

SUBSTITUTE FOR
HOUSE BILL NO. 4122

A bill to amend 1984 PA 270, entitled
"Michigan strategic fund act,"
by amending section 29h (MCL 125.2029h), as amended by 2014 PA 396.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29h. (1) The Michigan film office shall create and
2 operate the film and digital media production assistance program.
3 The film and digital media production assistance program may
4 provide funds to eligible production companies for direct
5 production expenditures or qualified personnel expenditures for
6 state certified qualified productions. **BEGINNING OCTOBER 1, 2015,**
7 **THE MICHIGAN FILM OFFICE AND THE FUND SHALL NOT PROVIDE NEW**
8 **FUNDING, OR INCREASE FUNDING THROUGH AN AMENDMENT TO AN EXISTING**
9 **AGREEMENT, FOR DIRECT PRODUCTION EXPENDITURES, MICHIGAN PERSONNEL**
10 **EXPENDITURES, CREW PERSONNEL EXPENDITURES, OR QUALIFIED PERSONNEL**

1 **EXPENDITURES UNDER THIS SECTION.**

2 (2) If the office receives applications that would exceed what
3 the office can award in any year, the office may prioritize that
4 application for funding in the subsequent year.

5 (3) The film and digital media production assistance program
6 shall provide for all of the following:

7 (a) Funding shall be provided only to reimburse direct
8 production expenditures or qualified personnel expenditures.

9 (b) To be eligible to apply for funding, the eligible
10 production company shall have direct production expenditures or
11 qualified personnel expenditures, or a combination of direct
12 production expenditures and qualified personnel expenditures, of
13 \$100,000.00 or more.

14 (c) To be eligible to apply for funding, the eligible
15 production company shall not be delinquent in a tax or other
16 obligation owed to this state or be owned or under common control
17 of an entity that is delinquent in a tax or other obligation owed
18 to this state.

19 (d) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR**
20 state certified qualified production expenditures on or before
21 December 1, 2014, funding as provided in the agreement if that
22 agreement was entered into on or before December 1, 2014. ~~For~~
23 **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR** state certified
24 qualified production expenditures after December 1, 2014 **THROUGH**
25 **SEPTEMBER 30, 2015**, an agreement under this section shall provide
26 for funding equal to the sum of the following:

27 (i) 25% of direct production expenditures and qualified

1 personnel expenditures.

2 (ii) In addition to the expenditures described in subparagraph
3 (i), 3% of direct production expenditures and qualified personnel
4 expenditures at a qualified facility or 10% of direct production
5 expenditures and qualified personnel expenditures at a
6 postproduction facility for a qualified production produced at the
7 facility.

8 (e) A television show may submit an application for 1 or more
9 successive seasons, notwithstanding the fact that the successive
10 seasons have not been ordered. The successive season's direct
11 production expenditures and qualified personnel expenditures shall
12 be based on the current season's estimated expenditures. Upon the
13 completion of production of each season, a television show may
14 submit an application for successive additional seasons. If a
15 television show received funding under this section and completed
16 the production of that television show season, the television show
17 shall receive a preference for funding the immediately succeeding
18 season for that television show.

19 (f) As a separate and distinct part of the film and digital
20 media production assistance program, the office may create a
21 program to directly support and promote qualified facilities and
22 other infrastructure throughout this state.

23 (g) That not less than 10% of the funding awarded under this
24 section is awarded for qualified productions that are motion
25 pictures, documentaries, or television series with a budget of less
26 than \$15,000,000.00.

27 (H) FOR AGREEMENTS ENTERED INTO AFTER THE EFFECTIVE DATE OF

1 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION, THE AGREEMENT SHALL
2 PROVIDE THAT ONLY THE DIRECT PRODUCTION EXPENDITURES, THE QUALIFIED
3 PERSONNEL EXPENDITURES AND THE COMBINATION OF DIRECT PRODUCTION
4 EXPENDITURES AND QUALIFIED PERSONNEL EXPENDITURES INCURRED ON OR
5 BEFORE SEPTEMBER 30, 2016 ARE ELIGIBLE FOR FUNDING.

