

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND  
INTERNET MEDIA

Ian C. Calderon, Chair

AB 533 (Ian Calderon) – As Amended: April 18, 2013

SUBJECT: Artistic Employment Contracts: Minors

SUMMARY: Excludes Background performers from the requirement of establishing a Coogan Trust, as defined. Specifically, this bill:

- 1) Provides that the court shall not require the employer of a minor for services as an extra, background performer, or in a similar capacity, as specified, to set aside 15% of the minor's gross earnings.
- 2) Exempts an employer of a minor for services as an extra, background performer, or in a similar capacity, as specified, from depositing or disbursing the 15% 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, 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.
- 3) Provides that notwithstanding any other statute, for any minor's contract for services as an extra, background performer, or similar capacity, as specified, that is not being submitted for approval by the court pursuant to existing law, or for which the court has issued a final order denying approval, is exempt from having 15% of the minor's gross earnings pursuant to the contract be set aside by the minor's employer.
- 4) Stipulates that an employer of a minor for services as an extra, background performer, or in a similar capacity, as specified, is not required to deposit 15% of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement, or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract.

EXISTING LAW

- 1) Requires the written consent of the Labor Commissioner (LC) for the employment of a minor in the entertainment industry, as specified. (Labor Code Section 1308.5.)
- 2) Provides that once written consent is given by the LC, as specified, that consent shall be void after the expiration of 10 business days from the date the written consent was granted unless it is attached to a true and correct copy as evidence that a "Coogan Trust Account" has been established on behalf of the minor. [Labor Code Section 1308.10(a).]

- 3) Requires that 15% of a minor's gross earnings 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. [Family Code Section 6752 (b)(1).]
- 4) Further requires that the minor's employer shall deposit or disburse the 15% of the minor's gross earnings within 15 business days as specified. [Family Code Section 6752(b)(4).]
- 5) Pending receipt of (among other things proof of the establishment of a trust account), the minor's employer shall hold, for the benefit of the minor, the 15% of the minor's gross earnings pursuant to the contract. [Family Code Section 6752 (b)(1).]
- 6) If a parent, guardian, or trustee fails to provide the minor's employer with a true and accurate photocopy of the trustee's statement within 180 days after the commencement of employment, the employer shall forward to The Actors' Fund of America 15% of the minor's gross earnings. [Family Code Section 6752 (b)(9)(A).]
- 7) Provides that 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. [Family Code Section 6750 (b)(3).]

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement and Support: According to the author, "Existing law requires that all child actors must have 15% of their earnings set aside in a Coogan Trust Account, which may not be accessed by anyone - including the child actor - until after they become adults. For child actors who earn large sums as principal performers, the Coogan law provides needed and beneficial protection. However, for kids who only work once or twice a year as an extra or background performer, this requirement is an unnecessary and inefficient waste, and simply denies kids some summer fun money. AB 533 corrects this situation and removes the requirement that the parents of background kids have to create Coogan accounts.

Central Casting, the largest casting agency in the world, that background kids work less than 2 times a year on average. The author concludes, "The daily pay rate for the background actors is \$64/8 non-union and \$145/8 for kids who are in SAG/AFTRA. When you take out 20% for their agent; 7% for taxes; 15% a Coogan Account, very little is left to deposit. Given that some banks charge fees for the Coogan Account, and draw it from the corpus of the trust, this pittance is exhausted quickly. For those accounts which are in place - waiting until a child reaches majority to release the funds is really inefficient and does little further our goal with the Coogan Act to protect kids."

According to The Actor's Fund of America (AFA), "the Unclaimed Coogan Fund has over 36,000 individual deposits, and over 31,000 of them are for less than \$99." Very few have aggregated sums of substance, which leads AFA to conclude it's probably all Background players who are abandoning their money rather than establish a Coogan Trust Account.

In a recent article discussing the ongoing class action lawsuit against Bank of America, (alleging that their practice of collecting fees from Coogan Account Trust Funds violates the Coogan Act), it was noted that BofA requires a minimum deposit amount of \$300, and will charge service fees on accounts which slip below that limit. Backstage, *Did Bank of America Steal From Child Actors?* Sean J. Miller, Sept. 24, 2012. Other banks also charge fees for the establishment and maintenance of Coogan Accounts.

