

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE BILL 315

Short Title: Minor's Entertainment Contracts. (Public)

Sponsors: Senator Horton.

Referred to: Judiciary I.

March 6, 2003

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO CONTRACTS OF MINORS FOR ARTISTIC OR
3 CREATIVE SERVICES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 48A of the General Statutes is amended by
6 designating the existing Chapter as Article 1, to be entitled "Age of Majority", and by
7 adding a new Article to read:

8 "Article 2.

9 "Certain Contracts of Minors.

10 "§ 48A-11. Applicability.

11 This Article applies to the following contracts entered into between an
12 unemancipated minor and any third party or parties on or after January 1, 2004:

13 (1) A contract pursuant to which a person is employed or agrees to render
14 artistic or creative services, either directly or through a third party,
15 including, but not limited to, a personal services corporation (loan-out
16 company). "Artistic or creative services" includes, but is not limited to,
17 services as an actor, actress, dancer, musician, comedian, singer, stunt
18 person, voice-over artist, or other performer or entertainer, or as a
19 songwriter, musical producer or arranger, writer, director, producer,
20 production executive, choreographer, composer, conductor, or
21 designer.

22 (2) A contract pursuant to which a person agrees to purchase, or otherwise
23 secure, sell, lease, license, or otherwise dispose of literary, musical, or
24 dramatic properties, or use of a person's likeness, voice recording,
25 performance, or story of or incidents in his or her life, either tangible
26 or intangible, or any rights therein for use in motion pictures,
27 television, the production of sound recordings in any format now
28 known or hereafter devised, the legitimate or living stage, or otherwise
29 in the entertainment field.

1 (3) A contract pursuant to which a person is employed or agrees to render
2 services as a participant or player in a sport.

3 (4) Where a minor renders services as an extra, background performer, or
4 in a similar capacity, through an agency or service that provides one or
5 more performers for a fee (casting agency), the agency or service shall
6 be considered the minor's employer for the purposes of this Article.

7 **"§ 48A-12. No disaffirmance if approved by superior court.**

8 (a) A contract, otherwise valid, of a type described in G.S. 48A-11, entered into
9 during minority, cannot be disaffirmed on that ground either during the minority of the
10 person entering into the contract, or at any time thereafter, if the contract has been
11 approved by the superior court in any county in which the minor resides or is employed
12 or in which any party to the contract has its principal office in this State for the
13 transaction of business.

14 (b) Approval of the court may be given on petition of any party to the contract,
15 after such reasonable notice to all other parties to the contract as is fixed by the court,
16 with opportunity to such other parties to appear and be heard.

17 (c) Approval of the court given under this section extends to the whole of the
18 contract and all of its terms and provisions, including, but not limited to, any optional or
19 conditional provisions contained in the contract for extension, prolongation, or
20 termination of the term of the contract.

21 (d) For the purposes of any proceeding under this Article, a parent or legal
22 guardian, as the case may be, entitled to the physical custody, care, and control of the
23 minor at the time of the proceeding shall be considered the minor's guardian ad litem for
24 the proceeding, unless the court shall determine that appointment of a different
25 individual as guardian ad litem is required in the best interests of the minor.

26 **"§ 48A-12.1. Copies of certain documents to be provided.**

27 A parent or guardian, as the case may be, entitled to the physical custody, care, and
28 control of a minor who enters into a contract of a type described in G.S. 48A-11 shall
29 provide a certified copy of the minor's birth certificate indicating the minor's minority to
30 the other party or parties to the contract and in addition, in the case of a guardian, a
31 certified copy of the court document appointing the person as the minor's legal
32 guardian.

33 **"§ 48A-13. Financial safeguards in court orders approving contracts.**

34 (a) Notwithstanding any other statute, in an order approving a minor's contract of
35 a type described in G.S. 48A-11, the court shall require that fifteen percent (15%) of the
36 minor's gross earnings pursuant to the contract be set aside by the minor's employer in
37 trust, in an account or other savings plan, and preserved for the benefit of the minor in
38 accordance with G.S. 48A-14. The court may also require that more than fifteen percent
39 (15%) of the minor's gross earnings be set aside in trust, in an account or other savings
40 plan, and preserved for the benefit of the minor in accordance with G.S. 48A-14, upon
41 request of the minor's parent or legal guardian, or the minor, through his or her guardian
42 ad litem.

