

CHILDREN IN THE ENTERTAINMENT INDUSTRY: THE RIGHT
TO CHILDHOOD. AN ANALYSIS OF FEDERAL LAWS
REGARDING MENTAL HEALTH & MINORS IN THE
ENTERTAINMENT INDUSTRY.

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Abstract

Society has simply accepted the entertainment industry as it is and has blamed former minor actors for their alcohol addiction, anxiety, depression, PTSD, and/or their lack of education that stems from their childhood. Society humanizes former minor actors and actresses in articles like, “Where Are They Now” or “10 Shocking Ways These Child Stars Died,” and uses their stories as entertaining reads and clickbait. Society has coined terms such as “toddler-to-trainwreck” that censors the harm happening behind the scenes, manicuring aspirational lifestyles and outcomes, and then watches young lives tragically implode.

Unfortunately, many think that federal labor laws provide adequate protection for all minors, but the truth is that minors in the industry are entirely exempted from the Fair Labor Standards Act. The Act affords protection to minors in a way that reflects its era throughout the Industrial Revolution’s rise of factories and high demand for workers. The Act did not anticipate the growth in entertainment mediums that consume our society today. Consequently, this focus on “hazardous” and “dangerous” occupations in 1938 left gaps in child labor laws regarding employment scenarios that were not as obviously dangerous at the time of enactment. Over the years, as technology and society have evolved, so have child labor practices and the risks associated with their employment. The current lack of evolution of federal legislation creates an overarching issue and a “tug-of-war” among states to balance protecting minors’ best interests with legislatures’ economic priority of maintaining the revenue from the entertainment industry. This Note presents an overview of what is missing from the pipeline narrative and incorporates clear action plans for federal intervention, long-term prevention in the industry, and accountability from studios, agencies, and guardians.

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INTRODUCTION

On cue, I perform the scene. This morning, I’m being kidnapped and raped. Ending in the fetal position under a chair with my body frozen in fear, I stand up, wipe my tears, and thank the stranger for the opportunity. I walk to the car ruminating over my performance, comparing my screams to the other kids’ I heard from the waiting room. On the spot, I manually alter my mood, personality, and outfit so I can win over a new stranger with a camcorder. I need to outperform 900 other candidates. Suddenly, I’m “Smiling Girl #437.”¹

At the age of six years old, Allyson Stoner started her career as an actress performing in television series, films, and music videos. Throughout her career, she worked on over 200 projects across networks

1. Allyson Stoner, *Allyson Stoner Pens Eye-Opening Op-Ed on ‘Harrowing’ Childhood Stardom: ‘Revisit the Script,’* PEOPLE (Apr. 7, 2021, 12:00 PM), <https://people.com/music/allyson-stoner-pens-op-ed-on-childhood-stardom-labor/> [<https://perma.cc/Y8KG-UV87>] [hereinafter Stoner Op-Ed].

and genres, wearing multiple hats and personalities.² After “traversing extreme peaks and valleys of global fame, hidden medical hospitalizations, artistic milestones, rapid adultification, and multi-layered abuse,” Allyson revisited her past career in a personal op-ed titled “*The Toddler to Trainwreck Industrial Complex*.”³ Her op-ed addresses the impacts of child labor and the notorious effects it has on minors physically, emotionally, and mentally in the entertainment industry.

Allyson Stoner sought the same attention she received as a young pop star featured on Camp Rock, Cheaper by the Dozen, The Suite Life of Zack & Cody, The Final Jam, and the Step-Up franchise. But years later, Allyson sought to turn the attention to discuss how the entertainment industry can change the worst aspects of growing up in the spotlight and can return the right to childhood to young actresses.⁴ The spotlight cast on minors in the industry is now being forced back on the entertainment industry by raising doubts about the inadequacy of existing labor laws for children within the industry.

Unfortunately, Allyson Stoner was not the first or the last actress that had to film rape scenes, scenes portraying pedophilia, or scenes of sexual abuse. In 1996, *Bastard Out of Carolina* was released with multiple scenes of pedophilia and sexual abuse scenes involving minors. Ron Eldard played the character “Glen,” a grown 5’10 man who aggressively grabbed actress Jena Malone playing “Bone” an 11-year-old little girl. The scene began with Glen grabbing Bone by the face stating, “I will kill you” and “I will break your neck.” Glen proceeded to kiss the minor on her lips while moaning.⁵ 11-year-old Bone then attempted to run away and begged Glen to “let [her] go.” As Bone ran into another room, Glen swung at her.⁶ Glen then aggressively ripped open Bone’s top and acted as if he was raping her while she cried.⁷ The horrific scene continued as Glen moaned and screamed in Glen’s face, “You’re going to say no to me?” “This time she [kicked] and [screamed]; her mouth [became] bloody; it [was] excruciating to watch.”⁸

Unfortunately, after all these horrific scenes, *Bastard Out of Carolina* was nominated for over seventeen awards in 1997.⁹ Specifically, 11-year-old Jena Malone was nominated for the “Cable ACE Awards: Actress in

2. Allyson Stoner, *About Allyson Stoner*, ALLYSON STONER, <https://www.allysonstoner.com/about> [<https://perma.cc/W54G-K8FC>].

3. Stoner Op-Ed, *supra* note 1.

4. *See generally* Stoner Op-Ed, *supra* note 1.

5. *BASTARD OUT OF CAROLINA* (Showtime Networks 1996).

6. *Id.*

7. *Id.*

8. Caryn James, *A Child Abused, Body and Soul*, N.Y. TIMES (Dec. 14, 1996), <https://www.nytimes.com/1996/12/14/arts/a-child-abused-body-and-soul.html> [<https://perma.cc/2KQK-HPY2>].

9. *BASTARD OUT OF CAROLINA*, *supra* note 5.

a Movie or Miniseries” and “Film Independent Spirit Awards: Best Debut Performance.”¹⁰ Lastly, the most terrifying award of them all, Jena was nominated for “YoungStar Awards: Best Performance by a Young Actress in a Made for TV Movie.”¹¹ These scenes remain active and easily accessible online, while Jena is now 37 years old.

In 2007, *Hounddog* was released as an American “coming-of-age” drama film and premiered at Sundance, the top U.S. film festival for movies. Dakota Fanning played the role of Lewellen, a troubled 12-year-old girl from the American South in the 1960s who found solace from an abusive life through blues music.¹² Lewellen was a free-spirited young girl with an obsession with Elvis Presley. 12-year-old Lewellen was raised with little supervision from her abusive father, absent mother, and alcoholic grandmother.¹³ The controversial scene began when Lewellen was told that if she danced to Elvis Presley while naked in an abandoned barn, the teenage milkman would give her tickets to his next upcoming concert.¹⁴ Lewellen proceeded to hesitantly dance for the milkman, and then asked for the ticket. The milkman then began unbuckling his pants as he slowly approached her.¹⁵ The teenage milkman then pushed Lewellen to the ground.¹⁶ In the dark light scene, only Lewellen’s crying face, neck, shoulders, hand and foot appeared onscreen, and much of the rape was depicted in darkness with only the sound of Lewellen’s screams.¹⁷

The writer and director Deborah Kampmeir received a storm of complaints before the festival from groups concerned about a scene where a 12-year-old girl was raped by a teenage boy.¹⁸ The New York-based Catholic League called for a federal probe to determine if the child pornography law was violated because Dakota Fanning, like Lewellen, was only 12 years old.¹⁹ Even before the first screening, Christian film

10. *Bastard Out of Carolina Awards*, IMDB, <https://www.imdb.com/title/tt0115633/awards/> [https://perma.cc/7Q48-Q82S].

11. *Id.*

12. *The Motion Picture Group, Inc. Co-Finances “Hound Dog”, A Feature Film Starring Dakota Fanning*, THE MOTION PICTURE GRP. (Sept. 12, 2006), https://web.archive.org/web/20061114055628/http://www.themotionpicturegroup.com/news_releases/09222006.html [https://perma.cc/TQ6H-JJX5].

13. *Film’s child rape scene causes stir*, EAST VALLEY TRIB. (Oct. 7, 2011), https://www.eastvalleytribune.com/get_out/films-child-rape-scene-causes-stir/article_3b2f687d-bfbc-597c-930c-3b1dd160b534.html [https://perma.cc/JBF4-QLBG].

