

FIRST REGULAR SESSION

HOUSE BILL NO. 133

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUDSON.

0599H.011

DANA RADEMAN MILLER, Chief Clerk

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.

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

(5) "Facility", a site with one or more studios. Multiple studios at a single location shall not be considered separate facilities. A site may include one or more

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.

18 **buildings on the same property or different properties within a five-mile radius,**
19 **provided that the properties' purpose and operations are interrelated and are owned or**
20 **operated by the same owner or operator, as applicable;**

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

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

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

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

38 **(a) Purchasing or renting of at least one million dollars of concert tour**
39 **equipment, related services, or a combination of both from a Missouri vendor for use in**
40 **rehearsal, on tour, or both;**

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

42 **(c) Holding at least two concerts this state;**

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

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

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

51 **(11) "Qualified rehearsal facility", a facility primarily used for rehearsals**
52 **located in this state that:**

53 **(a) Has a minimum of twelve thousand five hundred square feet of column-free,**
54 **unobstructed floor space in at least one rehearsal studio;**

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

57 **(c) Has a permanent grid system with a capacity of at least five hundred**
58 **thousand pounds in at least one rehearsal studio;**

59 **(d) Has a height from floor to permanent grid of at least fifty feet in at least one**
60 **rehearsal studio;**

61 **(e) Has at least one sliding or roll-up access door with a minimum height of**
62 **fourteen feet in the facility;**

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

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

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

69

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

72 **(12) "Qualified taxpayer", any individual or entity subject to the state income**
73 **tax imposed under chapter 143, excluding withholding tax imposed under sections**
74 **143.191 to 143.265, who incurs rehearsal expenses or tour expenses and meets the**
75 **minimum rehearsal and tour requirements;**

76 **(13) "Rehearsal", an event or series of events that occur in preparation for a**
77 **tour prior to the start of the tour or during a tour when additional preparation may be**
78 **needed;**

79 **(14) "Rehearsal expenses" include, but are not limited to, the following when**
80 **incurred during a rehearsal:**

81 **(a) Total aggregate payroll;**

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

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

84 **(d) The expense of construction, operations, editing, photography, staging,**
85 **lighting, wardrobe, and accessories;**

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

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

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

93 (h) The expense of food and lodging from a Missouri vendor;

94 (i) The expense of purchasing or renting concert tour equipment from a
95 Missouri vendor;

96 (j) The expense of renting a qualified rehearsal facility; or

97 (k) The expense of emergency or medical support services required to conduct a
98 rehearsal;

99 (15) "Resident", the same definition as in section 143.101;

100 (16) "Tax credit", a credit against the tax otherwise due under chapter 143,
101 excluding withholding tax imposed under sections 143.191 to 143.265;

102 (17) "Total aggregate payroll", the total sum expended on salaries paid to
103 residents, regardless of whether such residents are working within or outside of this
104 state, or nonresident employees working within this state in a tour or rehearsal
105 including, but not limited to, payments to a loan-out company as described in subsection
106 4 of this section;

107 (18) "Tour", a series of concerts or other performances performed or that will
108 be performed by a musical or other live performer in one or more locations over
109 multiple days including, but not limited to, at least one rehearsal;

110 (19) "Tour expenses", include, but are not limited to, the following for venues
111 located in this state when incurred during a tour or incurred before a tour if to secure
112 goods or services rendered during the tour:

113 (a) Total aggregate payroll;

114 (b) The expense of transporting people or concert tour equipment to or from a
115 train station, bus depot, airport, or other transportation facility or from a residence or
116 business entity located in this state, or the expense of concert tour equipment that is
117 purchased or will be purchased from a Missouri vendor;

118 (c) The expense of leasing vehicles provided by a Missouri vendor;

119 (d) The expense of purchasing or renting facilities and equipment from or
120 through a Missouri vendor;

121 (e) The expense of food and lodging that is incurred or will be incurred from a
122 facility located in this state;

123 (f) Expenses that are incurred or will be incurred in marketing or advertising a
124 tour at venues located within this state;

125 (g) The expense of merchandise that is purchased or will be purchased from a
126 Missouri vendor and used on the tour;

127 **(h) A payment that is made or will be made to a personal service corporation**
128 **representing individual talent if income tax under the laws of this state will be paid or**
129 **accrued on the net income of the corporation for the tax year; and**

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

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

137 **3. For all tax years beginning on or after January 1, 2024, a qualified taxpayer**
138 **shall be allowed a tax credit equal to thirty percent of the aggregate amount the**
139 **taxpayer invested and expended as a rehearsal expense or tour expense, subject to the**
140 **provisions of this section.**

141 **4. For purposes of determining the total aggregate payroll:**

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

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

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

164 in the same manner as the employee withholding taxes imposed under state law. The
165 department of revenue shall provide by regulation the manner in which such liability
166 shall be assessed and collected.

