division 1, of Title 8, California Code of Regulations, relating to Child Performer Services Permits.

PROPOSED REGULATORY ACTION

The Division of Labor Standards Enforcement (DLSE), proposes to adopt Subchapter 2.2 of Chapter 6 of Division 1, regulations consisting of the following:

Add new Subchapter 2.2 Child Performer Services Permits

1. Adopt section 11770 Representation or Services to Child Performers; Permit; Duration
2. Adopt section 11771 Application for Permit; Fingerprints
3. Adopt section 11771.1 Permit Renewal Application
4. Adopt section 11771.2 Fees
5. Adopt section 11772 Issuance of Permit; Denial
6. Adopt section 11773 Suspension and Revocation of Permit

TIME AND PLACE OF PUBLIC HEARING

The Department of Industrial Relations (DIR) has not scheduled a public hearing on this proposed action. However, DIR will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Labor Standards Enforcement. **The written comment period closes at 5:00 p.m., on January 9, 2017.** The DLSE will consider only comments received at the division by that time. Equal

weight will be accorded to comments presented at the hearing and to other written comments received by 5:00 p.m. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (916) 263-1563. Written comments may also be sent electronically (via e-mail) using the following e-mail address: DLSERegulations@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Stevens must receive all written comments no later than January 9, 2017.

AUTHORITY AND REFERENCE

The DLSE is undertaking this regulatory action pursuant to the authority pursuant to Labor Code sections 59, 95(a), 98.8, and 1702.

Reference is to Labor Code sections 1706, 1706.1, 1706.2, 1706.3, 1706.4, and 1706.5

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing law establishes a permit program for any person who represents or provides specified services, as defined, to artists who are minors in entertainment enterprises. (AB 1660 [Chapter 634, Statutes of 2012]) The legislation prohibits any person from providing specified services if they are required to register as a sex offender pursuant to Penal Code Section 290 to 290.006. Existing law requires that any person seeking to provide the regulated activities must first submit an application and receive a permit issued by the Labor Commissioner prior to engaging in activities related to representation or providing specified services to minors in entertainment enterprises.

Existing law provides that the permit program is to be administered by the Labor Commissioner, Chief of the Division of Labor Standards Enforcement within the Department of Industrial Relations. Existing law provides an application requirement, applicant fingerprinting for submission to the Department of Justice for a criminal background check, an application fee to be set by the Labor Commissioner, including any fees required by the Department of Justice (DOJ), and reporting of arrests and convictions by DOJ to the Labor Commissioner prior to issuance of a permit.

The proposed regulation provides necessary standards for the permit program which DLSE is required to administer. These standards include further specifying who is covered by the permit requirement, the setting of application fees, application information, and standards for processing permit applications and permit renewals. The proposal also specifies suspension and revocation procedures which are necessary to fully administer the permit program where a subsequent action impacts the permit holder's qualification for a permit (e.g., a permit holder's lack of sex offender registration status changes). The proposed procedure for a temporary suspension in the event of an arrest provides an administrative mechanism affecting the permit which safeguards the minor for a temporary time period or as otherwise ordered by a court. The proposed procedure for revocation in the event of a conviction for a sex crime requiring the holder to register as a sex offender more significantly determines the holder's disqualification for a permit pursuant to the statute which specifies the sole criteria for holding a permit (absence of sex offender status). The proposals are necessary for the Labor Commissioner to duly and efficiently administer the mandated permit program designed to screen sex offenders from representing or performing specified activities relating to minors in entertainment enterprises.

These regulations implement, interpret, and make specific the statutory requirements of Chapter 5 (Child Performer Services Permits) of Part 6 (Licensing) of Division 2 (Employment Regulation and Supervision), commencing with Section 1706 of the Labor Code, as follows:

Proposed New Subchapter 2.2 (of Chapter 6, Division 1, Title 8 of the California Code of Regulations) contains six (6) sections which provide requirements for application and issuance of permits to any person who seeks to represent or provide specified services to artists who are under the age of 18. The sections implement requirements or make more specific administrative procedures specified in Sections 1706 – 1706.5 of the Labor Code (AB 1660).

Proposed Section 11770 provides requirements for obtaining and posting a permit prior to engaging in any activity which is covered under the statute and specifies that the permit requirements are applicable to persons acting either individually as sole proprietors or for non-individual business entities. The section more specifically defines "incidental and occasional contact" for purposes of an exemption from the permit requirement. It also establishes an on-line permit application process for submission of an application to the Labor Commissioner.

Proposed Section 11771 provides for both application content for a permit and procedures for providing required fingerprints to be submitted to the Department of Justice (DOJ) for a criminal history report which is provided to the Labor Commissioner.

Proposed Section 11771.1 provides a process and on-line procedure for renewal of permits, which are valid for 2 years from the date of issuance by the Labor Commissioner, including specific information required on a renewal application.

Proposed Section 11771.2 provides the fee amounts required to be submitted with the permit application set by the Labor Commissioner as prescribed by Labor Code Section 1706(a). The fee includes an amount necessary to reimburse DLSE for the fees charged by the Department of Justice to perform fingerprint processing and criminal background checks provided to the Labor

Commissioner in connection with a permit application pursuant to Labor Code Section 1706(c)(3)(B).

Proposed Section 11772 provides for administrative procedures and actions by DLSE, including the issuance or denial of a permit for each permit application. These include time requirements for submitting fingerprints, curing defects on an application, and responding to defect notices. This section also describes consequences for failing to comply with these requirements.

