HB429 ENGROSSED



- 1 AAMXQ7-2
- 2 By Representatives Kiel, Moore (P), Pringle, Underwood,
- 3 Colvin, Woods, Baker, Wilcox, Brown, Stadthagen
- 4 RFD: Ways and Means Education
- 5 First Read: 03-May-23
- 6 2023 Regular Session



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5	A BILL
6	TO BE ENTITLED
7	AN ACT
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9	Relating to the Entertainment Industry Incentive Act
L 0	of 2009; to amend Sections 41-7A-40, 41-7A-41, 41-7A-42,
11	41-7A-45, and $41-7A-48$, Code of Alabama 1975, to expand the
12	incentive by renaming it the Film and Music Incentive Act of
13	2023, to increase the cap on incentives to fifty million
L 4	dollars annually, and to allow for the inclusion of music
15	and virtual reality as qualified production companies.
16	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
L 7	Section 1. Sections 41-7A-40, 41-7A-41, 41-7A-42,
18	41-7A-45, and $41-7A-48$, Code of Alabama 1975, are amended to
L 9	read as follows:
20	"\$41-7A-40
21	This article may be cited as the "Entertainment
22	Industry Incentive Act of 2009. Film and Music Incentive Act
23	of 2023."
24	"\$41-7A-41
25	The following is hereby found and declared by the
26	Legislature of Alabama:
27	(1) Although Alabama is filled with attractive natural
2 8	resources a growing workforce and other resources



- 29 attractive to the entertainment film and music industry,
- 30 Alabama has not developed its potential in terms of
- 31 attracting the entertainmentfilm and music industry to the
- 32 state by offering production incentives for qualified
- 33 productions not previously offered in Alabama.
- 34 (2) Entertainment Film and music industry incentives
- 35 offered by other states attract valuable projects to their
- 36 states which stimulate local economies, use local manpower
- and suppliers, offer other employment and entrepreneurial
- 38 opportunities for state residents, and provide public
- 39 awareness of the natural resources available in their
- 40 states.
- 41 (3) Because Alabama does not currently offer a
- 42 sufficiently viable incentive package to the industry,
- 43 Alabama cannot effectively compete with other states for
- 44 attracting industry projects in such a volume to cause the
- 45 development of adequate industry infrastructure and those
- 46 projects locate elsewhere.
- 47 (4) For Alabama to compete nationally or
- 48 internationally for the location and production of more
- 49 projects in Alabama and to foster a growing entertainment
- film and music industry in Alabama, an increase in industry
- 51 specific production incentives are immediately necessary.
- 52 (5) The Legislature recognizes and confirms the
- 53 planning and promotion of the entertainment film and music
- industry are of vital importance to the economic development
- of Alabama as are the recruitment, expansion, and retention
- of industrial development within the state, and the



57 promotion of the entertainmentfilm and music industry should 58 be included as an integral part of any comprehensive economic development strategy plan promoted by the state and 59 60 state agencies. 61 (6) Since Act 2009-144 was passed in 2009, the State 62 of Georgia has attracted a number of film and music 63 productions and established successful film production 64 facilities, whereas Alabama has enjoyed less success and has 65 yet to establish a successful film production facility. 66 (7) The film and music industry has been significantly 67 disrupted since Act 2009-144 was passed in 2009, and, to be competitive in attracting such projects, Alabama must devote 68 69 more financial resources to the effort." "\$41-7A-42 70 71 For purposes of this article, the following terms shall have the following meanings: 72 73 (1) COMPANY. A corporation, partnership, limited 74 liability company, or any other business entity. 75 (2) DEPARTMENT. The Alabama Department of Revenue. 76 (3) ENTERTAINMENT INDUSTRY. Those persons or entities 77 engaged in the production of entertainment content as defined under paragraph a. of subdivision (8). 78 79 (4) (3) EXPENDED IN ALABAMA. In the case of tangible 80 property, property which is acquired or leased from a source 81 within the State of Alabama; in the case of services, 82 services performed for a qualified production project in the State of Alabama. 83 84 (4) FILM AND MUSIC INDUSTRY. Those persons or entities



- engaged in the production of qualified products with

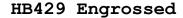
 entertainment content as defined under paragraph a. of

 subdivision (8).
- 88 (5) OFFICE. The Alabama Film Office.
- (6) PAYROLL. All salary, wages, and other
 compensation, including related benefits, including
 specifically, but not limited to, compensation and benefits
 provided to resident and nonresident producers, directors,
 writers, actors, and other personnel involved in qualified
 production projects in Alabama.
- 95 (7) PRODUCTION EXPENDITURES.
- 96 a. The term includes preproduction, production, and 97 postproduction expenditures incurred in the State of Alabama that are directly used in a state-certified production, 98 99 including, but not limited to, the following: Set construction and operation, wardrobe, makeup, set 100 accessories, and related services; costs associated with 101 102 photography and sound synchronization, lighting, and related 103 services and materials; editing and related services; rental 104 of facilities and equipment; leasing of vehicles; costs of 105 food and lodging; costs of catering; digital or tape 106 editing, film processing, transfer of film to tape or 107 digital format; transfer direct to DVD, cable, or satellite 108 for distribution; sound mixing, special and visual effects 109 including duplication, film processing digital, DVD, music 110 composition, and satellite distribution; total aggregate payroll; music; airfare; insurance costs of bonding; or 111 112 other similar production expenditures as determined by rule