43 (b) The court shall require that at least one parent or legal guardian, as the case
44 may be, entitled to the physical custody, care, and control of the minor at the time the

1 order is issued be appointed as trustee of the funds ordered to be set aside in trust for the
2 benefit of the minor, unless the court shall determine that appointment of a different
3 individual, individuals, entity, or entities as trustee or trustees is required in the best
4 interest of the minor.

5 (c) The trustee or trustees of the funds ordered to be set aside in trust shall
6 promptly provide the minor's employer with a true and accurate photocopy of the
7 trustee's statement pursuant to G.S. 48A-14(c).

8 (d) The minor's employer shall deposit or disburse the funds as required by the
9 order within 15 business days of receiving the order and receiving the trustee's
10 statement pursuant to G.S. 48A-14. Notwithstanding any other statute, pending receipt
11 of the trustee's statement, the minor's employer shall hold for the benefit of the minor
12 the percentage ordered by the court of the minor's gross earnings pursuant to the
13 contract.

14 (e) When making the initial deposit of funds pursuant to the order, the minor's
15 employer shall provide the financial institution with a copy of the order.

16 (f) Once the minor's employer deposits the set-aside funds pursuant to G.S.
17 48A-14, in trust, in an account or other savings plan, the minor's employer shall have no
18 further obligation or duty to monitor or account for the funds. The trustee or trustees of
19 the trust shall be the only individual, individuals, entity, or entities with the obligation
20 or duty to monitor and account for those funds once they have been deposited by the
21 minor's employer. The trustee or trustees shall do an annual accounting of the funds
22 held in trust, in an account or other savings plan, in accordance with Sections 16062 and
23 16063 of the Probate Code.

24 (g) The court shall have continuing jurisdiction over the trust established
25 pursuant to the order and may at any time, upon petition of the parent or legal guardian,
26 the minor, through his or her guardian ad litem, or the trustee or trustees, on good cause
27 shown, order that the trust be amended or terminated, notwithstanding the provisions of
28 the declaration of trust. An order amending or terminating a trust may be made only
29 after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the
30 trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all
31 parties to appear and be heard.

32 (h) The trustee or trustees of the funds ordered to be set aside shall promptly
33 notify the minor's employer in writing of any change in facts that affect the employer's
34 obligation or ability to set aside the funds in accordance with the order, including, but
35 not limited to, a change of financial institution or account number, or the existence of a
36 new or amended order issued pursuant to subsection (g) of this section amending or
37 terminating the employer's obligations under the original order. The written notification
38 shall include the information set forth in subsection (c) of this section and shall be
39 accompanied by a true and accurate photocopy of the new or amended order.

40 **"§ 48A-13.1. Financial safeguards when no court order.**

41 (a) Notwithstanding any other statute, for any minor's contract of a type
42 described in G.S. 48A-11 that is not being submitted for approval by the court pursuant
43 to G.S. 48A-12, or for which the court has issued a final order denying approval, fifteen
44 percent (15%) of the minor's gross earnings pursuant to the contract shall be set aside by

1 the minor's employer in trust, in an account or other savings plan, and preserved for the
2 benefit of the minor in accordance with G.S. 48A-14. At least one parent or legal
3 guardian, as the case may be, entitled to the physical custody, care, and control of the
4 minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the
5 court, upon petition by the parent or legal guardian, the minor, through his or her
6 guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment
7 of a different individual, individuals, entity, or entities as trustee or trustees is required
8 in the best interest of the minor.

9 (b) A parent or guardian, as the case may be, entitled to the physical custody,
10 care, and control of the minor shall promptly provide the minor's employer with a true
11 and accurate photocopy of the trustee's statement pursuant to G.S. 48A-14(c) and in
12 addition, in the case of a guardian, a certified copy of the court document appointing the
13 person as the minor's legal guardian.

14 (c) The minor's employer shall deposit fifteen percent (15%) of the minor's gross
15 earnings pursuant to the contract within 15 business days of receiving the trustee's
16 statement pursuant to G.S. 48A-14(c), or if the court denies approval of the contract,
17 within 15 business days of receiving a final order denying approval of the contract.
18 Notwithstanding any other statute, pending receipt of the trustee's statement or the final
19 court order, the minor's employer shall hold for the benefit of the minor the fifteen
20 percent (15%) of the minor's gross earnings pursuant to the contract.

21 (d) Once the minor's employer deposits the set-aside funds in trust, in an account
22 or other savings plan pursuant to G.S. 48A-14, the minor's employer shall have no
23 further obligation or duty to monitor or account for the funds. The trustee or trustees of
24 the trust shall be the only individual, individuals, entity, or entities with the obligation
25 or duty to monitor and account for those funds once they have been deposited by the
26 minor's employer. The trustee or trustees shall do an annual accounting of the funds
27 held in trust, in an account or other savings plan, in accordance with Sections 16062 and
28 16063 of the Probate Code.