- 2) Employment of Minors - Entertainment Work Permit: According to the California State Department of Industrial Relations Web site, generally, all minors under 18 years of age employed in the state of California must have a permit to work. The Labor Code further provides, in Section 1308.9(a), that if the LC provides written consent pursuant to Labor Code Section 1308.5, for the employment of a minor in the entertainment industry, 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.
- 3) Background - The Coogan Act: Blocked Trust Accounts Must be Established for Known and Unknown Child Actors:

The Coogan Act was passed in 1938 in response to Jackie Coogan's plight. Even though he earned millions as a child actor, Coogan was surprised to find out when he reached adulthood that his entire earnings were depleted, because his mother and stepfather spent all his money - legally. The Coogan Act was enacted to preserve a portion of a minor's earnings under an employment contract for creative or artistic services, for the minor's use when he or she reaches the age of majority. SB 1162 (Burton), Chapter 940, Statutes of 1999, overhauled the Coogan Act. Applicable to both court-approved and non-court-approved minors' contracts for creative or artistic employment, SB 1162 required 15% of a minor's earnings to be set aside and deposited into a "Coogan Trust Account", invested in low-risk financial vehicles, and blocked from use until the minor is emancipated or reaches age 18. To enforce the set-aside, SB 1162 imposed a duty on the employer to make the deposit directly into the minor's Coogan Trust Account, which a parent or guardian is required to open at an insured financial institution and to invest in a manner consistent with that of a trustee. Annual accounting is required, and court supervision of trust accounts for minors with court-approved contracts continues until the minor turns 18.

To further strengthen enforcement of the Coogan Act, the Legislature adopted, and the Governor signed, SB 210 (Burton), Chapter 667, Statutes of 2004, which added the requirement that the LC's written consent for performances of a minor under Labor Code Section 1308.5 be limited to 10 days, unless a Coogan Trust Account has been established.

SB 210 also created a mechanism for payment of the Coogan set-aside to AFA for those child performers whose parents failed to establish a Coogan Trust Account. The AFA holds the money for the benefit of the child until such time as the child claims his or her funds. Periodically AFA will advertise the Unclaimed Coogan Account, and makes best efforts to contact children whose 15% set aside is being held in trust for them.

To date over 36,000 individual deposits have been made into the Unclaimed Coogan Trust Account of AFA. Of those, 31,000, clearly the vast majority, of deposits are under ninety-nine dollars (\$99).

4) Why Does the Same Language Appear Twice?

The Family Code section which contains the Coogan Act was originally designed to cover the legal problem presented by studios hiring children to perform, but children are not allowed to sign contracts. The solution was to have contracts which were of an amount large enough to cause concern to be submitted to the court for Affirmance. This way the court could look out for the interests of the studios and child performers. The current law covers contracts which are subject to the courts Affirmance, and those which are not, hence the necessity to say the same thing twice.

5) Prior and Related Legislation:

- a) AB 1401 (AEST&IM Committee), Chapter 557, Statutes of 2011, established an Internet Web site permit process to be administered by DLSE for the issuance of temporary work permits for minors working in the entertainment industry. The temporary work permit issued under this bill enabled a parent or guardian of a minor to establish a Coogan Trust Account for the benefit of the minor. This bill required the LC to place fees received for a temporary minor's entertainment work permit into an EWP Fund, which funds would pay for the costs of administration of the Internet Web site created under this bill.
- b) SB 210 (Burton), Chapter 667, Statutes of 2004, which was discussed earlier, added the requirement that the LC's written consent for performances of a minor be limited to 10 days, unless a Coogan Trust Account has been established.
- c) SB 1162 (Burton), Chapter 940, Statutes of 1999, which was discussed in Comment 2) above, made significant changes to the Coogan law.

6) Double-referral: Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Labor and Employment.

REGISTERED SUPPORT / OPPOSITION:

Support

BizParentz  
The Actors Fund of America

Opposition

None on file