6 (4) An eligible production company intending to produce a
7 qualified production in this state may submit an application for
8 funding under this section to the Michigan film office. The request
9 shall be submitted in a form prescribed by the office and shall be
10 accompanied by an application fee equal to 0.2% of the funding
11 requested but not less than \$200.00 and not more than \$5,000.00 and
12 all of the information and records requested by the office. An
13 application fee received by the office under this subsection shall
14 be deposited in the Michigan film promotion fund. The office shall
15 not process the application until it is complete. If an eligible
16 production company is producing a qualified production at a
17 qualified facility, a copy of the agreement between the eligible
18 production company and the qualified facility shall be provided to
19 the office before the office enters into an agreement to award
20 funding under this section. The office shall process each
21 application within 21 days after the application is complete as
22 determined by the office. As part of the application, the company
23 shall estimate direct production expenditures and qualified
24 personnel expenditures for an identified qualified production. If
25 the office determines to award funding under this section to an
26 eligible production company, the office with the concurrence of the
27 fund president or his or her designee shall enter into an agreement

1 under this section. The agreement shall include, but is not limited
2 to, all of the following:

3 (a) A requirement that the eligible production company
4 commence work in this state on the identified qualified production
5 within 90 days of the date of the agreement or else the agreement
6 shall expire. However, upon request submitted by the company based
7 on good cause, the office may extend the period for commencement of
8 work in this state for up to an additional 90 days.

9 (b) A statement identifying the company and the qualified
10 production that the company intends to produce in whole or in part
11 in this state.

12 (c) A unique number assigned to the qualified production by
13 the office.

14 (d) A requirement that the qualified production not depict
15 obscene matter or an obscene performance.

16 (e) If the qualified production is a long-form narrative film
17 production, a requirement that the qualified production include
18 within its presentation worldwide for the life of the qualified
19 production an acknowledgment as provided by the office that
20 promotes the ~~pure~~**PURE** Michigan tourism campaign or any successor
21 campaign. If the qualified production is a television show, a
22 requirement that the qualified production include within each
23 broadcast of 30 minutes or longer an acknowledgment as provided by
24 the office that promotes the ~~pure~~**PURE** Michigan tourism campaign or
25 any successor campaign. If the qualified production is a music
26 video, a requirement that the music video include an acknowledgment
27 as provided by the office that promotes the ~~pure~~**PURE** Michigan

1 tourism campaign or any successor campaign. If the qualified
2 production is an interactive game, a requirement that the qualified
3 production include with each unit distributed and online promotions
4 an acknowledgment as provided by the office that promotes the ~~pure~~
5 **PURE** Michigan tourism campaign or any successor campaign. If the
6 qualified production is a long-form narrative film production, the
7 office also may require that, if the qualified production is
8 distributed by digital video disc or other digital media for the
9 secondary market, the qualified production include a video between
10 30 and 60 seconds long in a form approved by the office that
11 promotes the ~~pure~~**PURE** Michigan tourism campaign or any successor
12 campaign.

13 (f) A requirement that the company provide the office with the
14 information and independent certification the office deems
15 necessary to verify direct production expenditures and qualified
16 personnel expenditures, and eligibility for funding under this
17 section, which may include a report of direct production
18 expenditures and qualified personnel expenditures for the qualified
19 production audited and certified by an independent certified public
20 accountant.

21 (g) If determined to be necessary by the office, a provision
22 for addressing expenditures in excess of those identified in the
23 agreement.

24 (h) A requirement that residual payments to above the line
25 personnel, personal service corporations, loan out companies,
26 professional employer organizations, limited liability companies,
27 corporations, or other entities for a qualified production are

1 subject to taxation in this state under the income tax act of 1967,
2 1967 PA 281, MCL 206.1 to 206.713. With respect to residual
3 payments not otherwise subject to withholding under section 703 of
4 the income tax act of 1967, 1967 PA 281, MCL 206.703, the eligible
5 production company, affiliate entity, or its successor company
6 shall elect to either, for a period of not less than 12 years
7 following theatrical release of the qualified production, withhold
8 taxes from those residual payments and pay to this state the amount
9 provided under section 51 of the income tax act of 1967, 1967 PA
10 281, MCL 206.51, or require above the line personnel paid directly
11 or through, except as otherwise provided in this subdivision,
12 personal services corporations, loan out companies, professional
13 employer organizations, limited liability companies, corporations,
14 or other entities for the services of above the line personnel
15 receiving payments for direct production expenditures or qualified
16 personnel expenditures under this section to register to do
17 business under the laws of this state. To the extent that the
18 production company elects not to withhold, it shall notify the
19 above the line personnel of their registration obligations in
20 writing at the time of engagement for their services. Residual
21 payments shall include deferred, residual, or contingent
22 compensation, royalties, or profit participation relating to the
23 qualified production. A personal service corporation, loan out
24 company, professional employer organization, limited liability
25 company, corporation, or other entity is exempt from the
26 requirement to be registered to do business under the laws of this
27 state if it receives less than \$250,000.00 for the above the line