29 (e) Upon petition of the parent or legal guardian, the minor, through his or her
30 guardian ad litem, or the trustee or trustees of the trust, to the superior court in any
31 county in which the minor resides or in which the trust is established, the court may at
32 any time, on good cause shown, order that the trust be amended or terminated,
33 notwithstanding the provisions of the declaration of trust. An order amending or
34 terminating a trust may be made only after reasonable notice to the beneficiary, to the
35 parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is
36 then a minor, with opportunity for all parties to appear and be heard.

37 (f) A parent or guardian, as the case may be, entitled to the physical custody,
38 care, and control of the minor shall promptly notify the minor's employer in writing of
39 any change in facts that affect the employer's obligation or ability to set aside funds for
40 the benefit of the minor in accordance with this section, including, but not limited to, a
41 change of financial institution or account number, or the existence of a new or amended
42 order issued pursuant to subsection (e) of this section amending or terminating the
43 employer's obligations under this section. The written notification shall be accompanied
44 by a true and accurate photocopy of the trustee's statement and attachments pursuant to

1 subdivision (c) of G.S. 48A-14, or a true and accurate photocopy of the new or amended
2 order.

3 (g) Where a parent or guardian, as the case may be, is entitled to the physical
4 custody, care, and control of a minor who enters into a contract of a type described in
5 G.S. 48A-11, the relationship between the parent or guardian, as the case may be, and
6 the minor is a fiduciary relationship that is governed by the law of trusts, whether or not
7 a court has issued a formal order to that effect. The parent or guardian, as the case may
8 be, acting in his or her fiduciary relationship, shall, with the earnings and accumulations
9 of the minor under the contract, pay all liabilities incurred by the minor under the
10 contract, including, but not limited to, payments for taxes on all earnings, including
11 taxes on the amounts set aside under this section or G.S. 48A-13 and payments for
12 personal or professional services rendered to the minor or the business related to the
13 contract. Nothing in this subsection shall be construed to alter any other existing
14 responsibilities of a parent or legal guardian to provide for the support of a minor child.

15 (h) With respect to contracts pursuant to which a person is employed to render
16 services as a musician, singer, songwriter, musical producer, or arranger only, "gross
17 earnings" for purposes of this Article means the amount paid directly to the minor
18 pursuant to the contract, including the payment of any advances to the minor pursuant to
19 the contract, but excluding deductions to offset those advances or other expenses
20 incurred by the employer pursuant to the contract.

21 **§ 48A-14. Trust to be established.**

22 (a) The trustee or trustees shall establish a trust pursuant to this section at a bank,
23 savings and loan institution, credit union, brokerage firm, or company registered under
24 the Investment Company Act of 1940, unless a similar trust has been previously
25 established, for the purpose of preserving for the benefit of the minor the portion of the
26 minor's gross earnings pursuant to G.S. 48A-13(a) or pursuant to G.S. 48A-13.1(a). The
27 trustee or trustees shall establish the trust pursuant to this section within seven business
28 days after the minor's contract is signed by the minor and the employer.

29 (b) Except as otherwise provided in this section, prior to the date on which the
30 beneficiary of the trust attains the age of 18 years or the issuance of a declaration of
31 emancipation of the minor under G.S. 7B-3504, no withdrawal by the beneficiary or any
32 other individual, individuals, entity, or entities may be made of funds on deposit in trust
33 without written order of the superior court pursuant to G.S. 48A-13(g) or G.S.
34 48A-13.1(e). Upon reaching the age of 18 years, the beneficiary may withdraw the
35 funds on deposit in trust only after providing a certified copy of the beneficiary's birth
36 certificate to the financial institution where the trust is located.

37 (c) The trustee or trustees shall, within 10 business days after the minor's contract
38 is signed by the minor and the employer, prepare a written statement under penalty of
39 perjury that shall include the name, address, and telephone number of the financial
40 institution, the name of the account, the number of the account, the name of the minor
41 beneficiary, the name of the trustee or trustees of the account, and any additional
42 information needed by the minor's employer to deposit into the account the portion of
43 the minor's gross earnings prescribed by G.S. 48A-13(a) or G.S. 48A-13.1(a). The
44 trustee or trustees shall attach to the written statement a true and accurate photocopy of

1 any information received from the financial institution confirming the creation of the
2 account, such as an account agreement, account terms, passbook, or other similar
3 writings.

