

**SUBMISSION BY**  
**MEDIA, ENTERTAINMENT & ARTS ALLIANCE**  
**TO**  
**BETTER REGULATION OFFICE**  
**NEW SOUTH WALES GOVERNMENT**  
**REGARDING**  
**LICENSING OF SELECTED OCCUPATIONS**  
**NOVEMBER 2008**



**The Media, Entertainment & Arts Alliance**

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media, Entertainment & Arts Alliance appreciates the opportunity to make a submission to the review of the Licensing of Selected Occupations.

This submission confines itself to the licensing of entertainment industry agents, managers, and venue consultants.

As noted in the Discussion Paper, the licensing regime covering agents, managers and venue consultants is established under the Entertainment Industry Act 1989 and the Entertainment Industry Regulation 2004. “The principal objective of the Act is to ensure that entertainment industry representatives (defined as “agents”, “managers” and “venue consultants”) are appropriately qualified and that their dealing with performers and employers are structured so as to protect the performers.”<sup>1</sup>

In 2001, the Alliance made a submission to the review of the Entertainment Industry Act 1989 by the New South Wales Department of Industrial Relations as part of the New South Wales Government’s legislation review obligations under the National Competition Policy.

That review was completed in 2003 and found that there was sufficient justification for the retention of licensing of agents, managers and venue consultants.

As the Issues Paper notes, that review found the regulatory provisions included substantial benefits from:

- “the promotion of professional standards among service providers
- “a reduction in the scope for the possible exploitation of young and inexperienced performers
- “the provision of a standard for fee payments, and
- “the facilitation of transparent business dealings by service providers with performers.”<sup>2</sup>

The Alliance is of the view that nothing has changed since the National Competition Policy review handed down its findings in 2003 that would warrant ending licensing of agents, managers and venue consultants.

Views have been sought on:

- the benefits of the licensing regime including the protections offered by the regime and impacts on professional standards in the industry
- the costs of the licensing regime including compliance costs for industry representatives, impacts on labour mobility and competition between service providers
- existing or potential alternative ways to protect the interests of performers, and
- whether there are any reasons why it is necessary to license these occupations in NSW when it is not considered necessary to license them in other States and Territories

### **Benefits of the licensing regime**

The key benefits are as follows:

- The capping of commissions for services for performers.
- The prohibition of venue consultants receiving a fee from both an employer and performer.
- The obligation on agents and managers to keep trust accounts for the appropriate handling of performers’ monies.
- The lodgement of a bond with the Department of Industrial Relations.

The capping of commissions clearly mitigates the exploitation of persons often subject to intermittent employment. In an industry where child employment is legal, it is particularly important that young people are not exploited. In an industry where permanent employment does not exist (outside Opera

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<sup>1</sup> *Licensing of Selected Occupations Issues Paper*, Better Regulations Office, New South Wales Government, October 2008, page 8.

<sup>2</sup> *Ibid.*

Australia, the Sydney Dance Company, Bangarra Dance Theatre and the state orchestras) for performers, where incomes fluctuate from one year to the next, where annual income earned from performing work is as low as it is, and in an industry where the employment relationship is mediated by a third party, it is particularly important that the third party handling the employee's monies is regulated.

The latest data for artists' income is unfortunately for the 2000-2001 financial year. As can be seen from the table below the mean income from creative work for musicians is \$17,700, for dancers \$16,700 and for actors \$22,500, with total income from all sources being \$41,100, \$26,900 and \$41,700 respectively.

