

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SENATE BILL 315
RATIFIED BILL

AN ACT RELATING TO CONTRACTS OF MINORS FOR ARTISTIC, CREATIVE,
OR ATHLETIC SERVICES.

The General Assembly of North Carolina enacts:

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

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

"Article 2.
"Certain Contracts of Minors.

"§ 48A-11. Applicability.

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

- (1) A contract pursuant to which a person is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation or loan-out company. As used in this Article, the term "artistic or creative services" includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.
- (2) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.
- (3) A contract pursuant to which a person is employed or agrees to render services as a participant or player in a sport.
- (4) Where a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one or more performers for a fee, such as a casting agency, the agency or service shall be considered the minor's employer for the purposes of this Article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or

terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(f) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to subsection (e) of this section amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to subdivision (c) of G.S. 48A-14, or a true and accurate photocopy of the new or amended order.

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

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

§ 48A-14. Trust to be established.

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

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

(c) The trustee or trustees shall, within 10 business days after the minor's contract is signed by the minor and the employer, prepare a written statement under penalty of perjury that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional information needed by the minor's employer to deposit into the account the portion of

the minor's gross earnings prescribed by G.S. 48A-13(a) or G.S. 48A-13.1(a). The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.

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

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

- (1) The trustee or trustees may transfer funds to another account or other savings plan at the same financial institution or company, provided that the funds transferred shall continue to be held in trust and subject to this section.
- (2) The trustee or trustees may transfer funds to another financial institution or company, provided that the funds transferred shall continue to be held in trust and subject to this Article and that the trustee or trustees have provided written notification to the financial institution or company to which the funds will be transferred that the funds are subject to this section and written notice of the requirements of this Article.
- (3) The trustee or trustees may use all or a part of the funds to purchase, in the name of and for the benefit of the minor:
 - a. Investment funds offered by a company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., provided that if the underlying investments are equity securities, the investment fund is a broad-based index fund or invests broadly across the domestic or a foreign regional economy, is not a sector fund, and has assets under management of at least two hundred fifty million dollars (\$250,000,000); or
 - b. Government securities and bonds, certificates of deposit, money market instruments, money market accounts, or mutual funds investing solely in those government securities and bonds, certificates, instruments, and accounts that are available at the financial institution where the trust fund or other savings plan is held, provided that the funds remain in trust at a financial institution insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or the National Credit Union Share Insurance Fund if within the United States or maintained in an international banking corporation, as defined in G.S. 53-232.2, if not within the United States; provided that those purchases have a maturity date on or before the date upon which the minor will attain the age of 18 years, and provided further that any proceeds accruing from those purchases be redeposited into that account or

accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

"§ 48A-15. Talent agency contracts.

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

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

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

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

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

In the General Assembly read three times and ratified this the 9th day of June, 2003.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____, m. this _____ day of _____, 2003