4 (d) If the trust is established in the United States, it shall be established either
5 with a financial institution that is and remains insured at all times by the Federal
6 Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation
7 (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their
8 respective successors, or with a company that is and remains registered under the
9 Investment Company Act of 1940. If the trust is established outside the United States,
10 the financial institution shall be a first-class international bank. The trustee or trustees of
11 the trust shall be the only individual, individuals, entity, or entities with the obligation
12 or duty to ensure that the funds remain in trust, in an account or other savings plan, in a
13 financial institution insured in accordance with this section, or with a company that is
14 and remains registered under the Investment Company Act of 1940 as authorized by this
15 section.

16 (e) Upon application by the trustee or trustees to the financial institution or
17 company where the trust is held, the trust funds may be handled by the trustee or
18 trustees in any of the following methods:

19 (1) The trustee or trustees may transfer funds to another account or other
20 savings plan at the same financial institution or company, provided
21 that the funds transferred shall continue to be held in trust and subject
22 to this section.

23 (2) The trustee or trustees may transfer funds to another financial
24 institution or company, provided that the funds transferred shall
25 continue to be held in trust and subject to this Article and that the
26 trustee or trustees have provided written notification to the financial
27 institution or company to which the funds will be transferred that the
28 funds are subject to this section and written notice of the requirements
29 of this Article.

30 (3) The trustee or trustees may use all or a part of the funds to purchase, in
31 the name of and for the benefit of the minor:

32 a. Investment funds offered by a company registered under the
33 Investment Company Act of 1940, provided that if the
34 underlying investments are equity securities, the investment
35 fund is a broad-based index fund or invests broadly across the
36 domestic or a foreign regional economy, is not a sector fund,
37 and has assets under management of at least two hundred fifty
38 million dollars (\$250,000,000); or

39 b. Government securities and bonds, certificates of deposit, money
40 market instruments, money market accounts, or mutual funds
41 investing solely in those government securities and bonds,
42 certificates, instruments, and accounts that are available at the
43 financial institution where the trust fund or other savings plan is
44 held, provided that the funds remain in trust at a financial

1 institution insured by the FDIC, SIPC, or NCUSIF if within the
2 United States or maintained in a first-class international bank if
3 not within the United States; provided that those purchases have
4 a maturity date on or before the date upon which the minor will
5 attain the age of 18 years, and provided further that any
6 proceeds accruing from those purchases be redeposited into that
7 account or accounts or used to further purchase any of those or
8 similar securities, bonds, certificates, instruments, funds, or
9 accounts.

10 **"§ 48A-15. Talent agency contracts.**

11 (a) "Talent agency" means a person or corporation who engages in the
12 occupation of procuring, offering, promising, or attempting to procure employment or
13 engagements for an artist or artists, except that the activities of procuring, offering, or
14 promising to procure recording contracts for an artist or artists shall not of itself subject
15 a person or corporation to regulation and licensing under this Article. Talent agencies
16 may, in addition, counsel or direct artists in the development of their professional
17 careers.

18 (b) "Artists" means actors and actresses rendering services on the legitimate stage
19 and in the production of motion pictures, radio artists, musical artists, musical
20 organizations, directors of legitimate stage, motion picture and radio productions,
21 musical directors, writers, cinematographers, composers, lyricists, arrangers, models,
22 and other artists and persons rendering professional services in motion picture,
23 theatrical, radio, television, and other entertainment enterprises.

24 **"§ 48A-16. Disaffirmance of talent agency contracts.**

25 A minor cannot disaffirm a contract, otherwise valid, entered into during minority,
26 either during the actual minority of the minor entering into such contract or at any time
27 thereafter, with a duly licensed talent agency as defined in G.S. 48A-15, to secure
28 engagements to render artistic or creative services in motion pictures, television, the
29 production of phonograph records, the legitimate or living stage, or otherwise in the
30 entertainment field including, but without being limited to, services as an actor, actress,
31 dancer, musician, comedian, singer, or other performer or entertainer, or as a writer,
32 director, producer, production executive, choreographer, composer, conductor, or
33 designer, the blank form of which has been approved by the Commissioner of Labor,
34 where such contract has been approved by the superior court of the county where such
35 minor resides or is employed.

36 Such approval may be given by the superior court on the petition of either party to
37 the contract after such reasonable notice to the other party thereto as may be fixed by
38 said court, with opportunity to such other party to appear and be heard."

39 **SECTION 2.** This act is effective when it becomes law.