14. HOUNDDOG (Empire Film Group & Hannover House 2007).

15. *Id.*

16. *Id.*

17. Bob Tourtellotte, “*Hounddog*” opens at Sundance; dealmaking picks up, REUTERS (Jan. 23, 2007), <https://www.reuters.com/article/us-sundance-hounddog/hounddog-opens-at-sundance-dealmaking-picks-up-idUSN2349111720070123> [https://perma.cc/K73N-S83D].

18. *Id.*

19. *Id.*

critics decried *Hounddog* as child abuse, and Roman Catholic activist Bon Donohue called for a boycott.²⁰ Ted Baehr, chairman of the Christian Film and Television Commission, claimed *Hounddog* broke federal child-pornography law by producing scenes that “appear” to show minors engaging in sexually explicit conduct.²¹

Director Deborah Kampmeir said she spoke with the minors and their parents but didn’t go into great detail with the young actors about the content.²² Kampmeir stated that she didn’t have to articulate to the minors the psychological elements that were going on in this film. “I used images to tell the story. I didn’t manipulate these children or explain to these children what was going on.”²³ These visceral portrayals of scenarios at such a young age have been known to etch into the minor’s body memory and compound with trauma occurring in real life behind closed doors.²⁴

Unfortunately, very few resources exist to help minors unpack scenes, both mentally and emotionally, and navigate the implications of a child’s star-studded culture.²⁵ These few examples bring us to confront how our society has been awarding films that have minors participating in scenes depicting sexual abuse at such detrimental, cognitive development stages and how Congress has not implemented any uniform protection for these minors within the industry.

I. CURRENT PROBLEM

The “toddler-to-trainwreck” pipeline is a notorious and thriving industrial complex around children in the entertainment industry.²⁶ The toddler-to-trainwreck term “. . . is expertly constructed and bolted in place by censoring the harm happening behind the scenes, manicuring aspirational lifestyles and outcomes, and then watching young lives tragically implode.”²⁷ The damage behind the pipeline manifests as physical and mental illness or as questionable behavior from the minor. These behaviors then get projected and published by the public, where society often points its finger at the minors as if they are the isolated problem.

Child labor laws are designed to protect the most vulnerable members of our workforce. Unfortunately, child labor in the entertainment industry

20. *Film’s child rape scene causes stir*, *supra* note 13.

21. *Id.*

22. *Id.*

23. *Id.*

24. *See* Stoner Op-Ed, *supra* note 1.

25. *Id.*

26. *Id.*

27. *Id.*

is not regulated by federal law.²⁸ This lack of federal implementation leaves this issue to the state's discretion on what protections (if any) should be afforded to minor performers.²⁹ This Note discusses our nation's approach to protecting minors in the entertainment industry by leaving the decision to state legislators. This approach has created a "tug-of-war" among state legislatures' economic priority of maintaining the revenue from the entertainment industry, by preventing such strict state minor laws while pulling against their priority to protect minors. Many states implement state legislation regarding education, hour limitations, and employment permits, but not one state requires by state law the responsibility to protect the mental health and long-term impacts on these glorified minor performers. Allyson's memories of her auditions for scenes depicting sexual violence one minute and princess toy commercials the next, demonstrate a real-life example of the emotional toll this nation has failed to protect minors from.³⁰

By analyzing the dangers behind states balancing their economic priorities, there is an immense amount of pressure on Congress to implement uniformity in the United States and amend the Fair Labor Standards Act (FLSA).

Specifically, this Note will first explore the history of child labor laws in the United States. While most modern-day discussions are prioritizing the wild west of YouTube channels, this Note will remain committed to protecting minors in the fictional realm of the entertainment industry in hopes to strengthen our legal doctrines, address the root issue in our nation, and amend our laws to evolve with modern society in hopes to protect minors on all platforms. Modernizing our current federal legislation could ultimately influence laws and regulations on YouTube, TikTok, and the next platform that Congress and society may not currently foresee. Next, this Note will review the exclusion of minors in the entertainment industry under the FLSA. It will also provide a relevant overview of individual states' approaches to regulating minors in the industry while emphasizing the need for nationwide uniformity.

Lastly, this Note will address why parental supervision for minors in the entertainment industry is not sufficient and, when appropriate, will provide suggestions for federal implementation and amendment proposals to redefine "dangerous" and "hazardous" within current law.

28. See 29 C.F.R. § 570.125 ("Section 13(c) of the Act provides an exemption from the child labor provisions for 'any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.'").

29. See generally *Child Entertainment Laws As of January 1, 2022*, U.S. DEP'T OF LAB. (Jan. 1, 2022), <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [<https://perma.cc/MHW6-YZKQ>] (Table of Child Entertainment Provisions and laws differentiated state by state).

30. See Stoner Op-Ed, *supra* note 1.

This Note will explore entertainment producers' take on the mental health and psychological well-being of their cast and crew while introducing studies of mental health resources to promote awareness and the use of studio teachers on set. Overall, the purpose of this Note is to raise awareness of the issues that have arisen from the failure of Congress to enact nationwide uniformity and protect minors from oppressive and abusive labor recruitments.

II. THE HISTORICAL BACKGROUND OF CHILD LABOR LAWS

Child labor, or the use of children as servants and apprentices, has been practiced throughout most of human history but reached a zenith during the Industrial Revolution's rise of factories and high demand for workers.³¹ The Industrial Revolution's urban factories and textile mills ushered in a new mechanized age that altered the context and rhythm of child labor.³² Throughout the Industrial Revolution, child labor consisted of miserable working conditions that included crowded and unclean factories, a lack of safety codes or legislation, and long hours.³³ During the Industrial Revolution's high demand for workers, minors were the ideal employees because they could be paid less, were often of smaller stature to attend to more minute tasks, and were less likely to organize and strike against their pitiable working conditions.³⁴

Over time, cultural uncertainty grew over the proper role of minors in an economic scheme.³⁵ Limitations have emerged on the prerogatives of parents to act contemporaneously to the best interests of the child in matters such as child labor.³⁶ Society's perception changed overtime, "Whereas children's work in the eighteenth and early nineteenth centuries had been an integral part of both the child's education and the family's economy, by the twentieth century, child labor was increasingly condemned as 'commercialization' of the 'sacred' child."³⁷ Child labor laws became an issue of particular concern to Congress in the early twentieth century.³⁸ It was only when society presented pressure that states began to respond by enacting child labor laws.³⁹

31. *Child Labor*, HIST. (Aug. 24, 2022), <https://www.history.com/topics/industrial-revolution/child-labor> [<https://perma.cc/NQM3-6QRG>].

32. Barbara Bennett Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as Property, 33 WM. & MARY L. REV. 995, 1059–61 (1992).

33. *Child Labor*, *supra* note 31.

34. *Id.*

35. Woodhouse, *supra* note 32, at 1060.

36. *Hodgson v. Minnesota*, 497 U.S. 417, 482–83 (1990).

37. Woodhouse, *supra* note 32, at 1060.

38. See Michael Schuman, *History of Child Labor in the United States-Part 2: The Reform Movement*, MONTHLY LAB. REV. (Jan. 2017), <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-1.htm> [<https://perma.cc/C5CH-SNUK>].

39. *Id.*

The economics of price competition placed states that enacted stricter reforms at a disadvantage to the states that initiated liberally construed reforms. In 1906, while emphasizing the need for federal intervention, Senator Beveridge noted that “[e]ven if in one or a dozen states good child labor laws were still executed, the businessman in the good state would be at a disadvantage to the businessman in the bad state.”⁴⁰ Businesses in a state with more restrictive child labor laws have the incentive to violate them to compete with neighboring businesses in states where child labor is legal.⁴¹ Ultimately, reformers concurred that any reform would need to be federal to be effective because employers who conducted child labor could simply move to another state and play one jurisdiction against another.⁴²

Efforts to regulate or eliminate child labor became central to social reform in the United States. The National Child Labor Committee led the charge by using photography to show the poor conditions children were working in.⁴³ Initially, reformers, child-savers, trade unionists, and religious leaders attempted to enact uniform protective child labor and compulsory education laws in every state as an integral part to improve society, but quickly became frustrated by opposition from the South.⁴⁴ Educational reformers attempted to convince the public that a primary school education was a necessity if the nation wanted to advance.⁴⁵ In addition to education, “[r]eformers posited that the long hours of premature toil and the deprivation of education caused a litany of health problems” for these minors at such a young age.⁴⁶

Children were also being harmed mentally through their lack of opportunities for schooling. Symbolic of this was a petition organized by mill operators that were brought to the South Carolina legislature. The petition in opposition to child labor reforms was signed by 3,000 mill employees and stated, “[w]e are not overworked, and are satisfied, and only ask to be let alone.” An examination of the signatures indicated that 100 of the children were incapable of signing their names and could only mark the petition with an “X.”⁴⁷

40. *Id.*

41. *Id.*

42. See GERALD MAYER, CONG. RSCH. SERV., RL31501, CHILD LABOR IN AMERICA: HISTORY, POLICY, AND LEGISLATIVE ISSUES (2013).