Whilst median incomes are possibly a better reflection of the position for many performers, mean incomes show the impact of the higher earning performers. So, although the incomes of the majority of artists are relatively low, a very few enjoy high earnings and the sample cited here for 2000-2001 includes "several artists who earned incomes above \$200,000, and ... have a significant effect in raising the mean results".<sup>3</sup>

#### Mean earned income of artists 2000-2001<sup>4</sup>

	Creative income \$	Other arts-related income \$	Total arts income \$	Total non-arts income \$	Total income \$
Writers	20,400	6,100	26,400	19,700	46,100
Visual artists	12,600	7,300	20,000	9,300	29,300
Craft practitioners	19,100	4,000	23,300	7,000	30,300
Actors	22,500	5,000	27,400	14,300	41,700
Dancers	16,700	7,100	23,900	3,000	26,900
Musicians	17,700	9,800	27,600	13,500	41,100
Composers	12,700	14,000	26,700	11,500	38,200
Community cultural development workers	8,400	8,300	16,700	9,400	26,100
<b>All artists</b>	<b>17,100</b>	<b>7,400</b>	<b>24,600</b>	<b>12,600</b>	<b>37,200</b>

#### Median earned income of artists 2000-2001<sup>5</sup>

	Creative income \$	Total arts income \$	Total income \$
Writers	4,800	11,700	35,000
Visual artists	3,100	9,200	22,900
Craft practitioners	8,200	14,300	22,600
Actors	10,500	18,400	32,000
Dancers	12,900	23,600	26,000
Musicians	10,500	20,000	35,800
Composers	4,200	19,200	31,100
Community cultural development workers	3,400	16,500	22,600
<b>All artists</b>	<b>7,300</b>	<b>15,700</b>	<b>30,000</b>

The table below sets out mean income for performers and shows income trends between 1986-87 and 2000-01. Whilst income from arts-related work spiralled downwards between 1986-87 and 1991-92 by 2000-01 it had recovered to 1986-87 levels. The reversal is likely to be due to enhanced minimum rates

<sup>3</sup> *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*, David Throsby and Virginia Hollister, Australia Council, 2003, page 45, see online at [http://www.australiacouncil.gov.au/\\_\\_data/assets/pdf\\_file/0016/32506/08\\_income.pdf](http://www.australiacouncil.gov.au/__data/assets/pdf_file/0016/32506/08_income.pdf)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

of pay that were achieved in the early nineties together with a dramatic increase in offshore film and television productions utilising Australia as a location. With a downturn in offshore production from the boom in the first couple of years of this century it is unlikely that the picture today is very different from that of 2000-01.

### Trends in artists' mean earned income 1986-87 to 2000-01<sup>6</sup>

	Income from all arts work			Income from all work (arts and non-arts)		
	1986-87 (\$'000 p.a.)	1992-93 (\$'000 p.a.)	2000-01 (\$'000 p.a.)	1986-87 (\$'000 p.a.)	1992-93 (\$'000 p.a.)	2000-01 (\$'000 p.a.)
Writers	27.1	21.5	24.6	42.1	35.1	46.1
Visual artists	26.8	21.1	20.0	33.9	28.8	29.3
Craft practitioners	26.1	20.2	23.3	31.7	26.2	30.3
Actors	27.7	15.4	27.4	35.7	23.4	41.7
Dancers			23.9			26.9
Musicians	24.0	24.0	27.6	34.5	32.3	41.1
Composers	45.7	40.0	26.7	52.8	42.3	38.2
Community cultural development workers	24.2	24.6	16.7	27.4	31.1	26.1
<b>All artists</b>	<b>25.6</b>	<b>22.0</b>	<b>24.6</b>	<b>34.9</b>	<b>30.2</b>	<b>37.2</b>

With the majority of performers earning extremely modest incomes, it is very important that those earnings are not eroded further by the absence of a legislative cap on commissions or by venue consultants charging both performer and employer.

As is the case in other circumstances where people are handling monies in trust, it is essential that such monies are quarantined in trust accounts – as is the case, for instance, with solicitors.

A bond helps establish financial bona fides and should be available in the event of need by those who are to be the lawful recipients of funds held in trust.

#### Costs of the licensing regime

The cost of the licensing regime to Government is negligible.

There are no adverse impacts on labour mobility. As is discussed below, many people living and working in other jurisdictions in Australia have New South Wales based agents and managers.

