

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 315
Second Edition Engrossed 4/16/03
House Committee Substitute Favorable 5/27/03

Short Title: Minor's Entertainment and Sports Contracts.

(Public)

Sponsors:

Referred to:

March 6, 2003

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

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 48A-1 through G.S. 48A-3 are designated as Article 1,
6 "Age of Majority", of Chapter 48A of the General Statutes.

7 SECTION 2. Chapter 48A of the General Statutes is amended by adding a
8 new Article to read:

9 "Article 2.

10 "Certain Contracts of Minors.

11 "§ 48A-11. Applicability.

12 This Article applies to any of the following contracts entered into between an
13 unemancipated minor and any third party or parties:

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

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

1 known or hereafter devised, the legitimate or living stage, or otherwise
2 in the entertainment field.

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

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

10 **"§ 48A-12. No disaffirmance if approved by superior court.**

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

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

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

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

29 **"§ 48A-12.1. Copies of certain documents to be provided.**

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

36 **"§ 48A-13. Financial safeguards in court orders approving contracts.**

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

1 request of the minor's parent or legal guardian, or the minor, through his or her guardian
2 ad litem.

3 (b) The court shall require that at least one parent or legal guardian, as the case
4 may be, entitled to the physical custody, care, and control of the minor at the time the
5 order is issued be appointed as trustee of the funds ordered to be set aside in trust for the
6 benefit of the minor, unless the court shall determine that appointment of a different
7 individual, individuals, entity, or entities as trustee or trustees is required in the best
8 interest of the minor.

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

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

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

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

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

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

44 **"§ 48A-13.1. Financial safeguards when no court order.**

1 (a) Notwithstanding any other statute, for any minor's contract of a type
2 described in G.S. 48A-11 that is not being submitted for approval by the court pursuant
3 to G.S. 48A-12, or for which the court has issued a final order denying approval, fifteen
4 percent (15%) of the minor's gross earnings pursuant to the contract shall be set aside by
5 the minor's employer in trust, in an account or other savings plan, and preserved for the
6 benefit of the minor in accordance with G.S. 48A-14. At least one parent or legal
7 guardian, as the case may be, entitled to the physical custody, care, and control of the
8 minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the
9 court, upon petition by the parent or legal guardian, the minor, through his or her
10 guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment
11 of a different individual, individuals, entity, or entities as trustee or trustees is required
12 in the best interest of the minor.

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

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

26 (d) Once the minor's employer deposits the set-aside funds in trust, in an account
27 or other savings plan pursuant to G.S. 48A-14, the minor's employer shall have no
28 further obligation or duty to monitor or account for the funds. The trustee or trustees of
29 the trust shall be the only individual, individuals, entity, or entities with the obligation
30 or duty to monitor and account for those funds once they have been deposited by the
31 minor's employer. The trustee or trustees shall do an annual accounting of the funds
32 held in trust, in an account or other savings plan, in accordance with G.S. 28A-21-1, et
33 seq.

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

42 (f) A parent or guardian, as the case may be, entitled to the physical custody,
43 care, and control of the minor shall promptly notify the minor's employer in writing of
44 any change in facts that affect the employer's obligation or ability to set aside funds for

1 the benefit of the minor in accordance with this section, including, but not limited to, a
2 change of financial institution or account number, or the existence of a new or amended
3 order issued pursuant to subsection (e) of this section amending or terminating the
4 employer's obligations under this section. The written notification shall be accompanied
5 by a true and accurate photocopy of the trustee's statement and attachments pursuant to
6 subdivision (c) of G.S. 48A-14, or a true and accurate photocopy of the new or amended
7 order.

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

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

26 **"§ 48A-14. Trust to be established.**

27 (a) The trustee or trustees shall establish a trust pursuant to this section at a bank,
28 savings and loan institution, credit union, brokerage firm, or company registered under
29 the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., unless a similar trust
30 has been previously established, for the purpose of preserving for the benefit of the
31 minor the portion of the minor's gross earnings pursuant to G.S. 48A-13(a) or pursuant
32 to G.S. 48A-13.1(a). The trustee or trustees shall establish the trust pursuant to this
33 section within seven business days after the minor's contract is signed by the minor and
34 the employer.

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

1 (c) The trustee or trustees shall, within 10 business days after the minor's contract
2 is signed by the minor and the employer, prepare a written statement under penalty of
3 perjury that shall include the name, address, and telephone number of the financial
4 institution, the name of the account, the number of the account, the name of the minor
5 beneficiary, the name of the trustee or trustees of the account, and any additional
6 information needed by the minor's employer to deposit into the account the portion of
7 the minor's gross earnings prescribed by G.S. 48A-13(a) or G.S. 48A-13.1(a). The
8 trustee or trustees shall attach to the written statement a true and accurate photocopy of
9 any information received from the financial institution confirming the creation of the
10 account, such as an account agreement, account terms, passbook, or other similar
11 writings.