1 services of an actor during the period that the qualified
2 production is produced in this state and any related residual
3 payments are based solely on a collective bargaining agreement. As
4 used in this subdivision, "loan out company" means a personal
5 service corporation or other entity contracted with and retained by
6 the production company to provide individual personnel, including
7 artists, crew, actors, directors, and producers, for the
8 performance of services used directly in a production, but not
9 including entities retained by the production company to provide
10 tangible property or outside contractor service, including
11 catering, construction, trailers, equipment, and transportation.

12 (5) In determining whether to award funding under this
13 section, the Michigan film office shall consider all of the
14 following:

15 (a) The potential that, in the absence of funding, the
16 qualified production will be produced in a location other than this
17 state.

18 (b) The extent to which the qualified production may have the
19 effect of promoting this state as a tourist destination.

20 (c) The extent to which the qualified production may have the
21 effect of promoting economic development or job creation in this
22 state.

23 (d) The extent to which state funding will attract private
24 investment for the production of qualified productions in this
25 state.

26 (e) The record of the eligible production company in
27 completing commitments to engage in a qualified production.

1 (f) The extent to which the qualified production will employ
2 Michigan residents.

3 (g) Whether the eligible production company will hold a
4 premiere in this state for the qualified production.

5 (h) Whether the eligible production company will make film
6 trailers and clips available to the office for the ~~Pure Michigan~~
7 tourism campaign or any successor campaign to promote the qualified
8 production and the Pure Michigan tourism campaign or any successor
9 campaign.

10 (6) If the Michigan film office determines that an eligible
11 production company has complied with the terms of an agreement
12 entered into under this section, the office shall award funding as
13 provided in this section. A person that willfully submits
14 information under this section that the person knows to be
15 fraudulent or false shall, in addition to any other penalties
16 provided by law, be liable for a civil penalty equal to the amount
17 of funding provided to the person under this section. A penalty
18 collected under this section shall be deposited in the Michigan
19 film promotion fund.

20 (7) Information, records, or other data received, prepared,
21 used, or retained by the Michigan film office under this section
22 that are submitted by an eligible production company and considered
23 by the applicant and acknowledged by the office as confidential
24 shall not be subject to the disclosure requirements of the freedom
25 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
26 records, or other data shall only be considered confidential to the
27 extent that the information or records describe the commercial and

1 financial operations or intellectual property of the company, the
2 information or records have not been publicly disseminated at any
3 time, and disclosure of the information or records may put the
4 company at a competitive disadvantage. For purposes of this
5 subsection, information or records that describe commercial and
6 financial operations do not include that portion of information or
7 records that include any expenses that qualify under this section
8 as direct production expenditures or qualified personnel
9 expenditures.

10 (8) The office shall produce a performance dashboard for the
11 assistance authorized by this section. The performance dashboard
12 shall be made available by the office on the fund's website and
13 shall be updated at least annually. The performance dashboard shall
14 include the following measures:

15 (a) Direct and indirect economic impacts in this state of the
16 assistance authorized by this section.

17 (b) Direct and indirect job creation attributable to the
18 assistance authorized by this section.

19 (c) Direct and indirect private investment in this state
20 attributable to the assistance authorized by this section.

21 (d) Any other measures considered relevant by the office or
22 the Michigan film advisory council.

23 (e) The name of each eligible production company and the
24 amount of each incentive ~~dispersed~~ **DISBURSED** for each state
25 certified qualified production.

26 (9) Funding under this section for above the line personnel
27 shall not exceed 30% of total funding under this section for each

1 qualified production.

2 (10) To be eligible for funding under this section, except as
3 otherwise provided in subsection (11), Michigan residents shall be
4 hired to work on qualified productions ~~as follows:~~

5 ~~—— (a) Through **THROUGH** September 30, 2017, 2015, at a ratio of~~
6 not less than 1 Michigan resident for every nonresident hired.