43. *Child Labor*, *supra* note 31.

44. See generally Woodhouse, *supra* note 32.

45. Schuman, *supra* note 38.

46. See generally Schuman, *supra* note 38.

47. WALTER I. TRATTNER, CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA 83 (1970).

III. FEDERAL LAW

After years of reformers advocating for federal implementation and uniformity among the states, the Fair Labor Standards Act of 1938 (FLSA or the Act) became law in the summer of 1938 and was known as the law that changed the American workplace employment culture.⁴⁸ The FLSA had a long road to passage. For years, the U.S. Supreme Court struck down multiple attempts by state and federal officials to pass uniform laws to eliminate child labor.⁴⁹

The FLSA provides child workers enhanced federal protection.⁵⁰ “The FLSA generally prohibits the employment of children under eighteen in any occupation detrimental to their well-being or health. In particular, the Act forbids an employer from producing goods for commerce by utilizing oppressive child labor.”⁵¹ Overall, the Act prohibits the employment of “oppressive child labor” in the United States, which the Act defines—with some exceptions—as the employment of youth under the age of sixteen in any occupation or the employment of youth under 18 years old in hazardous occupations.⁵² Further, the FLSA creates federal regulations that every state has a child labor act and many municipal ordinances regulate child labor.⁵³

Today, all states have child labor laws, compulsory schooling requirements, and other laws that govern children’s employment and activities, but no state law may weaken any protection that’s provided in the FLSA.⁵⁴ To enforce the Act, the FLSA authorizes the Secretary of Labor to conduct workplace inspections and investigations to determine if oppressive child labor is present, to enforce the child labor provisions by assessing civil money penalties, and to pursue action in federal court against employers who violate the provisions.⁵⁵ Unfortunately, federal child labor enforcement has been “extraordinarily ineffectual.”⁵⁶ The Department of Labor (DOL) periodically conducts publicized enforcement initiatives in a particular industry or a particular region, but

48. Peter Cole, *The Law That Changed the American Workplace*, TIME (June 24, 2016, 9:30 AM), <https://time.com/4376857/flsa-history/> [<https://perma.cc/YBN5-YB6J>].

49. Schuman, *supra* note 38.

50. DOUGLAS, E. ABRAMS ET AL., CHILDREN AND THE LAW DOCTRINE, POLICY, AND PRACTICE 876, 881 (7th ed. 2020).

51. Erica Siegal, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Children Entertainers & Athletes*, 18 CARDOZO ARTS & ENT. J. 427, 442 (2000).

52. SARAH DONOVAN & JON O. SHIMABUKRO, CONG. RSCH. SERV., RL R44548, THE FAIR LABOR STANDARDS ACT (FLSA) CHILD LABOR PROVISIONS 1, 4 (2016).

53. ABRAMS ET AL., *supra* note 50, at 865.

54. DONOVAN & SHIMABUKRO, *supra* note 52, at 4.

55. *Id.*

56. Seymour Moskowitz, *Malignant Indifference, Wages of Contemporary Child Labor*, 57 OKLA. L. REV. 466, 470 (2004) (“The U.S. Department of Labor ‘underestimates the numbers of illegally employed children and rarely initiates investigations of statutory violations.’”).

the agency otherwise annually inspects only a small number of workplaces by the FLSA.⁵⁷

In addition to poor ineffectual enforcement, the FLSA excludes certain occupations and work arrangements entirely from its coverage of child labor provisions: children with a parental employer, newspaper delivery persons, evergreen wreath producers, and child performers.⁵⁸ Congress failed to address child employment in the entertainment industry in the twentieth century but rather focused on dangerous and hazardous occupations. The U.S. Department of Labor's Entertainment Industry Employment page specifically directs individuals to the state department of labor for specific information concerning minors employed as performers.

The FLSA exempts any minor within the entertainment industry from its child labor provisions. Therefore, the FLSA rules that regulate a minor's total permitted work hours per day and during specific times do not apply to minor actors or performers. Many states have taken their own initiative to regulate the employment of minors in the entertainment industry more strictly than the FLSA does.⁵⁹

More specifically, section 13(c) of the Act provides an exemption from the child labor provisions for "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions."⁶⁰ The Act affords protection to minors in a way that reflects its era, but the Act did not anticipate the growth in entertainment mediums that impact our society today.⁶¹ The development of the American film industry from the 1900s to the modern day has created a new form of child employment that the FLSA was not designed to protect at the time of implementation. Child labor protections in the United States primarily focused on the dangers of hazardous occupations that were widespread during the Industrial Age.⁶² The Department of Labor has emphasized "[t]he youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities."⁶³

57. ABRAMS ET AL., *supra* note 50, at 881.

58. DONOVAN & SHIMABUKRO, *supra* note 52, at 4.

59. *Entertainment Industry Employment*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/youthlabor/entertainmentemployment> [<https://perma.cc/FN2J-M7LQ>].

60. 29 C.F.R. § 570.125 (2021) ("The term "performer" used in this provision is obviously more inclusive than the term "actor.").

61. Amanda G. Riggio, *The Small-er Screen: Youtube Vlogging and the Unequipped Child Entertainment Labor Laws*, 44 SEATTLE U. L. REV. 493, 499–500, 502 (2020).

62. *Id.* at 499.

63. *Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture> [<https://perma.cc/WRT2-YL BG>] (Dec. 2016).

Consequently, this focus on “hazardous” and “dangerous” occupations has left gaps in child labor laws regarding future child employment scenarios that were not as obviously dangerous at the time of enactment.⁶⁴ In a generation consumed by media, any theatrical employment falls beyond the scope of FLSA child labor requirements. By exempting an entire class of minors employed in the entertainment industry, the FLSA dangerously leaves a gap in minor protections that must be filled to ensure “that when young people work, the work does not jeopardize their health, well-being or educational opportunities.”⁶⁵ Over the years, as technology and society have evolved, so have child labor practices and the risks associated with their employment. The current lack of evolution of federal legislation creates an overarching issue about protecting minors’ best interests. In this next section, we compare the states who are taking the initiative to fill in the gap for Congress to the states that have failed to implement any state protection at all.

IV. STATE LAW

Congress authorized the FLSA without creating any special legislation for minor performers and left the states free to provide their legislation without the hindrance of federal preemption.⁶⁶ Unfortunately, many think that federal labor laws provide adequate protection for children, but the truth is that this issue is dealt with at the state level.⁶⁷

Most state governments have adopted provisions to protect minors in the entertainment industry—the problem remains to what extent. In 1944, the Supreme Court upheld Massachusetts’s police power to enact child labor legislation pursuant to the state’s police power.⁶⁸ The Supreme Court emphasized that parental rights are not absolute and are subject to reasonable regulation.⁶⁹ A state may enact laws protecting the health, safety, morals, and welfare of children pursuant to its police power if there is a rational basis for the regulation to exist.⁷⁰ But unfortunately, states frequently are unwilling to take such advances alone for fear of giving another state an advantage economically.⁷¹ This fear is rooted in the history of the FLSA back in 1906 when Senator Beveridge advocated

64. Riggio, *supra* note 61, at 499.

65. *Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations*, *supra* note 63.

66. See Gerald Solk, *Legal Rights and Obligations of Minors in the Entertainment Industry: The California Approach*, 4 J. JUV. L. 78, 80 (1980).

67. Duncan Crabtree-Ireland, *Labor Law in the Entertainment Industry Supplemental Payments, Intellectual Property Rights, and the Role of Unions*, 31 ENT. & SPORTS L. 1, 7 (2015).

68. See *Prince v. Massachusetts*, 321 U.S. 158, 165, 167, 169 (1944).

69. *Id.* at 165.

