

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

S

D

SENATE DRS15087-LB-10 (1/7)

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

---

Sponsors: Senator Horton.

---

Referred to:

---

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Article 2.

"Certain Contracts of Minors.

**"§ 48A-11. Applicability.**

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

- (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 (loan-out company). "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

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 (casting agency), the agency or service shall  
8           be considered the minor's employer for the purposes of this Article.

9   **"§ 48A-12. No disaffirmance if approved by superior court.**

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

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

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

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

28   **"§ 48A-12.1. Copies of certain documents to be provided.**

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

35   **"§ 48A-13. Financial safeguards in court orders approving contracts.**

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

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

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

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

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

18       **(f)** Once the minor's employer deposits the set-aside funds pursuant to G.S.  
19 48A-14, in trust, in an account or other savings plan, the minor's employer shall have no  
20 further obligation or duty to monitor or account for the funds. The trustee or trustees of  
21 the trust shall be the only individual, individuals, entity, or entities with the obligation  
22 or duty to monitor and account for those funds once they have been deposited by the  
23 minor's employer. The trustee or trustees shall do an annual accounting of the funds  
24 held in trust, in an account or other savings plan, in accordance with Sections 16062 and  
25 16063 of the Probate Code.

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

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

42 **"§ 48A-13.1. Financial safeguards when no court order.**

43       **(a)** Notwithstanding any other statute, for any minor's contract of a type  
44 described in G.S. 48A-11 that is not being submitted for approval by the court pursuant

1 to G.S. 48A-12, or for which the court has issued a final order denying approval, fifteen  
2 percent (15%) of the minor's gross earnings pursuant to the contract shall be set aside by  
3 the minor's employer in trust, in an account or other savings plan, and preserved for the  
4 benefit of the minor in accordance with G.S. 48A-14. At least one parent or legal  
5 guardian, as the case may be, entitled to the physical custody, care, and control of the  
6 minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the  
7 court, upon petition by the parent or legal guardian, the minor, through his or her  
8 guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment  
9 of a different individual, individuals, entity, or entities as trustee or trustees is required  
10 in the best interest of the minor.

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

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

23 (d) Once the minor's employer deposits the set-aside funds in trust, in an account  
24 or other savings plan pursuant to G.S. 48A-14, the minor's employer shall have no  
25 further obligation or duty to monitor or account for the funds. The trustee or trustees of  
26 the trust shall be the only individual, individuals, entity, or entities with the obligation  
27 or duty to monitor and account for those funds once they have been deposited by the  
28 minor's employer. The trustee or trustees shall do an annual accounting of the funds  
29 held in trust, in an account or other savings plan, in accordance with Sections 16062 and  
30 16063 of the Probate Code.

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

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

1 employer's obligations under this section. The written notification shall be accompanied  
2 by a true and accurate photocopy of the trustee's statement and attachments pursuant to  
3 subdivision (c) of G.S. 48A-14, or a true and accurate photocopy of the new or amended  
4 order.

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

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

23 **§ 48A-14. Trust to be established.**

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

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

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

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

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

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

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

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

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

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

41 b. Government securities and bonds, certificates of deposit, money  
42 market instruments, money market accounts, or mutual funds  
43 investing solely in those government securities and bonds,  
44 certificates, instruments, and accounts that are available at the

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

12 **"§ 48A-15. Talent agency contracts.**

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

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

26 **"§ 48A-16. Disaffirmance of talent agency contracts.**

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

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

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