

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
(NEW) SUBCHAPTER 2.2

ADOPT SECTIONS 11770, 11771, 11771.1, 11771.2, 11772, & 11773
REGULATING CHILD PERFORMER SERVICES PERMITS

INITIAL STATEMENT OF REASONS

INTRODUCTION

Assembly Bill 1660 (Chapter 634, Statutes of 2012) established a permit program for any person who represents or provides specified services to artists who are minors in entertainment enterprises. (Labor Code Sections 1706.) 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. 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, and any person seeking to provide the regulated activities must first submit an application to and receive a permit issued by the Labor Commissioner. The bill provides an application requirement, applicant fingerprinting for submission to the Department of Justice (DOJ), an application fee to be set by the Labor Commissioner, including any fees required by DOJ, and reporting of arrests and convictions by DOJ to the Labor Commissioner prior to issuance of a permit.

The regulatory proposal provides standards for the permit program which the Labor Commissioner is required to administer including the setting of application fees, application information, and standards for processing applications and permit renewals. The proposal also specifies suspension and revocation authority which is necessary to implement the requirement that the Labor Commissioner be informed of subsequent arrests for permit holders and that subsequent conviction of a covered sex offender crime by a permit holder will result in revocation of the permit. These actions on issued permits will safeguard minors from sex offenders who hold permits to perform representation services for minors.

SPECIFIC PURPOSE OF EACH SECTION – GOVERNMENT CODE 11346.2(b)(1) The Labor Commissioner has determined that each adoption is reasonably necessary to carry out the authority and purposes for which they are proposed and each proposed section relates to a public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address.

New Subchapter 2.2 (of Chapter 6, Division 1, Title 8, 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 Chapter 5 (Child Performer Services Permit) of Part 6 (Licensing) of Division 2 (Employment Regulation and Supervision) of the Labor Code (AB 1660).

Section 11770 provides for coverage of the permit requirement applicable to persons acting either individually or for non-individual business entities.

- **Subsection (a)** states the permit requirement applicable to persons seeking to represent or provide specified services to first apply for and receive a permit issued by the Labor Commissioner pursuant to Labor Code 1706(a)(1) unless such person falls under exemptions specified in Labor Code section 1706(b). Duplication of the statutory application provisions is necessary to more directly state who is required to submit a permit application and provides clarity for subsequent language which more specifically addresses the scope of the application requirement for individuals and non-individual business entities. The subsection will make it easier for the public to establish a context for the subsequent regulatory language which is tied to the referenced statutory provisions establishing the application requirement.
- **Subsection (b)** addresses the permit program requirement authorized under Labor Code Section 1706 and more specifically provides the scope of the permit requirement upon individuals regardless of the business form under which the regulated activities are performed. The subsection is necessary to effectively address the permit application requirement to individuals who perform regulated activities regardless of whether they perform such activities as individuals (sole proprietors or independent contractors) or as an employee or agent in a recognized business entity, e.g., company, firm, partnership, association, corporation, limited liability company or other organization which receives a fee. Sex offenders are *individuals* who have been convicted of specified offenses for which offenders are required to register pursuant to Penal Code provisions. The permit program and background check the Labor Commissioner is required to perform generates information with respect to individual offenders and not with respect to non-individual business entities. This section provides that an individual who seeks to perform the regulated activity when acting as an individual or as an agent or employee of a non-individual business entity must have a permit. Any business entity who is not an individual or sole proprietor can only provide the regulated activity through an individual who has a permit and must ensure that any agent or employee have a permit in order to implement the requirement that any person, as defined in Labor Code Section 1706(g)(3), must comply with the permit requirement. This subsection will ensure the application requirement accomplishes the overall goal of the legislation which is to determine sex offender history for individuals who interact with minors when performing regulated activities.

