

## Senate Bill No. 210

### CHAPTER 667

An act to amend Sections 6750, 6752, and 6753 of the Family Code, and to add Section 1308.9 to the Labor Code, relating to minors.

[Approved by Governor October 2, 2003. Filed with Secretary of State October 3, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 210, Burton. Minors: artistic employment contracts.

(1) Existing law regulates certain contracts for artistic employment between an unemancipated minor and third parties, including employment as an actor, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or sports participant. Existing law provides for the establishment of a trust for the purpose of preserving for the benefit of the minor 15% of the minor's gross earnings or a greater percentage, if requested by the minor's parent or guardian.

This bill would define a minor's gross earnings for these purposes. The bill would specify who is a minor's employer for these purposes. The bill would limit the trust amounts to 15% of the minor's gross earnings and would specify the time period within which a minor's employer must receive a true and accurate photocopy of the trustee's statement. The bill would require the employer of a minor to forward to The Actors' Fund of America the funds set aside for the minor, if the parent, guardian, or trustee fails to provide the photocopy, as specified. The bill would also specify the rights and duties of The Actors' Fund of America in this regard, including the right to collect management, administrative, and investment expenses, and would exempt funds received by The Actors' Fund of America under the bill from the application of the Unclaimed Property Law, and provide for the dispersal of those funds to a beneficiary who has attained 18 years of age or who has been emancipated, or to the estate of a deceased beneficiary. The bill would provide that the trust account established for the minor pursuant to these provisions would be known as a Coogan Trust Account. The bill would make corresponding changes, and condition the issuance of certain work permits for a minor in the entertainment industry upon the establishment of a Coogan Trust Account, as specified.

(2) Existing law requires the written consent of the Labor Commissioner for the employment of minors under 16 years of age in artistic employment, as specified.

This bill would limit the period during which that consent is valid to 6 months or 10 business days, as specified, for the employment of certain minors in the entertainment industry.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6750 of the Family Code is amended to read:

6750. (a) This chapter applies to the following contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2000:

(1) A contract pursuant to which a minor 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 (loan-out company), or through a casting agency. “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 minor 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 minor is employed or agrees to render services as a participant or player in a sport.

(b) (1) If a minor is employed or agrees to render services directly for any person or entity, that person or entity shall be considered the minor’s employer for purposes of this chapter.

(2) If a minor’s services are being rendered through a third-party individual or personal services corporation (loan-out company), the person to whom or entity to which that third party is providing the minor’s services shall be considered the minor’s employer for purposes of this chapter.

(3) If a minor renders services as an extra, background performer, or in a similar capacity through an agency or service that provides one or more of those performers for a fee (casting agency), the agency or service shall be considered the minor’s employer for the purposes of this chapter.

(c) (1) For purposes of this chapter, the minor’s “gross earnings” shall mean the total compensation payable to the minor under the



contract or, if the minor's services are being rendered through a third-party individual or personal services corporation (loan-out company), the total compensation payable to that third party for the services of the minor.

(2) Notwithstanding paragraph (1), with respect to contracts pursuant to which a minor is employed or agrees to render services as a musician, singer, songwriter, musical producer, or arranger only, for purposes of this chapter, the minor's "gross earnings" shall mean the total amount paid 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, or, if the minor's services are being rendered through a third-party individual or personal services corporation (loan-out company), the total amount payable to that third party for the services of the minor.

SEC. 2. Section 6752 of the Family Code is amended to read:

6752. (a) A parent or guardian entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750 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.

(b) (1) Notwithstanding any other statute, in an order approving a minor's contract of a type described in Section 6750, the court shall require that 15 percent 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 Section 6753.

(2) 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.

(3) Within 10 business days after commencement of employment, the trustee or trustees of the funds ordered to be set aside in trust shall provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753. Upon presentation of the trustee's statement offered pursuant to this subdivision, the employer shall provide the parent or guardian with a written acknowledgement of receipt of the statement.



(4) The minor's employer shall deposit or disburse the 15 percent of the minor's gross earnings pursuant to the contract within 15 business days after receiving a true and accurate copy of the trustee's statement pursuant to subdivision (c) of Section 6753, a certified copy of the minor's birth certificate, and, in the case of a guardian, a certified copy of the court document appointing the person as the minor's guardian. Notwithstanding any other provision of law, pending receipt of these documents, the minor's employer shall hold, for the benefit of the minor, the 15 percent of the minor's gross earnings pursuant to the contract.

(5) When making the initial deposit of funds, the minor's employer shall provide written notification to the financial institution or company that the funds are subject to Section 6753. Upon receipt of the court order, the minor's employer shall provide the financial institution with a copy of the order.

(6) Once the minor's employer deposits the set aside funds pursuant to Section 6753, 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 Sections 16062 and 16063 of the Probate Code.