70. *Id.*

71. See Schuman, *supra* note 38.

for federal intervention because the businessman in the good state would be at a disadvantage to the businessman in the bad state.⁷² This disadvantage has led to a tug-of-war among states' laws to protect minors' mental health and overall well-being. This section will discuss the distinct state laws of California and New York, in comparison to Florida and fifteen other states with no state legislation regulating child entertainment or requiring a minor to obtain a work permit.⁷³

A. California Law

California is home to the entertainment industry and is known as the movie-making city of the world. With this title, California has taken the initiative to protect minors within the industry and has set examples for other states to follow. California has had a significant impact on minors performing both inside and outside their state.⁷⁴ California has ensured that minors that have entered into a contractual arrangement in the state remain protected even outside of state territories by enforcing California labor laws when a minor is taken to film in another state.⁷⁵

In 1982, the increased awareness about minors' working conditions in the entertainment industry began after an on-set accident while filming *Twilight Zone: The Movie*.⁷⁶ Vic Morrow, age 53, Renee Chen, age 6, and Myca Dinh Lee, age 7, were filming a Vietnam War battle scene early in the morning when minors were not permitted to work under California labor law.⁷⁷ While filming, the special effects exploded onset and caused the pilot to lose control of the low-flying helicopter and killed all three victims.⁷⁸ Ultimately, the production team was found responsible for violating multiple labor laws which prompted the introduction of new safety standards in the industry, stricter child actor laws, and harsher penalties for violations.⁷⁹

72. *Id.*

73. *Child Entertainment Laws As of January 1, 2022*, *supra* note 29.

74. CAL. CODE REGS. tit. 8, § 11756 (2022).

75. *Id.* (“When minors resident in the State of California and employed by an employer in the entertainment industry located in the State of California, are taken from the State of California to work on location in another state, as part of, and pursuant to, contractual arrangements made in the State of California for their employment in the entertainment industry, the child labor laws of California and the regulations based thereon shall be applicable, including, but not limited to, the requirement that a studio teacher must be provided for such minor in accordance with Section 11755.1.”).

76. Riggio, *supra* note 61, at 499.

77. *Actor and two children killed on “Twilight Zone” set*, HIST. (Nov. 13, 2009), <https://www.history.com/this-day-in-history/actor-and-two-children-killed-on-twilight-zone-set> [<https://perma.cc/62JQ-UHRL>].

78. *Id.*

79. Lee Brown, *Alec Baldwin’s fatal movie set accident recalls triple ‘Twilight Zone’ tragedy that led to criminal charges*, N.Y. POST (July 22, 2020), <https://nypost.com/2021/10/22/alec-baldwins-fatal-accident-recalls-twilight-zone-tragedy/> [<https://perma.cc/X764-3Q94>].

Today in California, any employer in the industry desiring to employ minors in work that is not hazardous or detrimental to the health, safety, morals, or education of minors is instructed to make an application to the Division for a Permit to Employ Minors.⁸⁰ The Labor Commissioner issues permits for minors within the industry with required documentation from appropriate school districts.⁸¹

In addition to permits, California's child labor laws set strict time constraints on when minors are permitted to work within a day and who must be present with the minor. The restrictions vary based on the minor's age from fifteen days old to eighteen years old.⁸² Any minor under the age of sixteen must always have their parent or guardian present on set and within sight or sound.⁸³ California regulates what hours a minor may be employed, the number of hours of permitted work activity, the number of hours permitted at the employment site, the number of hours the minor must have for rest and recreation, the presence of studio teachers, and the number of hours dedicated to school. As the minor ages, the regulations and hours permitted increase progressively from age group two to six years old; six to nine years old; nine to sixteen years old; and sixteen to eighteen years old.⁸⁴

From ages six to eighteen, minors have a mandatory three hours of school activity.⁸⁵ As the minor ages, all restrictions are extended but the amount of mandatory school activity remains the same of "at least three (3) hours of schooling when the minor's school is in session."⁸⁶ Meanwhile, California mandates all school districts, county offices of education, and classroom-based charter schools from grades fourth through twelfth to require a minimum of four hours of instructional

80. CAL. CODE REGS. tit. 8, § 11751 (2022); *see also* CAL. PENAL CODE § 314 (West 2022) ("1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, (2) Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.").

81. *Child Entertainment Laws As of January 1, 2022*, *supra* note 29.

82. CAL. CODE REGS. tit. 8, § 11760 (2022); *see also* CAL. CODE REGS. tit. 8, § 11755.3 (2022).

83. *See* CAL. CODE REGS. tit. 8, § 11757 (2022) ("A parent or guardian of a minor under sixteen (16) years of age must be present with, and accompany, such minor on the set or location and be within sight or sound of said minor at all times.").

84. CAL. LAB. CODE § 1308.7 (2019).

85. CAL. CODE REGS. tit. 8, § 11760.

86. *Id.*

learning for students.⁸⁷ Non-classroom-based charter schools have minimum instructional day requirements.⁸⁸

Further, in California, studio teachers hold both a California Elementary and a California Secondary teaching credential and are certified by the Labor Commissioner.⁸⁹ Studio teachers are held responsible for caring for and attending to the health, safety, and morals of the minor on set.⁹⁰ A certified studio teacher is hired by the employer to take cognizance of the minor's working conditions, physical surroundings, signs of mental and physical fatigue, and demands placed upon the minor in relation to the minor's age, strength, and stamina.⁹¹ Any minor that has entered a contract within state territory and films in another state must be provided a studio teacher on set.⁹² Lastly, the studio teacher has the authority to refuse the engagement of minors on set or location if it presents a danger to the health, safety, or morals of the minor. If the teacher's mandatory reporting reflects any activities or scenes that may result in any danger to the minor, the Labor Commissioner may affirm or countermand such action.⁹³ Any misdemeanor violation of the Labor

87. 2020–21 *Funding and Instructional Time FAQs*, CAL. DEPT. OF EDU. (Apr. 29, 2021), <https://www.cde.ca.gov/fg/aa/pa/pafaqs.asp#instructionaltime> [https://perma.cc/DC28-943P].

88. *Id.*

89. See CAL. CODE REGS. tit. 8, § 11755(a) (2022) (“A studio teacher within the meaning of these regulations must be a certificated teacher who holds one California teaching credential listed in paragraphs (1) through (4) of subsection (d) of this section and one California teaching credential listed in paragraphs (5) through (7) of subsection (d) of this section which are valid and current, and who has been certified by the Labor Commissioner.”).

90. See CAL. CODE REGS. tit. 8, § 11755.2 (2022) (“Employers shall provide a studio teacher on each call for minors from age fifteen (15) days to their sixteenth (16th) birthday (age sixteen (16)), and for minors from age sixteen (16) to age eighteen (18) when required for the education of the minor. One (1) studio teacher must be provided for each group of ten (10) minors or fraction thereof. With respect to minors age fifteen (15) days to age sixteen (16), one (1) studio teacher must be provided for each group of twenty (20) minors or fraction thereof on Saturdays, Sundays, holidays, or during school vacation periods.”).

91. See CAL. CODE REGS. tit. 8, § 11755.3. (2022) (“In the discharge of these responsibilities, the studio teacher shall take cognizance of such factors as working conditions, physical surroundings, signs of the minor's mental and physical fatigue, and the demands placed upon the minor in relation to the minor's age, agility, strength and stamina. The studio teacher may refuse to allow the engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor. Any such action by the studio teacher may be immediately appealed to the Labor Commissioner who may affirm or countermand such action.”).

92. See CAL. CODE REGS. tit. 8, § 11756 (2022) (“When minors resident in the State of California and employed by an employer in the entertainment industry located in the State of California, are taken from the State of California to work on location in another state, as part of, and pursuant to, contractual arrangements made in the State of California for their employment in the entertainment industry, the child labor laws of California and the regulations based thereon shall be applicable, including, but not limited to, the requirement that a studio teacher must be provided for such minor in accordance with Section 11755.1”).

93. CAL. CODE REGS. tit. 8, § 11755.3.

Code provisions respecting child labor or a violation of any regulation may constitute grounds for denying a Permit to Employ Minors in the entertainment industry, or for suspending or revoking any such permit.⁹⁴ Now, we turn to how other states have attempted to mirror California's strict regulations.