The subsection also clarifies and makes specific the meaning of the statutory phrase “incidental and occasional contact” (Labor Code section 1706(b)(4)) for purposes of the permit requirement. Coverage under the statute excludes persons who have “only incidental and occasional contact,” so a more specific definition of the terms is necessary to delineate the regulated activity for purposes of the statutory permit requirement and more clearly inform the public as to who is subject to the permit requirement. The specified definition clarifies that the exemption from the application requirement only applies to individuals whose contact with minors is

limited, brief, or rare. In the absence of a more specific standard for the exemption, persons would make subjective determinations regarding potential contact which could undermine the protection of minors. The Labor Commissioner has determined that the proposed language provides a practical and reasonable formulation to distinguish between “only incidental and occasional contact” and contact which brings the person within coverage of the permit requirement in more specific and objectively measurable language. The proposed standard will make compliance more ascertainable for the regulated public, enforcement agencies, and for courts which need to determine disputes regarding coverage of the permit requirement. This more specific standard provides a more objective ascertainable standard (less dependent on subject interpretations) and provides a meaning to the statutory terms which more effectively accomplishes the objectives of the legislation aimed at protecting minors from persons required to be registered sex offenders.

- **Subsection (c)** provides that a permit valid for 2 years must be received and posted prior to a permit holder engaging in any representation of minors who are protected under these provisions. The statute provides that a recipient must receive a permit prior to performing the regulated activity (Labor Code 1706(a)(1)) and also post the permit in a conspicuous place in his or her place of business (LC 1706(e)) upon receipt. While there is some duplication of the statutory provisions, this regulatory section is necessary to provide a standard which more directly references both requirements (receipt and posting which are fragmented in Section 1706) as express conditions to a recipient’s authority to render services for a minor. In doing so, it further clarifies in a more singular standard when a permit recipient can engage in the regulated activities.
- **Subsection (d)** establishes the permit program as an on-line application process through the Division of Labor Standards Enforcement’s (DLSE’s) website requiring initial payment of fees for an amount referenced in a separate regulation. This section is necessary to establish a standard regarding the manner and means for submitting the permit application to the Labor Commissioner. Establishing an on-line application process will consolidate staff and technical resources for efficient processing of applications, receipt of fees and initiation of background checks better than physical processing procedures. While the Labor Commissioner would not preclude submission of a physical application if an applicant establishes that he or she has no reasonable access to the internet, the primary manner for submitting an application will be on-line in order for the agency to efficiently administer the permit program which will benefit both the applicant and minors who are subject to the protection afforded by the statutory provisions.

Section 11771 provides the required information for an application and other procedures for applying for a permit.

- **Subsection (a)** prescribes content requirements for an initial permit application which includes information to identify an individual applicant including, physical address and other contact and identifying information, business name and address

information, and a description of the type of services the applicant will perform among those specified in Labor Code Section 1706(g)(4). Specification of the types of services will aid the applicant in that it screens and verifies that he or she will actually perform a regulated activity and allows the Labor Commissioner to track activities for which permit holders primarily perform services. The Labor Commissioner has determined that these items of information are reasonably necessary to sufficiently identify, distinguish between permit holders and businesses they are associated with, and provide the agency with information to locate permit holders.

- **Subsection (b)** prescribes that a change in the required information must be reported to the Labor Commissioner within 7 days. This is necessary for the agency to maintain current and accurate records of permit holders.
- **Subsection (c)** The section provides procedures for an applicant to provide fingerprints and information to the Department of Justice which is required under Labor Code Section 1706(c) as part of the application process. The proposed language includes billing information which is needed for payment of fees to DOJ for services in providing the reports to the Labor Commissioner as specified in the statute and requires the applicant to provide information on the application regarding the live scan operator and identifier number, applicant transaction identifier number, and date of submission of fingerprints. This subsection is necessary to establish a standard process for applicants to provide fingerprints to the DOJ as a requirement for performance of criminal history background checks. Criminal history background checks are the fundamental means for screening persons for previous sex offenses established under Labor Code 1706.

Section 11771.1 provides a process and procedure for renewal of permits which are valid for 2 years from the date of issuance by the Labor Commissioner.