(7) 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 and, if the beneficiary is then a minor, to the parent or guardian, if any, and to the trustee or trustees of the funds with opportunity for all parties to appear and be heard.

(8) A parent or guardian 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 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 paragraph (7) 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 pursuant to Section 6753 and, if applicable, a true and accurate photocopy of the new or amended order.



(9) (A) If a parent, guardian, or trustee fails to provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753 within 180 days after the commencement of employment, the employer shall forward to The Actors' Fund of America 15 percent of the minor's gross earnings pursuant to the contract, together with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, e-mail address, dates of employment, and title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds, The Actors' Fund of America shall become the trustee of those funds and the minor's employer shall have no further obligation or duty to monitor or account for the funds.

(B) The Actors' Fund of America shall make its best efforts to notify the parent, guardian, or trustee of their responsibilities to provide a true and accurate photocopy of the trustee's statement pursuant to Section 6753, and in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian. Within 15 business days after receiving those documents, The Actors' Fund of America shall deposit or disburse the funds as directed by the trustee's statement. When making that deposit or disbursal of the funds, The Actors' Fund of America shall provide to the financial institution notice that the funds are subject to Section 6753 and a copy of each applicable order, and shall thereafter have no further obligation or duty to monitor or account for the funds.

(c) The Actors' Fund of America shall notify each beneficiary of his or her entitlement to the funds that it holds for the beneficiary within 60 days after the date on which its records indicated that the beneficiary has attained 18 years of age or the date on which it received notice that the minor has been emancipated, by sending that notice to the last known address for the beneficiary or, if it has no specific separate address for the beneficiary, to the beneficiary's parent or guardian.

(d) (1) Notwithstanding any other statute, for any minor's contract of a type described in Section 6750 that is not being submitted for approval by the court pursuant to Section 6751, or for which the court has issued a final order denying approval, 15 percent 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 Section 6753. 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.

(2) Within 10 business days of commencement after employment, a parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753 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. Upon presentation of the trustee's statement offered pursuant to this subdivision, the employer shall provide the parent or guardian with a written acknowledgement of receipt of the statement.

(3) The minor's employer shall deposit 15 percent of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to Section 6753, or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract. 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 15 percent of the minor's gross earnings pursuant to the contract. When making the initial deposit of funds, the minor's employer shall provide written notification to the financial institution or company that the funds are subject to Section 6753.

(4) Once the minor's employer deposits the set aside funds in trust, in an account or other savings plan pursuant to Section 6753, 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 Sections 16062 and 16063 of the Probate Code.

(5) 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 and, if the beneficiary is then a minor, to the parent or guardian, if any, and to the trustee or trustees of the funds with opportunity for all parties to appear and be heard.



(6) A parent or guardian 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 paragraph (5) 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 Section 6753 and, if applicable, a true and accurate photocopy of the new or amended order.

(7) (A) If a parent, guardian, or trustee fails to provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753, within 180 days after commencement of employment, the employer shall forward to The Actors' Fund of America the 15 percent of the minor's gross earnings pursuant to the contract, together with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, e-mail address, dates of employment, and the title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds, The Actors' Fund of America shall become the trustee of those funds and the minor's employer shall have no further obligation or duty to monitor or account for the funds.

(B) The Actors' Fund of America shall make best efforts to notify the parent, guardian, or trustee of their responsibilities to provide a true and accurate photocopy of the trustee's statement pursuant to Section 6753 and in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian. After receiving those documents, The Actors' Fund of America shall deposit or disburse the funds as directed by the trustee's statement, and in accordance with Section 6753, within 15 business days. When making that deposit or disbursement of the funds, The Actors' Fund of America shall provide notice to the financial institution that the funds are subject to Section 6753, and shall thereafter have no further obligation or duty to monitor or account for the funds.

(C) The Actors' Fund of America shall notify each beneficiary of his or her entitlement to the funds that it holds for the beneficiary, within 60 days after the date on which its records indicate that the beneficiary has attained 18 years of age or the date on which it received notice that the minor has been emancipated, by sending that notice to the last known address that it has for the beneficiary, or to the beneficiary's parent or guardian, where it has no specific separate address for the beneficiary.



(e) Where a parent or guardian is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750, the relationship between the parent or guardian 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 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 subdivisions (b) and (c) of this section, and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subdivision shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

(f) (1) Except as otherwise provided in this subdivision, The Actors' Fund of America, as trustee of unclaimed set-aside funds, shall manage and administer those funds in the same manner as a trustee under the Probate Code. Notwithstanding the foregoing, The Actors' Fund of America is not required to open separate, segregated individual trust accounts for each beneficiary but may hold the set-aside funds in a single, segregated master account for all beneficiaries, provided it maintains accounting records for each beneficiary's interest in the master account.