B. *New York*

In New York, state legislatures have implemented regulations for child performers to “protect the safety, morals, health, and well-being of the performers.”⁹⁵ Many of the New York provisions governing minors in the entertainment industry are modeled after a comparable California provision.⁹⁶ Unfortunately, the New York Legislature has fallen short in modeling California's more detailed regulations reflecting their stringent requirements for certified staff teachers, school requirement policies, and limitations on parental involvement.⁹⁷

Employers who engage a minor to perform work in New York must obtain a certificate to employ the performer and the minor's parents or guardians must obtain a Child Performer Permit.⁹⁸ A certificate shall not be issued if the Commissioner determines that the employment or activity may be hazardous or detrimental to the child's physical or mental health, morals, education, or general welfare.⁹⁹ In addition, the employer must provide “one adult for every 20 children or fraction thereof under the age of 16 to accompany the group throughout the workday and to monitor the children's safety and well-being.”¹⁰⁰ Unlike California's requirement of a trained and certified studio teacher, in New York, the employer may designate parents or other qualified persons to be responsible for the

94. CAL. CODE REGS. tit. 8, § 11758 (2022) (“Any misdemeanor violation of any Labor Code provision respecting child labor, or any violation of these regulations may constitute grounds for denying a Permit to Employ Minors in the entertainment industry, or for suspending or revoking any such permit.”).

95. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-1.1 (2022) (“The purposes of this Part are to protect the safety, morals, health, and well-being of child performers, to ensure that child performers who work or reside in the State of New York are provided with adequate education, and to ensure that a portion of the child performer's earnings are kept in trust for the benefit of the child performer until such child reaches the age of majority.”).

96. Robert A. Martis, *Children in the Entertainment Industry: Are They Being Protected? An Analysis of the California and New York Approaches*, 8 LOV. L.A. ENT. L. REV. 25, 30 (1988).

97. Cf. CAL. CODE REGS. tit. 8, § 11755 (2022) (demonstrates the strict requirements needed to qualify as a studio teacher within the meaning of California's state regulations).

98. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-3.1 (2022).

99. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-4.1(a) (2022).

100. See N.Y. COMP. CODES R. & REGS. 12, § 186-4.1(b)(2) (2022) (“The employer and/or the entity providing the group of children shall provide at least one adult for every 20 children or fraction thereof under the age of 16 to accompany the group throughout the work day and to monitor the children's safety and well-being. They may designate parents or other qualified persons as responsible persons for the group.”).

group. Every minor performer under the age of sixteen shall be assigned a “responsible person at least 18 years of age, whose duties shall be to accompany the child throughout the workday and to monitor the child’s safety and well-being.”¹⁰¹ The parents or guardian shall designate the responsible person and may even choose to serve as the responsible person for their child under the age of 16.¹⁰²

To ensure the child performer is obtaining an adequate education, New York sets forth educational requirements that any child performer employed in the state shall fulfill the educational requirements of the school district in which the child performer resides or of the private school the child attends. The employer shall provide at least one teacher for every ten performers and an average of at least three hours per school day, each week to fulfill requirements.¹⁰³

Lastly, New York mandates that no employer shall employ a minor in any activity that may be hazardous or detrimental to the physical or mental health, morals, education, or general welfare of the child performer.¹⁰⁴ New York differentiates child performers based on age and involvement in live theater and other live performances.¹⁰⁵ Similar to California, New York regulates the hours a minor may be employed and¹⁰⁶ requires mandatory rest and recreation every four hours of employment.¹⁰⁷ In addition, New York requires that a child performer must also be given adequate instruction and rehearsal time for the specific activities the child performer is to perform to protect his or her health or safety.¹⁰⁸ If a child performer’s employer has violated any provision of

101. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-4.6(a) (2022) (“Every child performer under the age of 16 shall be assigned a responsible person at least 18 years of age, whose duties shall be to accompany the child throughout the work day and to monitor the child’s safety and well-being. The employer shall allow the responsible person to be within sight or sound of the child at all times during the workday.”).

102. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-4.1(b)(2) (2022).

103. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-5.1(e)(6) (2017); see also N.Y. COMP. CODES R. & REGS. tit. 12, § 186-5.1(e)(8) (2022).

104. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-4.1(c) (2022).

105. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-6.2(a) (2022) (“Outside of live theater and other live performance, a child performer may be employed no earlier than 5:00 a.m. on any day, no later than 10:00 p.m. on evenings preceding school days, and not later than 12:30a.m. on the morning of non-school days.”); cf. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-6.2(b) (2022) (“In live theater and other live performance, a child performer may be employed no earlier than 5:00 a.m. on any day, no later than 12:00 midnight on evenings preceding school days, and no later than 12:30 a.m. on the mornings of non-school days.”).

106. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-6.2(a) (2022).

107. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-6.4(a) (2022) (“The employer shall permit all child performers to take at least 10 minutes of the rest period time or down time to which they are entitled by section 186-6.2 of this Subpart during every four hours of work time.”).

108. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-6.5(a) (2017) (“The employer shall provide the child performer and his or her parent or guardian with information and instruction to protect the health or safety of the child performer, including any potential hazards associated with

the Labor Law regulations outlined in Article 4A, the Commissioner may revoke or suspend the Employers Certificate of Eligibility, and the civil penalty shall not exceed \$1,000 for the first violation, \$2,000 for the second, and \$3,000 for a subsequent violation.¹⁰⁹

C. Florida

Florida legislation sets forth regulations to “ensure that minors are not employed under the conditions that are injurious or detrimental to their health, safety, or education.”¹¹⁰ In Florida, employers in the entertainment industry shall first obtain a “Permit to Hire” before employing any minors.¹¹¹ Employers shall provide the Department of Business and Professional Regulation with information relative to each “shoot.”¹¹² The application may be denied by the Department if the application evinces work conditions that are hazardous or detrimental to the minor’s health, morals, or education.¹¹³

In addition, the employer shall designate one individual on each set to act as a “Coordinator of Child Labor.”¹¹⁴ The designated coordinator

the specific activities that he or she will be expected to perform. In addition, a child performer must be given adequate instruction and rehearsal time for the specific activities he or she is to perform in order to protect his or her health or safety.”).

109. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-10.1(a)–(b) (2017) (“Where the commissioner finds that a child performer’s employer has violated any provision of article 4-A of the Labor Law or of this Part, the commissioner may, in addition to revocation or suspension of the employer certificate of eligibility pursuant to section 186-4.2 of this Part, issue an order describing the nature of the violation and assess a civil penalty therefor. Each violation shall constitute a separate offense . . . The civil penalty shall not exceed \$1,000 for the first violation, \$2,000 for the second violation and \$3,000 for the third or subsequent violation.”).

110. See FLA. ADMIN. CODE ANN. r. 61L-2.006.1 (2022) (“The requirements in this rule are intended to ensure that minors are not employed under conditions that are injurious or detrimental to their health, safety or education.”).

111. See FLA. ADMIN. CODE ANN. r. 61L-2.006.2a (2022) (“Employers of minors in the entertainment industry shall obtain a Permit to Hire prior to employing any minor in Florida, or within 60 days of this rule’s adoption for productions already in progress.”).

112. See FLA. ADMIN. CODE ANN. r. 61L-2.006.2b (2022) (“Reporting Requirements. Employers of minors in the entertainment industry shall provide the Department with information relative to each “shoot” or separate program of a series as required in subsection 450.132(5), F.S. After each production, or upon completion of employment in Florida, the employer shall submit to the Department a completed Final Report, Form DBPR FCL 1003, available as provided in Rule 61L-2.012, F.A.C. Failure to submit such Final Report shall be grounds to deny any future application for Permit to Hire.”).

113. See FLA. ADMIN. CODE ANN. r. 61L-2.006.2a (2022) (“Failure to complete any item in the application form, after being requested to do so, or if the completed application form evinces work conditions that are hazardous or detrimental to the health, morals, or education of the minor employees, shall be grounds to deny the application.”).

114. See FLA. ADMIN. CODE ANN. r. 61L-2.006.4 (2022) (“The employer shall designate one (1) individual on each set where minors are employed, or in each touring company which includes minor employees, to act as Coordinator of Child Labor. The coordinator shall respond to all communications from the Department regarding the employment of minor(s). The employer shall

shall respond to all communications from the Department regarding the minor's employment.¹¹⁵ Unlike California, the statute is silent on any certifications coordinators must hold, their authority to withhold minors from the scene, or their responsibilities to protect the minors' physical or mental health on set.¹¹⁶ In addition, unlike New York, Florida's statute does not address if the coordinator can be a minor's parent or a staff producer, or if the coordinator must be within sight or sound of the child at all times during the workday.¹¹⁷

Similar to New York and California, Florida regulates what hours the minor may be employed.¹¹⁸ In Florida, the working hours may not exceed those set forth for the specific age of the minor in the statute unless a "Partial Waiver" is granted by the Department.¹¹⁹ Unlike California, Florida's statute remains silent on any academic requirements for minors, including the amount of time a producer is obligated to set aside to ensure the minors meet their academic requirements.¹²⁰ Whoever violates any provisions of this law, employs or permits or suffers any minor to be employed or to work in violation of this law, shall be guilty of a misdemeanor of the second degree.¹²¹ In addition, any violation may be

provide the name of the coordinator(s) to the Department, the minor, the minor's parent(s), guardian, and/or chaperon.").