7 ~~—— (b) Beginning October 1, 2017 through September 30, 2020, at a~~
8 ~~ratio of not less than 1.5 Michigan residents for every nonresident~~
9 ~~hired.~~

10 ~~—— (c) Beginning October 1, 2020 through September 30, 2022, at a~~
11 ~~ratio of not less than 2 Michigan residents for every nonresident~~
12 ~~hired.~~

13 ~~—— (d) Beginning October 1, 2022, at a ratio of not less than 3~~
14 ~~Michigan residents for every nonresident hired.~~

15 (11) A producer may apply to the Michigan economic development
16 corporation for a waiver of the Michigan resident hiring
17 requirements described in subsection (10), based on the
18 unavailability of qualified Michigan residents. The Michigan
19 economic development corporation may waive the Michigan resident
20 hiring requirement described in subsection (10) if the Michigan
21 economic development corporation determines that there is an
22 insufficient number of qualified Michigan residents for the
23 qualified production.

24 (12) The legislature finds and declares that funding
25 authorized under this section to encourage diversification of the
26 economy, to encourage film production, to encourage investment, and
27 to encourage the creation of jobs in this state is a public purpose

House Bill No. 4122 as amended March 10, 2015

1 and of paramount concern in the interest of the health, safety, and
2 general welfare of the citizens of this state. It is the intent of
3 the legislature that the economic benefits, film production,
4 investment, and the creation of jobs resulting from this section
5 shall accrue substantially within this state.

6 (13) The fund board may authorize the use of money
7 appropriated for the program authorized by this section for
8 administration of the program. However, the fund board shall not
9 use more than 4% of the annual appropriation for administering the
10 program authorized under this section.

11 (14) At the end of each fiscal year, the commissioner shall
12 certify the total amount of unclaimed certificates of completion,
13 agreements where work has not commenced as required in subsection
14 (4), and agreements for qualified productions the commissioner
15 reasonably believes will not be completed. Funding allocated for
16 qualified productions described in the preceding sentence may be
17 reallocated.

18 ~~(15) The Michigan film office shall not award funding 7 years~~
19 ~~after the effective date of the amendatory act that added this~~
20 ~~subsection.~~ **NOTWITHSTANDING ANY OTHER PROVISION IN SECTION 29D,**
21 **AFTER SEPTEMBER 30, 2016 AFTER ALL PAYMENTS AND OBLIGATIONS UNDER**
22 **THIS SECTION HAVE BEEN SATISFIED, THE MONEY REMAINING IN THE**
23 **MICHIGAN FILM PROMOTION FUND SHALL REVERT BACK TO THE GENERAL FUND**
24 **OF THIS STATE [AND SHALL ONLY BE USED TO REPAY STATE PUBLIC EMPLOYEE**
RETIREMENT SYSTEMS FOR ANY LOSSES INCURRED DUE TO THE CONSTRUCTION OR
OPERATION OF A QUALIFIED FACILITY].

25 (16) As used in this section:

26 (a) "Above the line personnel" means a producer, director,
27 writer, actor, other than extras and stunt performers, or other

1 similar personnel whose compensation is negotiated prior to the
2 start of the production.

3 (b) "Below the line crew" means persons employed by an
4 eligible production company for state certified qualified
5 production expenditures made after production begins and before
6 production is completed, including, but not limited to, a best boy,
7 boom operator, camera loader, camera operator, assistant camera
8 operator, compositor, cook, driver, dialogue editor, film editor,
9 assistant film editor, focus puller, Foley operator, Foley editor,
10 gaffer, grip, key grip, lighting crew, lighting board operator,
11 lighting technician, music editor, sound editor, sound effects
12 editor, sound mixer, steadicam operator, first assistant camera
13 operator, second assistant camera operator, digital imaging
14 technician, camera operator working with a director of photography,
15 electric best boy, grip best boy, dolly grip, rigging grip,
16 assistant key for makeup, assistant key for hair, assistant script
17 supervisor, set construction foreperson, lead set dresser,
18 assistant key for wardrobe, scenic foreperson, assistant
19 propmaster, assistant audio mixer, assistant boom person, assistant
20 key for special effects, stunt performer, and other similar
21 personnel. Below the line crew does not include a producer,
22 director, writer, actor, or other similar personnel.