(2) The Actors' Fund of America shall have the right to transfer funds from the master account, or from a beneficiary's segregated account to its general account in an amount equal to the beneficiary's balance. The Actors' Fund of America shall have the right to use those funds transferred to its general account to provide programs and services for young performers. This use of the funds does not limit or alter The Actors' Fund of America's obligation to disburse the set-aside funds to the beneficiary, or the beneficiary's parent, guardian, trustee, or estate pursuant to this chapter.

(3) (A) Upon receiving a certified copy of the beneficiary's birth certificate, or United States passport, and a true and accurate photocopy of the trustee's statement pursuant to Section 6753, The Actors' Fund of America shall transfer the beneficiary's balance to the trust account established for the beneficiary.

(B) The Actors' Fund of America shall disburse the set-aside funds to a beneficiary who has attained 18 years of age, after receiving proof of the beneficiary's identity and a certified copy of the beneficiary's birth certificate or United States passport, or to a beneficiary who has been emancipated, after receiving proof of the beneficiary's identity and appropriate documentation evidencing the beneficiary's emancipation.





(C) The Actors' Fund of America shall disburse the set-aside funds to the estate of a deceased beneficiary after receiving appropriate documentation evidencing the death of the beneficiary and the claimant's authority to collect those funds on behalf of the beneficiary.

(g) (1) The beneficiary of an account held by The Actors' Fund of America pursuant to this section shall be entitled to receive imputed interest on the balance in his or her account for the entire period during which the account is held at a rate equal to the lesser of the federal reserve rate in effect on the last business day of the prior calendar quarter or the national average money market rate as published in the New York Times on the last Sunday of the prior calendar quarter, adjusted quarterly.

(2) The Actors' Fund of America may assess and deduct from the balance in the beneficiary's account reasonable management, administrative, and investment expenses, including beneficiary-specific fees for initial set up, account notifications and account disbursements, and a reasonably allocable share of management, administrative, and investment expenses of the master account. No fees may be charged to any beneficiary's account during the first year that the account is held by The Actors' Fund of America.

(3) Notwithstanding paragraph (2), the amount paid on any claim made by a beneficiary or the beneficiary's parent or guardian after The Actors' Fund of America receives and holds funds pursuant to this section may not be less than the amount of the funds received plus the imputed interest.

(h) Notwithstanding any provision of this chapter to the contrary, any minor's employer holding set-aside funds under this chapter, which funds remain unclaimed 180 days after the effective date hereof, shall forward those unclaimed funds to The Actors' Fund of America, along with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, e-mail address, dates of employment, and the title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds by The Actors' Fund of America, the minor's employer shall have no further obligation or duty to monitor or account for the funds.

(i) All funds received by The Actors' Fund of America pursuant to this section shall be exempt from the application of the Unclaimed Property Law (Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure), including, but not limited to, Section 1510 of the Code of Civil Procedure.

SEC. 3. Section 6753 of the Family Code is amended to read:



6753. (a) The trustee or trustees shall establish a trust account, that shall be known as a Coogan Trust Account, 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, that is located in the State of California, 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 paragraph (1) of subdivision (b) of Section 6752 or pursuant to paragraph (1) of subdivision (c) of Section 6752. 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, the third-party individual or personal services corporation (loan-out company), 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 Section 7122, 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 paragraph (7) of subdivision (b) or paragraph (5) of subdivision (c) of Section 6752. 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, the third-party individual or personal services corporation (loan-out company), 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 paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) of Section 6752. 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) The trust shall be established in California either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. 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 insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.

(e) Upon application by the trustee or trustees to the financial institution or company in which the trust is held, the trust funds shall be handled by the financial institution or company in one or more of the following methods:

(1) The financial institution or company 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 chapter.

(2) The financial institution or company 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 chapter and that the transferring financial institution or company has 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 chapter.

(3) The financial institution or company 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, 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 shall continue to be held in trust and subject to this chapter, those purchases shall have a maturity date on or before the date upon which the minor will attain the age of 18 years, and any proceeds accruing from those purchases shall be redeposited into that account or accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

SEC. 4. Section 1308.9 is added to the Labor Code, to read:

1308.9. (a) If the Labor Commissioner provides written consent pursuant to Section 1308.5 for the employment of a minor under a contract described in Section 6750 of the Family Code, that consent shall be void after the expiration of 10 business days from the date written



consent was granted, unless it is attached to a true and correct copy of the trustee's statement evidencing the establishment on behalf of the minor of a "Coogan Trust Account" pursuant to Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of the Family Code. If the written consent is attached to a true and correct copy of that trustee's statement, the written consent shall be valid for a six-month period.

(b) A person may not apply for the written consent of the Labor Commissioner to employ the same minor under a contract described in Section 6750 of the Family Code more than once in any six-month period. If written consent is issued by the Labor Commissioner for the employment of the same minor more than once within any six-month period, the earliest dated written consent shall be valid and any other written consent issued during that six-month period shall be void.