115. *Id.*

116. *Cf.* CAL. CODE REGS. tit. 8, § 11755.3 (2022) (The studio teacher, in addition to teaching, shall also have the responsibility for caring and attending to the health, safety and morals of minors under sixteen (16) years of age for whom they have been provided by the employer, while such minors are engaged or employed in any activity pertaining to the entertainment industry and subject to these regulations. In the discharge of these responsibilities, the studio teacher shall take cognizance of such factors as working conditions, physical surroundings, signs of the minor's mental and physical fatigue, and the demands placed upon the minor in relation to the minor's age, agility, strength and stamina. The studio teacher may refuse to allow the engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor.").

117. *Cf.* N.Y. COMP. CODES R. & REGS. tit. 12, § 186-4.6(a) (2022) ("Except as otherwise provided in this section, the parent or guardian shall designate the responsible person and may choose to serve as the responsible person for his or her own child under the age of 16. The parent or guardian may designate another adult at least 18 years of age, including another child performer's parent or guardian, to serve as the responsible person for the first parent's or guardian's child.").

118. *See generally* FLA. ADMIN. CODE ANN. r. 61L-2.006.5 (2022) (regulates working hours, and hours spent at the place of employment for minors under two to minors over sixteen).

119. FLA. ADMIN. CODE ANN. r.61L-2.006.5(c) (2022).

120. FLA. ADMIN. CODE ANN. R. 61L-2.006.5 (2022).

121. *See* FLA. STAT. § 450.141(1) (2022) ("Whoever violates any provisions of this law, or employs or permits or suffers any minor to be employed or to work in violation of this law, or of any order issued under the provisions of this law, or obstructs persons authorized under this law in the inspection of places of employment, and whoever, having under his or her control any minor, permits the minor to be employed or to work in violation of this law, shall for such offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day during which any violation of this law continues shall constitute a separate and

subject to fines that may not exceed \$2,500 per offense.¹²² While states like New York and Florida have implemented less stringent state labor laws than California, over fifteen states fail to implement any child entertainment laws at all.¹²³

D. *States with Minimal to No Regulations or Work Permit Requirements*

The South remains an issue for minors in the industry, as it consistently opposed federal legislation prior to the implementation of the FLSA. To solicit filmmakers, many of the production companies in the Southeast advertise their lack of labor laws for minors in the entertainment industry.¹²⁴ In North Carolina, the state only requires a “Youth Employment Certificate” and continues to exempt all youth performers from their Wage & Hour Act.¹²⁵ North Carolina film commissions advertise that “[f]ilming in North Carolina offers attractive incentives and makes the business of filmmaking easier with a customer-focused commitment to their project’s success.”¹²⁶

While some states have taken the initiative to enforce state legislation to different extents to protect minor performers, over fifteen states have failed to enforce any state legislation at all. As of January 1, 2022, Arizona, Kansas, Kentucky, Mississippi, Montana, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and West Virginia failed to regulate child entertainment and don’t require employers to obtain a work permit.¹²⁷ These fifteen states simply leave the exemption open just as it was written in the FLSA, enabling child performers to avoid being subjected to any

distinct offense, and the employment of any minor in violation of the law shall, with respect to each minor so employed, constitute a separate and distinct offense.”).

122. See FLA. STAT. § 450.141(2) (2022) (“Any person, firm, corporation, or governmental agency, or agent thereof, that has employed minors in violation of this part, or any rule adopted pursuant thereto, may be subject by the department to fines not to exceed \$2,500 per offense. The department shall adopt, by rule, disciplinary guidelines specifying a meaningful range of designated penalties based upon the severity and repetition of the offenses, and which distinguish minor violations from those which endanger a minor’s health and safety.”).

123. *Child Entertainment Laws As of January 1, 2022*, *supra* note 29.

124. Siegal, *supra* note 51, at 448.

125. See N.C. GEN. STAT. § 95-25.5(g) (2022) (“Youths employed as models, or as actors or performers in motion pictures or theatrical productions, or in radio or television products are exempt from all provisions of this section except the certificate requirements of subsection (a).”).

126. See NC PIEDMONT TRIAD FILM COMM’N, <https://piedmontfilm.com> [<https://perma.cc/XGW9-NLJL>] (“Filming in North Carolina offers attractive incentives, experienced crews, unique locations, a temperate climate and a film friendly community. Here in the Piedmont Triad (Greensboro/Winston-Salem/High Point), the Piedmont Triad Film Commission makes the business of filmmaking easier with a customer-focused commitment to your project’s success. Call us, let us tell you why we’re the perfect region for your production.”).

127. *Child Entertainment Laws As of January 1, 2022*, *supra* note 29.

time restrictions, permit requirements, educational requirements, or overall, any mandatory supervision that is imposed on minors employed in other exempted industries. Film producers continue to use the state's exemption as an advertisement for producers. Specifically, South Carolina's Film Commission advertises being a business-friendly state that understands production opportunities, has a strong state government, and is the country's leading incentive state for filming.¹²⁸

In conclusion, the federal government's lack of uniform federal legislation regarding the employment of minors in the entertainment industry has left the states to regulate this industry within their borders.¹²⁹ Without federal protection, and with no assured state protection either, minors desiring a career in entertainment are left with only their parents as their protectors. In the next section, we discuss why most parents of minors working within the entertainment industry are not adequately equipped to care for their children.

V. WHY PARENTS ARE NOT ENOUGH

Where there is a lack of regulation, or as in New York, where a parent is allowed to monitor their child rather than an adequately trained third-party professional, we must face the reality that the majority of parents may not have the child's best interest at stake and might not be trained or educated enough to understand the issues that may arise within the industry. Our current federal labor laws allow the parental exploitation of minors in the entertainment industry.

In the United States, there is a strong presumption that fit parents act in their children's best interests.¹³⁰ Historically, it has been recognized that natural bonds of affection lead parents to act in the best interests of their children.¹³¹ Typically, there is no reason for the State to inject itself into the private realm of the family to question fit parents' ability to make the best decisions for their children.¹³² Long ago, our constitutional

128. See S. CAROLINA FILM COMM'N, <https://www.filmsc.com> [<https://perma.cc/QJ7W-G3XJ>] ("We're a business-friendly state that understands the importance behind the opportunities provided by every production. For the 12th consecutive year, South Carolina has earned a top spot in Area Development's 'Top States for Doing Business' report. SC ranked No. 4 for our business environment.").

129. Jessica Kreig, *There's No Business Like Show Business: Child Entertainers and the Law*, 6 U. PA. J. LAB. & EMP. L. 429, 431 (2004).

130. See *Parham v. J. R.*, 442 U.S. 584, 602 (1979) ("The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.").

131. *Id.* at 602.

132. See *Reno v. Flores*, 507 U.S. 292, 304 (1993) ("Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to

system rejected any notion that a child is a mere creature of the State and asserted that parents generally have the right, coupled with the high duty, to recognize and prepare their children for additional obligations.¹³³ “The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions.”¹³⁴ But, when the parents fail to have experienced the mental and physical impacts of the entertainment industry or maintain the capacity for judgment, the State must step in.

The Due Process Clause of the Fourteenth Amendment protects the fundamental rights of parents to make decisions concerning the care, custody, and control of their children.¹³⁵ The Supreme Court in *Meyer* recognized a parent’s due process liberty interest in “establish[ing] a home and bring[ing] up children.”¹³⁶ But, this interest has been balanced with the notion that the rights of parenthood are beyond limitation.¹³⁷ In essence, the freedom and the right to make parental decisions are important liberties, but they are not absolute. The courts have long recognized the state’s *parens patriae* authority to remove decision-making control from a parent when necessary to protect a child.¹³⁸ It is only when a state can show a reasonable relation between legislation and a legitimate state objective, that the state may not curtail its citizens’ constitutional rights.¹³⁹

The states have a compelling interest as *parens patriae* to protect the welfare of children in the entertainment industry who are unable to protect themselves or are cognizant of long-term impacts. Multiple issues

make the best decisions concerning the rearing of that parent’s children.” (citing *Troxel v. Granville*, 530 U.S. 57, 66, 69 (2000)).