- **Subsection (a)** provides a process for renewal which requires the Labor Commissioner to send electronic notification to the permit holder of the date the permit expires no later than 45 days prior to such date. This provision requires that a renewal application and fee must be submitted to the agency 30 days prior to expiration. The section is necessary to establish standards for renewing permits biennially pursuant to Labor Code 1706(a)(3)(B) and is required for orderly administration of the permit program. Establishing the requirement provides a standard time frame for submitting a renewal application in order to avoid last minute renewal applications which can interfere with timely processing of the application and performance of required verification of sex offender status. This time requirement will guard against lapses between expiration of a permit and issuance of a renewed permit in furtherance of the statutory obligation that only those with a valid permit may perform the regulated activities. A consequence for submission of a late permit renewal application (i.e., within 15 days of expiration) is that a new application and fee will be required which should discourage late renewal applications by permit holders.

- **Subsection (b)** provides content requirements for renewal permit applications. The information will provide a means of verifying information with information previously provided and updating information for the permit holder. The renewal application requirements are necessary to ensure that accurate identifying information is provided with respect to items specified in proposed Section 11771 which are referenced in this provision. Indicating the previously issued permit number is necessary in order for the agency to match the renewal applicant as a current permit holder. Specifying items which only reflect changes from the initial or previous application (specified in proposed Section 11771.1 which are referenced in this subsection) covers items identified by the Labor Commissioner (business name and address, telephone and mobile numbers of a permit holder, and types of services among the regulated activities the permit holder will perform for minors) which are more likely subject to change during the two year duration of a permit. In requiring an applicant to provide only changes from a previous application, the renewal process will be less burdensome for applicants and continue to provide the agency with the necessary information to maintain accurate and current information regarding permit holders.

Section 11771.2 provides the fee amounts required to be submitted with an initial and renewal permit application set by the Labor Commissioner as prescribed by Labor Code Section 1706(a). Also, the permit applicant may be charged fees imposed on the Labor Commissioner by the Department of Justice to perform fingerprinting processing and background checks in connection with a permit application pursuant to Labor Code Section 1706(c)(3)(B). This section is necessary to implement the statutory directive that the Labor Commissioner set a filing fee which may include fees charged by DOJ for processing fingerprints for criminal history searches and continuing arrest notification services. Accordingly, this section provides for two components for the total application filing fee:

- **Subsection (a)** sets a dollar amount pursuant to Labor Code Section 1706(a)(2) which requires that the Labor Commissioner shall set forth a non-refundable filing fee to be paid at the time of an application is filed in an amount sufficient to reimburse the agency for costs to administer the permit program. The agency has calculated the fee amount (\$245) based on program operational costs (maintenance/staffing) and DOJ criminal history/subsequent reporting costs divided by an estimated number of permit applications (325). Currently, 221 permits have been issued since 2014 with 122 permits issued in 2015 and 42 issued in the first 5 months of 2016. The increase is likely due to the increase in awareness of the program and on-going dissemination of information regarding the permit requirement provided in connection with the Labor Commissioner's issuance of entertainment work permits to minors. The estimated number of permit applications reflects the steady increase in the numbers of permits issued since 2014 and the operational number for purposes of administering the program.
- **Subsection (b)** specifies that the fee (\$245) includes an amount which is paid by the Labor Commissioner to DOJ which DOJ requires for its services in connection with

fingerprint processing, reporting of criminal history, and subsequent arrest notification service. The language also provides that DOJ's charges for these services are subject to change by DOJ. This language is necessary because the Labor Commissioner lacks authority to determine or modify amounts that DOJ charges for its services and these charges are not controlled under AB 1660, and thus, subject to change by DOJ under authority not related to this regulation. The language maintains consistency with Labor Code Section 1706(c)(3) which authorizes the agency to charge the applicant a fee sufficient to cover the DOJ fee collected by the Labor Commissioner which will be transmitted to DOJ.

Section 11772 provides for administrative procedures and actions for each permit application and is necessary to establish standards for processing a permit application for both the agency and the applicant so that the Labor Commissioner can timely and efficiently review and issue permits based on complete information required from an applicant.