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

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

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

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

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

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

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

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

197 **(1) The tax credit may be taken beginning with the tax year in which the**
198 **qualified taxpayer earning the tax credit has met the applicable investment**
199 **requirements under this section. For each tax year in which such qualified taxpayer**
200 **either claims or transfers the tax credit, the qualified taxpayer shall attach a schedule to**

201 **the qualified taxpayer's Missouri income tax return that, at a minimum, sets forth the**
202 **following information:**

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

204 **(b) A detailed listing of the employee names, Social Security numbers, and**
205 **Missouri wages if salaries are included in the base investment;**

206 **(c) The amount of the tax credit claimed for the tax year;**

207 **(d) Any tax credit previously taken by the qualified taxpayer against Missouri**
208 **income tax liabilities;**

209 **(e) The amount of tax credit carried over from prior years;**

210 **(f) The amount of tax credit used by the qualified taxpayer claiming the tax**
211 **credit in the current tax year; and**

212 **(g) The amount of tax credit to be carried over to subsequent tax years;**

213 **(2) In the initial year in which the qualified taxpayer claims the tax credit**
214 **granted under this section, the qualified taxpayer shall demonstrate that the minimum**
215 **rehearsal and tour requirements are met by including a description of the qualifying**
216 **activities and expenses; and**

217 **(3) In no event shall the amount of the tax credit under this section for a tax year**
218 **exceed the qualified taxpayer's income tax liability. Any unused tax credit amount may**
219 **be carried forward for five years from the close of the tax year in which the rehearsal**
220 **expense or tour expense occurred. No such tax credit shall be allowed the qualified**
221 **taxpayer against prior years' tax liability.**

222 **7. (1) The aggregate amount of tax credits awarded in a fiscal year under this**
223 **section shall not exceed eight million dollars. In a fiscal year, the department of**
224 **economic development may, in the department's discretion, advance the award of tax**
225 **credits up to two million dollars of the tax credits available to be awarded in the**
226 **succeeding fiscal year, provided that the advance award shall count against the total**
227 **amount of tax credits that the department of economic development awards under this**
228 **section in the next succeeding fiscal year.**

229 **(2) The following limitations shall apply:**

230 **(a) If a qualified taxpayer's base investment is less than four million dollars, the**
231 **qualified taxpayer shall not be awarded more than one million dollars of tax credits**
232 **under this section in a fiscal year;**

233 **(b) If a qualified taxpayer's base investment is at least four million dollars but**
234 **less than eight million dollars, the qualified taxpayer shall not be awarded more than**
235 **two million dollars of tax credits under this section in a fiscal year; and**

236 (c) If a qualified taxpayer's base investment is at least eight million dollars, the
237 qualified taxpayer shall not be awarded more than three million dollars of tax credits
238 under this section in a fiscal year.

239 8. Any qualified taxpayer claiming, transferring, or selling the tax credit shall
240 reimburse the department of revenue for any department-initiated audits relating to the
241 tax credit. This section shall not apply to routine tax audits of a qualified taxpayer that
242 may include the review of the tax credit provided in this section.

243 9. The department and the department of revenue shall promulgate all necessary
244 rules and regulations for the implementation and administration of this section. Any
245 rule or portion of a rule, as that term is defined in section 536.010, that is created under
246 the authority delegated in this section shall become effective only if it complies with and
247 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This
248 section and chapter 536 are nonseverable, and if any of the powers vested with the
249 general assembly pursuant to chapter 536 to review, to delay the effective date, or to
250 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
251 rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be
252 invalid and void.

253 10. (1) Under section 23.253 of the Missouri sunset act:

254 (a) The provisions of the new program authorized under this section shall
255 automatically sunset on December thirty-first six years after the effective date of this
256 section unless reauthorized by an act of the general assembly;

257 (b) If such program is reauthorized, the program authorized under this section
258 shall automatically sunset on December thirty-first twelve years after the effective date
259 of the reauthorization of this section;

260 (c) This section shall terminate on September first of the calendar year
261 immediately following the calendar year in which the provisions authorized under this
262 section is sunset; and

263 (d) Nothing in this subsection shall prevent a qualified taxpayer from redeeming
264 a properly issued tax credit after the program is terminated.

265 (2) Notwithstanding subdivision (1) of this subsection, the provisions of the new
266 program authorized under this section shall automatically terminate and expire on
267 December thirty-first after the director of the department of economic development
268 notifies the director of revenue that all other state and local governments in the United
269 States of America have terminated or let lapse their tax credit or other governmental
270 incentive program for the music or performance entertainment industries, regardless of
271 whether such credits or programs are now in effect or first commence after the effective
272 date of this section.

Section B. The enactment of section 620.1631 of Section A of this act shall become
2 effective on July 1, 2024.

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