Proposed Section 11773 provides for suspension and revocation of an issued permit on specified grounds and under circumstances where the statutory conditions and subsequent reporting of an arrest warrant action by DLSE on an issued permit. Also, this section provides that nothing in the administrative permit program regulations limits the authority of any aggrieved person or a prosecuting agency from seeking, or a court from granting, any relief against one representing or providing specified services regulated under the legislation which includes the permit requirement which is the subject of the proposed regulations.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The objective of the regulations is to establish procedures, standards, and criteria necessary for the DLSE to administer the Child Performer Services Permit program in accordance with the statutory requirements provided in Chapter 5 (Child Performer Services Permits) of Part 6 (Licensing) in Division 2 (Employment Regulation and Supervision) of the Labor Code. This chapter contains provisions requiring persons to apply for, and receive, a permit issued by the DLSE prior to engaging in activities related to procuring services for minors. Establishing standardized information regarding the standards, criteria, and processes for issuance of a permit will inform the public of the agency's standard procedures regarding the required permit program and provide for consistent administration of the permit program by the agency. Uniform procedures for submitting the required application and fingerprints under proposed time periods, as specified, will provide for efficient and effective issuance of permits to persons who seek to perform the regulated activities and will further accomplish the objective of the legislation (AB 1660) to enhance the protection of artists who are minors in the entertainment industry.

DETERMINATION OF INCONSISTENCY AND/OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations has determined that this proposed regulation is not inconsistent or incompatible with existing statutes or other regulations. After conducting a review for any regulations that would relate to or affect this area, the Labor Commissioner has concluded that these are the only valid regulations to implement the statutory mandates contained in Chapter 5 (Child Performer Service Permits) of Part 6 (Licensing) in Division 2 (Employment Regulation and Supervision) of the Labor Code.

DUPLICATION OF LABOR CODE PROVISIONS:

The proposed regulations repeat limited parts of various provisions of Labor Code sections 1706, 1706.1, 1706.2, 1706.3, 1706.4, and 1706.5. Duplication is necessary for the purpose of clarity such that the regulations represent comprehensive and consistent description of procedural requirements, standards, and criteria for administering the permit program.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Labor Commissioner has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: No fiscal impact exists because these proposed regulations create rules to conform or carry out provisions in statute, where the cost of compliance is equivalent for both the existing procedures and provisions.

Cost or savings in federal funding to the state: None.

Direct cost impacts on housing: None.

Cost impacts on a representative private person or business: The Labor Commissioner identifies a filing fee of \$245 which will be incurred by any person who seeks to obtain a permit for the purpose of representing or providing specified services to artists who are minors in the entertainment industry. These individuals are required to obtain a permit from DLSE in order to comply with these regulations which implement the statutory permit requirements set forth in Labor Code 1706 et. seq.. Permit applicants will also be subject to paying vendors authorized by the Department of Justice to take or scan fingerprints for submission for checking criminal history as required in Labor Code section 1706. DLSE is informed that vendors who provide fingerprint scanning services charge various amounts which generally range between \$20 and \$40 for providing fingerprinting services (this cost is not required for renewal applicants who do not have to submit fingerprints). Since the permit is required for individuals, businesses which utilize more than one individual to provide the regulated activity must ensure that each individual has the required permit. Conversely, a person in a business who does not perform the specified representation services for a minor is not required to obtain the permit.

Effect on Small Business: The proposed regulations may affect small business.

Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: None.

Summary Results of the Economic Impact Analysis/Assessment

The DLSE concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses with the State of California, (4) unlikely that the proposal will eliminate any existing businesses with the State of California, and (5) unlikely that the proposal would cause the expansion of the businesses currently doing business within the State of California; (6) Benefits of the Proposed Regulation: Uniform procedures for submitting the required application as required by statute (Labor Code section 1706 et. seq.) will provide for efficient and effective issuance of permits to persons who seek to perform the regulated activities and will further enhance the protection of artists who are minors in the entertainment industry.

The agency has determined that the proposed regulatory action will not have a significant impact on business. While the proposed regulations will impact persons who represent or provide specified services to minors in the entertainment industry or enterprises that fall under the permit requirement, the regulatory action primarily implements, clarifies, and standardizes a permit program set by statute and will not significantly increase existing statutory obligations above that which the agency currently requires for permit applicants.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Labor Commissioner must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Labor Commissioner's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The agency has initially determined that no alternatives would be more effective in carrying out the purpose that underlies the proposed regulatory action, or would be at least as effective or less burdensome on the regulated public (persons who seek to represent or perform specified services, as defined, with respect to minors working in the entertainment industry or entertainment enterprises), and that would ensure full compliance with the existing statutes regarding permits being implemented or made specific by the proposed regulations.

The Labor Commissioner invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A text of draft proposed regulations will be made available for public comment from November 25, 2016 to January 9, 2016 on the Agency's website (<https://www.dir.ca.gov/Rulemaking/DIRProposed.html>), and a public meeting for public comment will be held as noted.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, and the Economic Impact Statement (Form STD 399). Also included are documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Laws & Regulations" button and follow the link for "Rulemaking - Proposed Regulations". There you will find all of the agencies current rulemaking proceedings. Scroll down the list to find the Child Performer Services Permits rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Division of Labor Standards Enforcement, 2031 Howe Avenue, Suite 100, Sacramento, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday, unless the state office is closed for a state holiday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825
E-mail: jstevens@dir.ca.gov

The telephone number of the contact person is (916) 263-1563.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Robert N. Villalovos, Industrial Relations Counsel IV
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825
E-mail: rvillalovos@dir.ca.gov

The telephone number of the backup contact persons is (916) 928-3117.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Labor Commissioner makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the DLSE's mailing list.

If adopted, the regulations as amended will appear in title 8, California Code of Regulations, commencing with section 11770. The text of the final regulations will also be available through the website of the Office of Administrative Law at www.oal.ca.gov.