12 (d) If the trust is established in the United States, it shall be established either
13 with a financial institution that is and remains insured at all times by the Federal
14 Deposit Insurance Corporation, the Securities Investor Protection Corporation, or the
15 National Credit Union Share Insurance Fund or their respective successors, or with a
16 company that is and remains registered under the Investment Company Act of 1940, 15
17 U.S.C. § 80a-1, et seq. If the trust is established outside the United States, the financial
18 institution shall be an international banking corporation, as defined in G.S. 53-232.2.
19 The trustee or trustees of the trust shall be the only individual, individuals, entity, or
20 entities with the obligation or duty to ensure that the funds remain in trust, in an account
21 or other savings plan, in a financial institution insured in accordance with this section,
22 or with a company that is and remains registered under the Investment Company Act of
23 1940, 15 U.S.C. § 80a-1, et seq., as authorized by this section.

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

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

31 (2) The trustee or trustees may transfer funds to another financial
32 institution or company, provided that the funds transferred shall
33 continue to be held in trust and subject to this Article and that the
34 trustee or trustees have provided written notification to the financial
35 institution or company to which the funds will be transferred that the
36 funds are subject to this section and written notice of the requirements
37 of this Article.

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

40 a. Investment funds offered by a company registered under the
41 Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq.,
42 provided that if the underlying investments are equity securities,
43 the investment fund is a broad-based index fund or invests
44 broadly across the domestic or a foreign regional economy, is

1 not a sector fund, and has assets under management of at least
2 two hundred fifty million dollars (\$250,000,000); or

- 3 b. Government securities and bonds, certificates of deposit, money
4 market instruments, money market accounts, or mutual funds
5 investing solely in those government securities and bonds,
6 certificates, instruments, and accounts that are available at the
7 financial institution where the trust fund or other savings plan is
8 held, provided that the funds remain in trust at a financial
9 institution insured by the Federal Deposit Insurance
10 Corporation, the Securities Investor Protection Corporation, or
11 the National Credit Union Share Insurance Fund if within the
12 United States or maintained in an international banking
13 corporation, as defined in G.S. 53-232.2, if not within the
14 United States; provided that those purchases have a maturity
15 date on or before the date upon which the minor will attain the
16 age of 18 years, and provided further that any proceeds accruing
17 from those purchases be redeposited into that account or
18 accounts or used to further purchase any of those or similar
19 securities, bonds, certificates, instruments, funds, or accounts.

20 **"§ 48A-15. Talent agency contracts.**

21 (a) As used in this Article, the term 'talent agency' means a person or corporation
22 who engages in the occupation of procuring, offering, promising, or attempting to
23 procure employment or engagements for an artist or artists. Talent agencies may, in
24 addition, counsel or direct artists in the development of their professional careers.

25 (b) As used in this Article, the term 'artists' means actors and actresses rendering
26 services on the legitimate stage and in the production of motion pictures, radio artists,
27 musical artists, musical organizations, directors of legitimate stage, motion picture and
28 radio productions, musical directors, writers, cinematographers, composers, lyricists,
29 arrangers, models, and other artists and persons rendering professional services in
30 motion picture, theatrical, radio, television, and other entertainment enterprises.

31 **"§ 48A-16. Disaffirmance of talent agency contracts.**

32 A minor cannot disaffirm a contract, otherwise valid, entered into during minority,
33 either during the actual minority of the minor entering into the contract or at any time
34 thereafter, with a talent agency as defined in G.S. 48A-15, to secure engagements to
35 render artistic or creative services in motion pictures, television, the production of
36 phonograph records, the legitimate or living stage, or otherwise in the entertainment
37 field including, but without being limited to, services as an actor, actress, dancer,
38 musician, comedian, singer, or other performer or entertainer, or as a writer, director,
39 producer, production executive, choreographer, composer, conductor, or designer,
40 where the contract has been approved by the superior court of the county where such
41 minor resides or is employed. This approval may be given by the superior court on the
42 petition of either party to the contract after reasonable notice to the other party thereto
43 as may be fixed by said court, with opportunity to the other party to appear and be
44 heard."

1 **SECTION 3.** This act is effective when it becomes law and applies to
2 contracts entered into on or after January 1, 2004.