- 113 or regulation.
- b. The term includes financial contributions or educational or workforce development in partnership with
- 116 related educational institutions, or local industry
- organizations, or both, contributed toward the furtherance
- 118 of the local entertainment mediafilm and music industries.
- 119 c. The term does not include postproduction
- 120 expenditures for marketing or any amounts that are paid to
- 121 persons or entities as a result of their participation in
- 122 profits from the exploitation of a motion picture
- 123 production.
- 124 (8) QUALIFIED PRODUCTION.
- 125 a. The term means entertainment film and music content
- 126 created in whole or in part within the state, including
- 127 motion pictures; soundtracks for motion pictures;
- 128 documentaries; long-form, specials, miniseries, series,
- 129 sound recordings, videos and music videos, and interstitials
- 130 television programming; interactive television; interactive
- 131 games; video games; music albums; entertainment and
- 132 educational content that incorporates virtual reality or
- augmented reality, or virtual reality film production;
- 134 commercials; infomercials; any format of digital media,
- 135 including an interactive website that is intended for
- 136 national or international distribution or exhibition to the
- 137 general public; and any trailer, pilot, video teaser, or
- demo created primarily to stimulate the sale, marketing,
- 139 promotion, or exploitation of future investment in either a
- 140 product or a qualified production via any means and media in







- any digital media format, film, or videotape, provided such 141 142 program meets all the underlying criteria of a qualified 143 production.
- 144 b. The term does not include any ongoing television 145 program created primarily as news, weather, or financial 146 market reports, a production featuring current events, 147 sporting events, an awards show or other gala event, a 148 production whose sole purpose is fund-raising, a long-form 149 production that primarily markets a product or service, a production used for corporate training or in-house corporate 150 151 advertising or other similar productions; nor does the term include any production for which records are required to be 152 153 maintained under 18 U.S.C. § 2257 with respect to sexually 154 explicit content; nor does the term mean or include any form 155 of gambling, gaming, wagering, or pari-mutuel wagering activity or enterprise. 156
- 157 (9) QUALIFIED PRODUCTION COMPANY.

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- 158 a. The term means a company engaged in the business of 159 producing a qualified production, as that term is defined.
- b. The term does not mean or include any company owned, affiliated, or controlled, in whole or in part, by 162 any company or person which is in default on a loan.
- 163 (10) RESIDENT OF ALABAMA. A natural person and, for 164 the purpose of determining eligibility for the incentives 165 provided by this article, any person domiciled in the State of Alabama and any other person who maintains a permanent 166 place of abode within the state and spends in the aggregate 167 168 more than six months of each year within the State of



- 169 Alabama.
- 170 (11) STATE-CERTIFIED PRODUCTION. A qualified
- 171 production approved by the office, produced by a qualified
- 172 production company."
- 173 "\$41-7A-43
- 174 (a) Beginning January 1, 2009, a qualified production
- 175 company shall be entitled to a rebate for production
- 176 expenditures, as defined in subdivision (7) of Section
- 177 41-7A-42, related to a state-certified production. The
- 178 rebate shall be equal to 25 percent of the state-certified
- 179 production's production expenditures excluding payroll paid
- 180 to residents of Alabama plus 35 percent of all payroll paid
- 181 to residents of Alabama for the state-certified production,
- 182 provided the total production expenditures for a project
- 183 must equal or exceed at least five hundred thousand dollars
- 184 (\$500,000), but no rebate shall be available for production
- 185 expenditures incurred after the first twenty million dollars
- $\frac{(\$20,000,000)}{(\$20,000,000)}$ fifty million dollars (\\$50,000,000).
- 187 (b) A single episode in a television series or
- 188 miniseries may be considered a single production project for
- 189 purposes of this section. However, in determining the total
- 190 production expenditures incurred by a qualified production
- 191 company on a qualified production, the total production
- 192 expenditures of a television series or miniseries, whether a
- 193 single season or multiple seasons thereof, to be filmed
- 194 within a period of 12 consecutive months, each individual
- 195 episode of which separately and independently meets the



- definition of a qualified production, may be aggregated to
 meet the monetary requirements set forth in subsection (a)
 as long as each individual episode within the series
 pertains to the same subject as the other episodes in the
 series.
- 201 (c) A single commercial may be considered a single 202 production project for purposes of this section. However, in 203 determining the total production expenditures incurred by a 204 qualified production company on a qualified production, the total production expenditures of a series of commercials to 205 206 be filmed within a period of 12 consecutive months, each of 207 which separately and independently meets the definition of a 208 qualified production, may be aggregated to meet the monetary 209 requirements set forth in subsection (a) as long as each 210 individual commercial within the series pertains to the same subject as the other commercials in the series and was 211 212 planned as part of a series of commercials to be filmed 213 within a period of 12 consecutive months at the time the 214 qualified production company applied for the incentives.
 - (d) A qualified production company shall be entitled to the rebate for production expenditures as provided in subsection (a) for a qualified project that is limited only to the production of a soundtrack used in a motion picture or documentary, provided that the production expenditures for the soundtrack project must equal or exceed at least fifty thousand dollars (\$50,000), but no rebate shall be available for production expenditures incurred after the first three hundred thousand dollars (\$300,000) of

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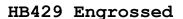
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224 production expenditures expended in Alabama under this 225 subsection.