133. See *Parham*, 442 U.S. at 602, see also *Pierce v. Society Sisters*, 268 U.S. 510, 535 (1925) (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”).

134. *Parham*, 442 U.S. at 602.

135. See *Troxel*, 530 U.S. at 66 (“In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”).

136. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

137. See *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth’s wellbeing, the state, as *parens patriae*, may restrict the parent’s control by requiring school attendance, regulating or prohibiting the child’s labor and in many other ways.”).

138. See *In re D.K.*, 58 Pa. D. & C.4th 353, 357 (C.P. 2002) (“The Act limits the Commonwealth’s coercive interference with the family unit to those cases where the parents have not provided ‘a minimum standard of care for a child’s physical, intellectual and moral wellbeing.’ . . . [P]arental care which is both ‘necessary’ and ‘proper’ is not the best care possible but that care which (1) is geared to the particularized needs of the child and (2) at a minimum, is likely to prevent serious injury to the child.”).

139. *Pierce v. Society Sisters*, 268 U.S. 510, 535 (1925).

arise from states leaving so much responsibility and freedom to the parents of minors in the entertainment industry, such as exploitation, excessive labor, abuse, and practice demands.¹⁴⁰ In addition, many parents in these unusual situations are not versed in helping minors regulate their nervous systems.¹⁴¹ While states like California have attempted to protect children from the undue influences of third parties, the statutory schemes have failed to address the undue influence from who the state presumes to be the “best fit.”¹⁴² In addition, while California has incorporated reporting procedures for studio teachers to report minors’ mental and physical fatigue, there is no particular remedy for when a minor no longer wants to partake on the path of stardom.¹⁴³ To prevent the exploitation of children, undue influence from third parties, and long-term cognitive impacts, there must be federal legislation available offering protection avenues. These children need protection, not only from their careers and employers, but most essentially, from their parents.¹⁴⁴ While not all parents have selfish financial motives and some minors desire to be a part of the entertainment industry, it remains apparent that Congress needs to amend the FLSA to provide adequate protection for children from their parents.¹⁴⁵ Parental prerogatives don’t have boundless connotational protection and it’s time for Congress to step in again.

VI. IMPLEMENTING FEDERAL LAWS

A. *Re-Defining “Dangerous” & “Hazardous”*

The FLSA was not a complete victory for advocates of child labor regulation.¹⁴⁶ Scholars have argued that the Act may have served “as a deterrent” and as an “educational force” but “in those areas where children are useful, they continue to be employed.”¹⁴⁷ With the modern-day explosion of the internet and various social platforms, the legislative branch has been unable to amend and change laws at the same rate.¹⁴⁸

140. Siegal, *supra* note 51, at 448.

141. See Stoner Op. Ed., *supra* note 1 (“As with many parents in this unusual situation, my mother is not versed in how to help me regulate my nervous system.”).

142. See generally Neyza Guzman, *The Children of YouTube: How an Entertainment Industry Goes Around Child Labor Law*, 8 BARRY CHILD & FAM. L. J. 86, 109 (2020) (“While California does attempt to address the issue of the child’s wishes through the usage of studio teacher reports, a negative report does not necessarily cause automatic revocation of the child’s permit.”).

143. *Id.*

144. Siegal, *supra* note 51, at 449.

145. *Id.* at 429–30.

146. MAYER, *supra* note 42, at 6.

147. *Id.*

148. Guzman, *supra* note 142, at 109.

The current lack of federal legislation creates an overarching issue that has failed one too many times to protect children within the entertainment industry. It is time we advocate for the legislative branch to reevaluate the definition of “dangerous” and “hazardous” occupations by looking further than the physical danger of minors working with machinery. The FLSA defines “hazardous” as “detrimental to [the minor’s] health and well-being,” which traditionally includes jobs involving extensive manual labor, including coal mining, manufacturing, and operating machinery.¹⁴⁹ The Act was hyper-focused on regulating dangerous occupations held by minors back during the Industrial Revolution which drove policy decisions.¹⁵⁰

To redefine “dangerous” and “hazardous” is to truly accomplish the mission of the FLSA and protect minors. Congress needs to look further into what creates a “dangerous” and “hazardous” environment by prioritizing both minors’ physical and mental health. Prior to the FLSA legislation, reformers advocated for long hours of premature toil, deprivation of education, and potential health problems. These issues that the FLSA initially sought to halt and prevent are still negatively impacting minors in the entertainment industry, through a lack of educational requirements and opportunities, anxiety, depression, addiction, and lack of sleep. By omitting such a high-stress, publicly criticized, and demanding profession, state and federal laws have interacted and developed in a way that has left children within this industry less protected than necessary.

The lack of uniformity in addressing these occupations as “dangerous” and “hazardous” has left states in uncomfortable positions. In 2019, before updating Pennsylvania labor laws for child performers, Representative Tom Murt publicly addressed how our nation has seen many child actors get in trouble in their later years because they were robbed of their childhood.¹⁵¹ Murt emphasized that he “wanted these film companies to come to Pennsylvania.¹⁵² It means jobs not just for the artists but for carpenters and electricians . . . But if somebody’s going to be filming children in Pennsylvania, we want to protect the children.”¹⁵³ Pennsylvania prioritized the safety of minors performing within the state and enforced new updates to its child labor laws for new requirements for work permits, on set-teachers, and work limitations. Here, Pennsylvania took the stance our nation should require. In the next section, this Note

149. Riggio, *supra* note 61, at 500.

150. *Id.* at 499.

151. Marsha Mercer, *Few protections for child performers*, USA TODAY (Aug. 29, 2013, 5:53 PM), <https://www.usatoday.com/story/news/nation/2013/08/29/child-actors-protections-laws-pew/2734035/> [<https://perma.cc/VWQ5-5BUX>].

152. *Id.*

153. *Id.*

discusses how Congress must take a dominant stance and close certain gaps that have been left open for far too long.

B. *Producers, Managers, & Parents are not Therapists*

It is no secret the entertainment industry has given birth to a telling array of stereotypes: tortured artist, drunken pop star, domineering stage mom, and the anorexic dancer, that take the cover of click baits and magazine covers to attract viewers.¹⁵⁴ While producers attempt to banish these stereotypes from their script, producers cannot disregard the mental health and psychological well-being of their cast in doing so.¹⁵⁵

To prevent these arrays of stereotypes placed upon minors, society needs to improve in recognizing and responding to mental health issues on and off set.¹⁵⁶ Regardless of an individual's years of experience within the industry, producers, managers, and parents are not medically trained and educated to play the role of the therapist for minors. As discussed, a parent's control is not absolute,¹⁵⁷ and with the money, fame, and perks of the entertainment field, it may lead to a clouded parenting judgment. To move forward, the FLSA needs to create a requirement that studio teachers on set remain certified, trained, and equipped to assist minors.

C. *Promoting Mental Health Resources on Set*

Mental health issues in the entertainment industry are widespread and severe not only in the United States, but throughout the world.¹⁵⁸ Studies in the United Kingdom, North America, Canada, and Australia show that rates of suicide, suicidal thinking, depression, anxiety, and substance abuse are significantly higher among entertainment industry professionals than the general population.¹⁵⁹ Suicide is listed as the

154. Julie Crosby, *Producer's Hat #96: Therapist*, SHOWBIZING (June 1, 2021), <https://www.showbizing.com/showbizing-blog/mental-health-in-the-entertainment-industry> [<https://perma.cc/CQZ3-2KCZ>].

155. *Id.*

156. *Id.*

157. *See* Troxel v. Granville, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) (“A parent’s rights with respect to her child have thus never been regarded as absolute.”).