- **Subsection (a)** establishes a time period of 15 days from receiving a report from the Department of Justice that the Labor Commissioner will process and review the information and determine whether an applicant is required to register as a sex offender based on crimes specified in the statute. The time period takes into account the workload of the agency's Licensing and Registration unit and the relatively limited review required for issuance of a permit which is based on screening for sex offenders, which does not determine general fitness using other criteria that exist in other licensing and registration programs administered by the Labor Commissioner.
- **Subsection (b)** establishes a time period of 10 days from filing an application for an applicant to provide fingerprints necessary for processing the application and search by DOJ. Failure to timely provide the fingerprints within the 10 days will result in denial of the application. A failure to respond to a defect in the application within specified times from a notice to the applicant by the Labor Commissioner will result in closure of the application with failure for a first defect notice being discretionary closure and a second defect requiring closure. These time frames and consequences are needed to promptly process applications by placing consequences (forfeiture of filing fee) for an applicant's failure to submit necessary information for the agency to efficiently determine an applicant's qualification for a permit. While applicants are more likely to provide the required fingerprints near the time of application, this 10-day standard will avoid having lengthy pending applications which cannot be acted on without the required submission of fingerprints for DOJ to process. For defects on the application, the section also provides for timely response to defect notices sent to applicants with a discretionary denial for failure to respond within 30 days and a mandatory denial for failure to respond within 30 days of a second defect notice sent by the agency. The Labor Commissioner's program experience in administering other licensing, registration, and permit programs indicates that applications pend too frequently due to insufficient or incomplete applications and lack of timely curing deficient information within a reasonable time creates inefficiency and requires agency staff to revisit applications filed long ago. This requirement setting a time period for response to a defect notice is necessary to ensure all required information is

submitted within a reasonable period upon notice of a defect, which in turn will provide for efficient administration of the permit program.

- **Subsection (c)** provides the administrative process and action by the Labor Commissioner where it is determined that the applicant is not required to register as a sex offender pursuant to Labor Code Section 1706, including the requirement that a copy of the report be provided to the applicant, issuance of a permit, and posting on DLSE's website pursuant to Labor Code Section 1706(d). This language implements statutory provisions in the context of the Labor Commissioner's permit program. The duplication of the requirement that a copy of the criminal history report be provided to the applicant is necessary to inform the public of all actions which will be taken by the Labor Commissioner where the applicant is cleared to have a permit due to the absence of sex offender history. The inclusion also provides clarity in specifying the action taken in the context of the permit application process for the permit program administered by the agency. The subsection also provides for the items of information (content) on an issued permit and the information which will be posted on DLSE's website and is necessary to implement and make more specific the statute which generally requires issuance of a permit and posting of basic permit holder information on the website. In providing city and state information, the posted information gives general location for the permit holder while affording privacy protection from disclosure of the individual's street address on the website.
- **Subsection (d)** provides actions performed by the Labor Commissioner where it is determined that the applicant is required to register based on convictions of the crimes specified in the statute. The subsection is necessary to establish the specific actions the Labor Commissioner will take upon a report from DOJ that an applicant is required to register as a sex offender and what information will be provided to the denied applicant. It provides that the Labor Commissioner will notify the applicant in writing of a determination that the applicant is required to register as a sex offender and provide a copy of the information received by DOJ. Since the Labor Commissioner will only make the statutorily prescribed determination based on information reported by DOJ, the Labor Commissioner will provide DOJ contact information where an applicant can address any inaccurate information on the report. The Labor Commissioner will also notify DOJ and local district attorney's office or other prosecuting agency of the application permit and denial by the Labor Commissioner. These standards are designed to inform the applicant of a denial of the permit recognizing that the Labor Commissioner's permit authority extends only to determinations based on information provided by DOJ. The Labor Commissioner does not have authority to determine the accuracy of DOJ-provided information nor can it review circumstances surrounding convictions or pleas for crimes which unconditionally disqualifies one from a permit under the statute.