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- (e) A qualified production company shall be entitled 227 to the rebate for production expenditures as provided in 228 subsection (a) for a qualified project that is limited only 229 to the production of a music album or music video, provided 230 that the production expenditures for the music album equal 231 or exceed twenty thousand dollars (\$20,000) and the 232 production expenditures for the music video equal or exceed fifty thousand dollars (\$50,000), but no rebate shall be 233 234 available for production expenditures incurred after the 235 first two hundred thousand dollars (\$200,000) of production 236 expenditures expended in Alabama under this subsection. Rebates received under this subsection may not, in the 237 238 aggregate, exceed five percent of the funding available each year under Section 41-7A-43(a) for all qualified production 239 240 companies.
 - (f) The rebate described in this section may be applied to offset any income tax liability applicable to a qualified production company for the tax year in which production activity in Alabama on the state-certified production concludes.
 - (g) If the rebate available under this section exceeds a qualified production company's Alabama income tax liability for the tax year in which production activity in Alabama concludes on the state-certified production, the excess of the rebate over a qualified production company's Alabama income tax liability shall be rebated to the



- 252 qualified production company.
- 253 (h) The Commissioner of the Department of Revenue and
- 254 the office shall promulgate adopt rules necessary to
- 255 administer this section.
- 256 "\$41-7A-45
- 257 A qualified production company that intends to expend
- in the aggregate one hundred fifty thousand dollars
- 259 (\$150,000) or more in connection with a qualified production
- in the State of Alabama within a consecutive 12-month
- 261 period, upon making application for, meeting the
- 262 requirements of, and receiving written certification of that
- 263 designation from the office, shall be exempted from the
- 264 payment of the state portion, but not the local portion of
- 265 sales, use, and lodging taxes levied pursuant to Sections
- 266 40-23-2, 40-23-61, and 40-26-1, respectively, on production
- 267 expenditures expended in Alabama in connection with the
- 268 state-certified productions. The exemption provided by this
- section shall not be available for production expenditures
- 270 incurred by a qualified production company after the first
- 271 twenty million dollars (\$20,000,000) fifty million dollars
- 272 (\$50,000,000) of production expenditures expended in Alabama
- 273 on a state-certified project."
- 274 "\$41-7A-48
- For the fiscal year ending September 30, 2009, the
- 276 aggregate cap of incentives granted under this article shall
- 277 not exceed five million dollars (\$5,000,000) for all
- 278 qualified production companies. For the fiscal year ending
- 279 September 30, 2010, the aggregate cap of incentives granted

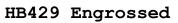




280 under this article shall not exceed seven million five 281 hundred thousand dollars (\$7,500,000) for all qualified 282 production companies. For fiscal years ending September 30, 283 2011, and September 30, 2012, the aggregate cap of 284 incentives granted under this article shall not exceed ten 285 million dollars (\$10,000,000) for all qualified production 286 companies. For the fiscal year ending September 30, 2013, 287 the aggregate cap of incentives granted under this article 288 shall not exceed fifteen million dollars (\$15,000,000). For the fiscal year ending September 30, 2014, the aggregate cap 289 290 of incentives granted under this article shall not exceed 291 fifteen million dollars (\$15,000,000) and for all subsequent 292 fiscal years thereafter, through September 30, 2023, the aggregate cap of incentives granted under this article shall 293 294 not exceed twenty million dollars (\$20,000,000) for all qualified production companies. For the fiscal year ending 295 296 September 30, 2024, the aggregate cap of incentives granted 297 under this article shall not exceed fifty million dollars 298 (\$50,000,000) and for all subsequent fiscal years thereafter for all qualified production companies." 299 300 Section 2. If a court of competent jurisdiction adjudges invalid or unconstitutional any clause, sentence, 301 302 paragraph, section, or part of this act, such judgment or 303 decree shall not affect, impair, invalidate, or nullify the 304 remainder of this act, but the effect of the decision shall be confined to the clause, sentence, paragraph, section, or 305 part of this act adjudged to be invalid or unconstitutional. 306 307 Section 3. All laws or parts of laws which conflict



308	with this act are repealed.
309	Section 4. This act shall become effective
310	immediately following its passage and approval by the
311	Governor, or its otherwise becoming law.





312 313 314	House of Representatives
315 316 317 318 319	Read for the first time and referred03-May-23 to the House of Representatives committee on Ways and Means Education
320 321 322 323	Read for the second time and placed
324 325 326 327 328 329	Read for the third time and passed23-May-23 as amended Yeas 100 Nays 1 Abstains 1
330 331 332 333	John Treadwell Clerk