158. Crosby, *supra* note 154.

159. *See id.* (citing *Phase One*, ENT. ASSIST, <https://www.entertainmentassist.org.au/our-research> [<https://perma.cc/GYR2-MYWX>] (“25% of performing artists, and most roadies have attempted or considered suicide, but none of the roadies surveyed had sought help, over a third of performing artists, 25% of industry support workers and most roadies and crew reported mental health problems”) and *Better mental health behind the scenes*, FILM & TV CHARITY, <https://filmtvcharity.org.uk/leading-change/better-mental-health/> [<https://perma.cc/5UN6-9DPU>] (“In 2019 the first edition of our ground-breaking Looking Glass research found that 9 in 10 people working in film, TV and cinema in the UK had experienced a mental health problem—

10th leading cause of death in the United States, and these numbers are even higher in the industry category of “Arts, Design, Entertainment, Sports, and Media.”¹⁶⁰ As seen with Allyson Stoner, a minor’s pressure to perform and land auditions, coupled with the intense proliferation of social media and the 24-hour news cycle, has and will continue to impact minors in a way that many former actors and actresses did not experience in their careers. The entertainment industry is known for its intense focus on physical appearance, its constant scrutiny, and its inability to keep failures or mistakes private, which can lead entertainers to suffer from chronic stress, anxiety, and depression.¹⁶¹

The immediate solution to assist minors is to implement a mandatory qualified third-party professional on set. The average cost of making a feature film is between \$100 million and \$150 million which typically accounts for the crew and cast, rights to the scripts, producers, directors, cost of production, and expenses of post-production editing.¹⁶²

Budgeting qualified third-party mental health professionals on set would be a drop in the bucket for most film budgets. Qualified professionals could monitor working conditions and be available to assist entertainers in regulating, shifting between identities, and discharging residual inner turbulence after emotional performances.¹⁶³

compared to 65% in the population as a whole (Source: Mental Health Foundation, 2017). Shockingly more than half (55%) of respondents had considered taking their own life. These findings indicated a mental health emergency in our industry, with its roots in the ‘3 Cs’ of poor working CONDITIONS (including very long hours); an entrenched CULTURE of bullying and stigma around mental health; and a lack of CAPABILITY across the industry to support people.”)

160. See *2019 Survey to Assist in the Development of a Mental Health and Suicide Prevention Initiative Summary of Key Findings*, BEHIND THE SCENES (2021), <https://wp.behindthescenescharity.org/mental-health-and-suicide-prevention-initiative/2019-industry-survey-summary-of-key-findings/> [https://perma.cc/VG2P-4SSN] (“Research shows this category within the 3 most impacted industries related to suicide statistics.” In Canada, suicide is listed as the 9th leading cause of death (Statistics Canada). Women in Canada in the category of “Arts, Design, Entertainment, Sports, and Media” have the highest rate of suicide of any occupation (Peterson et al., 2018)).

161. Ashley Cullins et al., *Hollywood’s Mental Health Reckoning Has Arrived*, THE HOLLYWOOD REP. (Jan. 15, 2020), <https://www.hollywoodreporter.com/movies/movie-features/hollywoods-mental-health-reckoning-has-arrived-1269807/> [https://perma.cc/6XHV-96YC].

162. *How Much Does It Cost To Make A Movie – Everything You Need To Know*, NFI, <https://www.nfi.edu/how-much-does-it-cost-to-make-a-movie/> [https://perma.cc/9NZQ-JM2M] (last visited Sept. 27, 2022) (“The average cost of making a feature film is between \$100 million and \$150 million. Keep in mind that this is an average, meaning that there are feature films that cost less than \$80 million and those that cost more than \$200 million to produce. The cost of making a movie varies depending on the number of actors involved, the amount of animation or special effects used, and the area in which it is shot. Many comedy films and some animated features, such as recent DreamWorks films, are made for \$70 million to \$90 million.”).

163. Stoner Op. Ed., *supra* note 1.

In addition to being on set, they could also provide a safe contact, not being employed by the producers, to report misconduct, harassment, and mental health struggles without any fear of backlash from producers.¹⁶⁴

In addition to budgeting qualified professionals, *Behind the Scenes* is a non-profit initiative to address mental health and psychological safety in the entertainment industry.¹⁶⁵ *Behind the Scenes* offers a therapist finder specifically designed to match professionals within the entertainment industry with a therapist that specializes in the entertainment field, a 24/7 peer-to-peer support app, and an online course in mental health first aid that producers can take before welcoming performers to their set.¹⁶⁶ These tools and resources were developed by industry experts, representatives of labor, employers, and mental health professionals to directly address the specific needs of the entertainment industry.¹⁶⁷

Lastly, Congress should mandate Basic Industry and Media Literacy courses taught by industry mental health experts to educate all guardians on how to detect mental fatigue and how to address their child's concerns, and to also set forth guides on working conditions beyond just hourly limits.¹⁶⁸

D. Introduce Federal Legislation and Enforcement

This nation and future generations need Congress to amend the FLSA by bringing minors in entertainment into the eye of federal regulation. To reiterate, the FLSA should amend the outdated statute to include academic requirements for all minors; ensure laws follow the child regardless of the onset of location filming; take initiatives to strategically reduce the stress of minors by implementing mental health programs; and include requirements for studio teachers and therapists to attend every production that includes minors.

In addition to federal implementation, we need to create stronger enforcement to hold those who violate child labor laws more accountable.

164. *Id.*

165. Crosby, *supra* note 154.

166. *Id.*

167. 2019 Survey to Assist in the Development of a Mental Health and Suicide Prevention Initiative Summary of Key Findings, BEHIND THE SCENES (2021), <https://wp.behindthescenescharity.org/mental-health-and-suicide-prevention-initiative/2019-industry-survey-summary-of-key-findings/> [<https://perma.cc/RHK9-FA34>] (“These tools address many of the issues raised by the respondents of the survey, who represented a broad spectrum of the industry, and a wide variety of age and experience level. The majority of respondents identified with Live Events as their primary area of work (including theatre, dance, music, opera, touring, circus, sports, theme parks, etc.) followed by those involved in Motion Picture and Television Production.”).

168. Stoner Op. Ed., *supra* note 1.

Enforcement of the Act remains lax in most states because budgetary constraints have reduced the number of enforcement agents.¹⁶⁹ When enforcement is pursued, a \$3,000 fine to a 150-million-dollar production is simply a slap on the wrist. The state laws impose criminal or civil penalties on employers who hire a child in violation of the FLSA.¹⁷⁰ Where the Act doesn't sanction parents, a parent may face sanctions under compulsory attendance laws, where unlawful employment makes a child miss school. When unlawful employment harms the child both physically and/or emotionally, parents might face civil neglect or criminal child endangerment charges.¹⁷¹ Enforcement of child labor law has been generally lax due to public budget cutbacks and a lack of enforcement agencies.¹⁷² With federal implementation must come funding to increase the presence of enforcement agencies. In essence, we can enact legislation, but if Congress doesn't have the correct enforcement protocols in place, they have done nothing at all.

CONCLUSION

As a society, we have simply accepted the entertainment industry as it is and have blamed adults for their alcohol addiction, anxiety, depression, PTSD, and/or their lack of education, which stems from their childhood. We humanize former minor actors and actresses in articles like, "Where Are They Now" or "10 Shocking Ways These Child Stars Died," which are used for entertaining reads and clickbait to continue to monetize off these minors.¹⁷³ The exact celebrities in the "Where Are They Now" articles, like Allyson Stoner, need a more appropriate venue and platform to share their stories and ideas that would have helped them as "Smiley Girl #437," "Bone," or "Lewellen."

Narratives like Allyson's and platforms like the University of Florida Levin College of Law's Sports & Entertainment Law Review have the power to change outdated laws by informing the public. The inaugural class of the *Florida Entertainment & Sports Law Review* at the University of Florida Levin College of Law has provided a forum for aspiring attorneys, judges, and advocates to discuss these topics to spread awareness and inspire change. As of January 2022, the University of Florida is the only Sports & Entertainment Law Review in the state of Florida. Alongside implementing federal laws, we need more forums and platforms to address the issues in this constantly evolving industry, to create new goals, and to get others talking about these issues that we have

169. ABRAMS ET AL., *supra* note 50, at 875.

170. *Id.*

171. *Id.*

172. *Id.* at 875.

173. Stoner Op. Ed., *supra* note 1.

brushed under the carpet for far too long. This Note situates itself exactly in line with these goals.

In conclusion, spreading awareness on social media and the internet can show more of a personal side to those that “retired” at the age of 18. With the continuing evolution of social media, YouTube, and TikTok, we are in a unique moment to implement changes to the FLSA. Similar to the National Child Labor Committee’s efforts to regulate or eliminate child labor in the United States by using photography to show the poor conditions children were working in, today we must use social media and academic works to advocate for Congress to step back in. There is an opportunity for us to empower each other through honest conversations and collaborative action.¹⁷⁴ Society has changed, and so has the definition of “dangerous.”

174. Stoner Op. Ed., *supra* note 1.