Section 11773 provides for suspension and revocation of an issued permit under circumstances where the statutory conditions and subsequent reporting of an arrest warrant action by the Labor Commissioner on an issued permit.

- **Subsection (a)** establishes grounds for suspension of a permit upon information the Labor Commissioner receives and confirms an arrest for a crime for which a conviction would unconditionally disqualify a permit holder from performing the regulated activity. Since the Labor Commissioner will receive subsequent arrest notification services from DOJ for permit holders, this subsection is necessary to provide a suspension procedure for the Labor Commissioner to act on an arrest which is related to a specified sex crime for which a conviction requires the permit holder to register as a sex offender. Suspension recognizes that an arrest is not a conviction of a crime but must be balanced with the evil sought to be addressed under the statutory scheme designed to provide advanced protection for vulnerable minors in the entertainment industry. Suspension of the permit in light of an arrest, pending determination of the criminal matter, is a reasonable response to the probability that the permit holder may have committed a crime that the law regulating child performers was designed to protect against. Although procedural due process generally may include an opportunity for some type of hearing before the deprivation of a protected property interest, there are well-settled exceptions to the provision of a pre-deprivation hearing. Protection of an important public interest can justify an immediate deprivation of property interest without a prior hearing, when coupled with the availability of post-deprivation procedures. Here, the Labor Commissioner's suspension of a permit upon notice that the permit holder has been arrested and charged with an offense requiring registration as a sex offender is necessitated by the state's overriding interest in protecting the safety of child performers, and outweighs any asserted right of the permittee to either be provided with a pre-deprivation hearing or to continue representing the child performer until or unless there is a conviction. The very fact of the arrest and formal charges brought against the permit holder by an independent prosecuting agency demonstrates that suspension of the permit pending determination of the criminal matter is not arbitrary or unwarranted – but rather, is justified based on a finding of probable cause to believe that a crime, which has been deemed by the California Legislature to pose a threat to the well-being of the child performer, was committed by the permittee, who has a relationship (albeit an occupational or professional one) with the child performer. The subsection recognizes that a post-deprivation criminal proceeding carried out by a prosecuting agency and/or court sufficiently determines whether a conviction is appropriate which will control a permittee's ability to perform activities regulated under this law. The section provides for the agency's verification of arrest information and a period of suspension for not less than 60 days in order to allow for a disposition of the matter in a criminal proceeding or directive from a court regarding continued suspension.
- **Subsection (b)** establishes grounds for a revocation when a permit holder is convicted of a disqualifying crime under the statute upon evidence of a certified record of conviction or nolo contendere (not contested). This subsection is necessary to make express the implied authority to revoke a permit the agency issued in order to carry out the objectives of the legislation for permit holders who subsequently become disqualified due to a conviction of a crime requiring registration as a sex offender. (See, *In re Petersen* (1958) 51 Cal.2d 177, 184-185 [standards for administrative action may be found by implication from the reasons inherent for adoption of the enactment].) Evidence in the form of a conviction would render revocation appropriate and necessary as a matter of law and

without any exercise of any discretion by the Labor Commissioner. A permit holder would not be entitled to collaterally attack a conviction or no contest plea with the agency.

- **Subsection (c)** provides that, similar to language stated in Labor Code Section 1706.1 through 1706.5, nothing in the administrative permit program regulations limits the authority of any aggrieved person, prosecuting agency, or a court from seeking any relief against one representing or providing specified services for minors. While there is some duplication of language in the above stated statutes and this subsection, this provision is necessary to clarify that the regulations of this subchapter applicable to the permit program do not reduce or qualify the rights of any aggrieved person, prosecuting agency, or court to pursue remedies against any person who represents or provides specified services as defined in the child performer services permit legislation. In distinguishing the permit program from the rights created under the legislation enacting a protection for minors who are artists, the subsection will avoid and preclude a claim by persons regulated under the legislation that enforcement of the legislation is only through these permit program regulations enforceable only by the Labor Commissioner.