23 (c) "Direct production expenditure" means a development,
24 preproduction, production, or postproduction expenditure made in
25 this state directly attributable to the production or development
26 of a qualified production that is a transaction subject to taxation
27 in this state. Direct production expenditure does not include out-

1 of-state production costs that are made in this state even if the
2 costs are passed through a third-party company in this state or
3 payments made by an eligible production company to its parent
4 company, affiliate, subsidiary, or joint venture partner except
5 where the payments are for transactions entered into pursuant to
6 arm's-length negotiations and which reflect a commercially
7 reasonable price for the goods and services purchased. A direct
8 production expenditure must have true economic substance within the
9 state. Direct production expenditure does not include a prize
10 payable to participants in a game show; an expenditure for
11 entertainment, amusement, or recreation; or an expenditure of more
12 than \$2,500.00 for the purchase of artwork or jewelry used in a
13 production. Direct production expenditure does not include a
14 qualified personnel expenditure. Direct production expenditure
15 includes payments to vendors doing business in this state to
16 purchase or use tangible personal property in producing the
17 qualified production or to purchase services relating to the
18 production or development of the qualified production, including
19 all of the following:

20 (i) Production work, production equipment, production software,
21 development work, postproduction work, postproduction equipment,
22 postproduction software, set design, set construction, set
23 operations, props, lighting, wardrobe, makeup, makeup accessories,
24 photography, sound synchronization, special effects, visual
25 effects, audio effects, digital effects, film processing, music,
26 sound mixing, editing, interactive game development and
27 programming, and related services and materials.

1 (ii) Use of facilities or equipment, use of soundstages or
2 studios, location fees, and related services and materials.

3 (iii) Catering, food, lodging, and related services and
4 materials.

5 (iv) Use of vehicles, which may include chartered aircraft
6 based in this state used for transportation in this state directly
7 attributable to production of a qualified production, but may not
8 include the chartering of aircraft for transportation outside of
9 this state.

10 (v) Commercial airfare if purchased through a travel agency or
11 travel company based in this state for travel to this state or
12 within this state directly attributable to production or
13 development of a qualified production.

14 (vi) Insurance coverage or bonding if purchased from an
15 insurance agent based in this state.

16 (vii) Interest on a loan, if the entity from which the
17 financing is obtained is a public, private, or institutional entity
18 with the requisite level of physical presence in this state that is
19 not related to or affiliated with the eligible production company
20 or any above the line personnel or cast members, and whose
21 principal business activity is the lending of money to individuals
22 and businesses. In addition, the financing shall be a good faith
23 loan, payable by the eligible production company, evidenced by an
24 enforceable promissory note or other debt instrument with clear
25 repayment obligations and bearing a market-related rate of
26 interest.

27 (viii) Other expenditures for production of a qualified

1 production in accordance with generally accepted entertainment
2 industry practices.

3 (d) "Eligible production company" or "company" means an entity
4 in the business of producing qualified productions or for
5 interactive games in the business of developing interactive games,
6 but does not include an entity that is more than 30% owned,
7 affiliated, or controlled by an entity or individual who is in
8 default on a loan made by this state, a loan guaranteed by this
9 state, or a loan made or guaranteed by any other state. For an
10 interactive game, an eligible production company need not possess
11 ownership of or legal control over all of the intellectual property
12 rights or other rights necessary to complete the qualified
13 production in its entirety nor be the same entity that distributes
14 or publishes the interactive game.

15 (e) "Made in this state" means all of the following:

16 (i) Tangible personal property and services acquired by the
17 eligible production company from a source within this state. If an
18 item of tangible personal property is not available from a source
19 within this state and a vendor with the requisite physical presence
20 in this state that regularly sells or leases property of that kind
21 obtains the property from an out-of-state vendor and sells or
22 leases it to an eligible production company, that expenditure is
23 considered made in this state and is a direct production
24 expenditure and not an out-of-state production cost.

25 (ii) Services wholly performed within this state.

26 (f) "Obscene matter or an obscene performance" means matter
27 described in 1984 PA 343, MCL 752.361 to 752.374.

1 (g) "Postproduction expenditure" means a direct expenditure
2 for editing, Foley recording, automatic dialogue replacement, sound
3 editing, special or visual effects including computer-generated
4 imagery or other effects, scoring and music editing, beginning and
5 end credits, negative cutting, soundtrack production, dubbing,
6 subtitling, or addition of sound or visual effects. Postproduction
7 expenditure includes direct expenditures for advertising,
8 marketing, or related expenses.