OTHER REQUIRED SHOWINGS – GOVERNMENT CODE 11346.2(b)

Results of the Economic Impact Analysis/Assessment– Government Code 11346.2(b)(2)(A)

The proposed regulation provides necessary standards for the permit program which the Labor Commissioner is required to administer under AB 1660 (Chapter 634, Statutes of 2012). The regulations will facilitate for the regulated public an understanding of the standards and criteria considered for issuance of a child performer services permit. These standards include further specifying who is covered by the permit requirement, the setting of an application fee, required 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 there is a subsequent action impacting the permit holder's qualification for a permit (i.e., a permit holder's lack of sex offender registration status changes). The temporary suspension in the event of an arrest which would require, or revocation in the event of a conviction for a sex crime which requires, the holder to register as a sex offender will provide an administrative mechanism affecting the permit which safeguards artists who are minors which is the primary purpose of the legislation.

Significant statewide adverse economic impact directly affecting businesses and including the ability of California businesses to compete with businesses in other states: The proposed action will directly affect businesses and persons statewide who seek to represent minors or perform specified services for minors (except for talent agents who are exempt from this permit program). The Labor Commissioner concludes that the regulations will not adversely affect the ability of California businesses to compete with business in the other states. Based on an estimated 325 permits for individuals who perform the regulated activity, the \$245 permit fee every 2 years, such that the total statewide cost incurred by persons or businesses over a 10 year period would be \$398,125 ([\$245 x 325 permits] x 5 years).

Creation or Elimination of Jobs within the State of California: Sex offenders are statutorily precluded from engaging in the regulated activity. Any sex offenders who are employed at businesses who work with such minors in performance of regulated activities would violate the statutory prohibition. Since only persons who have no sex offender status would be permitted to perform the regulated activities as a direct result of the legislation (AB 1660) being implemented by these regulations, any elimination of jobs previously held by sex offenders are the result of the legislation and not of the regulations. To the extent that any job was previously held by a sex offender working in a business which performs a regulated activity, the job is not necessarily eliminated and may be performed by another individual who qualifies for and obtains a permit. Therefore, the regulations do not create or eliminate jobs in in California.

Creation of New or Elimination of Existing Businesses within the State of California: The regulations are designed to standardize criteria for administering statutory permit requirements. The regulations will establish uniform standards for coverage of the permit requirement, permit applications with identifying and contact information, fees, requirements for permit renewal, denial, and administrative procedures for suspension and revocation of permits. While the proposed regulations will impact businesses that fall under the permit requirement, the regulatory action primarily implements, clarifies and standardizes existing requirements set by statute or that are necessary to implement statutory prohibitions and requirements, and will not significantly increase statutory obligations above that which the agency currently requires for the permit program. Therefore, no new businesses in California will be created or existing businesses eliminated by these regulations.

Studies, Reports, or Documents Relied Upon – Government Code 11346.2(b)(3)
Exhibit B to Interagency Agreement - Invoicing and Payment Provisions

Reasonable Alternatives – Government Code 11346.2(b)(5)(A)

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 represent or provide specified services to artists who are minors in entertainment enterprises) and that would ensure full compliance with the existing licensing statutes being implemented or made specific by the proposed regulations.

Facts and Evidence to Support Determination that Action Will Not Have A Significant Impact On Business – Government Code 11346.2(b)(6)

The agency has determined that the proposed regulatory action implementing the statutorily required permit program will have an impact on individuals and businesses who seek to perform the regulated activity with respect to minors in the entertainment industry who are not otherwise excluded from the permit requirements (e.g. parents of the minor, licensed talent agents) and will be required to file an on-line application, pay a fee, provide fingerprints to the Department of Justice. Due to the limited qualification standard which only screens for sex offenders seeking to perform a regulated activity, the required information for the permit application seeks consistent but less information than is required with other permit and licensing programs administered by DLSE. The on-line application process will be less burdensome and minimize paperwork submissions to the agency for applicants seeking to perform the regulated activity.