9 (h) "Postproduction facility" means a permanent facility
10 within this state equipped for the postproduction of motion
11 pictures, television shows, or digital media production that meets
12 all of the following requirements:

13 (i) Includes at least 3,000 square feet of contiguous space.

14 (ii) Includes at least 8 work stations.

15 (iii) Has been a qualified film and digital media infrastructure
16 project from which an investment expenditure certificate was issued
17 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
18 208.1457, or has been the location of a state certified qualified
19 production for which a postproduction certificate of completion was
20 issued under section 455 of the Michigan business tax act, 2007 PA
21 36, MCL 208.1455, or both.

22 (i) "Producer" means an individual without regard to his or
23 her actual title or screen credit involved in or responsible for
24 any of the following:

25 (i) Funding for financing in whole or in part, or arranging for
26 the funding, or financing, of the qualified production.

27 (ii) Obtaining the creative rights to or the intellectual

1 property for development or production of the qualified production.

2 (iii) Hiring above the line personnel.

3 (iv) Supervising the overall production of the qualified
4 production.

5 (v) Arranging for the exhibition of the qualified production.

6 (j) "Qualified facility" means a permanent facility within
7 this state equipped for the production of motion pictures,
8 television shows, or digital media production that meets all of the
9 following requirements:

10 (i) Includes more than 1 soundstage.

11 (ii) Includes not less than 3,000 square feet of contiguous,
12 column-free space for production activities with a height of at
13 least 12 feet.

14 (iii) Includes any grid and sufficient built-in electric service
15 for shooting without the need of portable electric generators.

16 (iv) Has been a qualified film and digital media infrastructure
17 project for which an investment expenditure certificate was issued
18 under section 457 of the Michigan business tax act, 2007 PA 36, MCL
19 208.1457, or has been the location of a state certified qualified
20 production for which a postproduction certificate of completion was
21 issued under section 455 of the Michigan business tax act, 2007 PA
22 36, MCL 208.1455, or both.

23 (k) "Qualified personnel expenditure" means an expenditure
24 made in this state directly attributable to the production or
25 development of a qualified production that is a transaction subject
26 to taxation in this state and is a payment or compensation for
27 personnel, talent, management, or labor, including both of the

1 following:

2 (i) Payment of wages, benefits, or fees for talent, management,
3 or labor.

4 (ii) Payment to a personal services corporation or professional
5 employer organization for the services of a performing artist or
6 crew member if the personal services corporation or professional
7 employer organization is subject to taxation in this state on the
8 portion of the payment qualifying for funding under this section
9 and the payments received by the performing artist or crew member
10 that are subject to taxation under the income tax act of 1967, 1967
11 PA 281, MCL 206.1 to 206.713, and are withheld and paid to this
12 state in the amount provided under section 703 of the income tax
13 act of 1967, 1967 PA 281, MCL 206.703.

14 (l) "State certified qualified production" or "qualified
15 production" means single media or multimedia entertainment content
16 created in whole or in part in this state for distribution or
17 exhibition to the general public in 2 or more states by any means
18 and media in any digital media format, film, or video tape,
19 including, but not limited to, a motion picture, a documentary, a
20 television series, a television miniseries, a television special,
21 interstitial television programming, long-form television,
22 interactive television, music videos, interactive games such as
23 video games or wireless games, including console, computer, mobile,
24 and online games, internet programming, an internet video, a sound
25 recording, a video, digital animation, or an interactive website.
26 Qualified production also includes any trailer, pilot, video
27 teaser, or demo created primarily to stimulate the sale, marketing,

1 promotion, or exploitation of future investment in a production.

2 Qualified production does not include any of the following:

3 (i) A production for which records are required to be
4 maintained with respect to any performer in the production under 18
5 USC 2257.

6 (ii) A production that includes obscene matter or an obscene
7 performance.

8 (iii) A production that primarily consists of televised news or
9 current events.

10 (iv) A production that primarily consists of a live sporting
11 event.

12 (v) A production that primarily consists of political
13 advertising.

14 (vi) A radio program.

15 (vii) A weather show.

16 (viii) A financial market report.

17 (ix) An awards show or other gala event production.

18 (x) A production with the primary purpose of fund-raising.

19 (xi) A production that primarily is for employee training or
20 in-house corporate advertising or other similar production.

21 (xii) A commercial.