#### Alternatives to the licensing regime

The alternative is abolition of regulation and exposure of performers. New South Wales would become a jurisdiction like others in Australia where performers are pressured and often expected to pay up-front “joining fees”, required to attend and pay for “acting classes” conducted by the agent/manager, required to pay for expensive (unnecessary and sometimes unprofessionally undertaken) photo shoots for photographic portfolios produced by the agency in-house photographer (sometimes costing as much as \$700), make monthly payments to “stay on the agent’s books”, suffer late payment of funds received from employers, and so on, all often regardless of whether the agent is able to secure the performer any employment.

While the licensing regime is far from perfect in New South Wales, it is certainly better than deregulation.

<sup>6</sup> *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*, David Throsby and Virginia Hollister, Australia Council, 2003, page 51, see online at [http://www.australiacouncil.gov.au/\\_\\_data/assets/pdf\\_file/0016/32506/08\\_income.pdf](http://www.australiacouncil.gov.au/__data/assets/pdf_file/0016/32506/08_income.pdf)

## **Differences between the states and territories**

### Queensland

Agents in Queensland must adhere to the Private Employment Agents Act 1983. Commissions are capped at 10 per cent of gross wages and costs such as telephone, postage and the like cannot be passed on to the performer.

### Victoria, South Australia, Western Australia, Tasmania, Northern Territory

There is no legislation governing the operations of agents, managers and venue consultants. The Alliance understands theatrical agents take commissions ranging from 10 per cent to 25 per cent.

### The need for regulation in New South Wales

The Alliance considers that agents, managers and venue consultants should be regulated in all Australian jurisdictions. That being said, it is essential for regulation to be maintained in New South Wales as it is the location of the majority of employment and the site of a substantial amount of work negotiated in New South Wales but undertaken elsewhere in the country.

It is not at all uncommon for performers who train at the prestigious Western Australian Academy of Performing Arts (WAAPA) to secure a Sydney agent on graduation and remain with that agent throughout their career. Indeed, it is the goal of graduates to be accepted onto the books of one of Sydney's leading agents. By way of further example, legendary Northern Territory actor, David Gulpilil was represented by Sydney based June Cann Management until the recent death of its principal, John Cann.

Ensuring that agents, managers and venue consultants are regulated gives protection for, at the very least, half of those working in the arts and entertainment industries in Australia – notwithstanding where the performer might normally be resident and notwithstanding where the work is undertaken.

### Theatrical and Modelling Agents

Numerically, New South Wales has only a few more theatrical agents than Victoria. However, the majority of all agents and managers representing working performers working in film and television drama and live theatre are in New South Wales. Some of the New South Wales agents have branches in Victoria and Queensland. Many of the agents in Victoria specialise in representing models, principally for print and catwalk work; or concentrate on advertising – print, catwalk and television commercials; or focus on representing children – principally for work in advertising.

Of the four in South Australia, one – Mostly Kids – specialises in children, babies and models.

One of the four agents in Western Australia, Jiriki Management, specialises in representing Indigenous performers, writers and technicians.

Of the two in the Northern Territory, one – Vast Film Services – provides services that include location surveys, securing location permissions for filming along with casting of Indigenous performers.

### **Theatrical and Modelling Agents in Australia**

<b>NSW</b>	<b>Victoria</b>	<b>Queensland</b>	<b>Sth Aust</b>	<b>West Aust</b>	<b>NT</b>	<b>Tasmania</b>
89	83	20	5	4	2	2

### Employment

The majority of employment occurs in New South Wales, followed by Victoria and then by the other states and territories.

As can be seen from the information below, New South Wales captures more film, television and video production than any other state.

### Film and video production, 1971–2001<sup>7</sup>

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
<b>Numbers</b>								
1971	941	406	42	40	39	33	4	5
1976	1,022	503	43	104	35	53	0	0
1981	1,811	784	185	126	77	102	3	9
1986	2,941	1,039	274	232	178	57	19	18
1991	3,022	1,529	605	220	233	59	39	33
1996	3,637	2,112	1,021	542	319	35	40	54
2001	3,863	1,942	957	358	396	66	44	76
<i>Change 96 to 01</i>	+6%	-8%	-6%	-34%	+24%	+89%	+10%	+41%
<b>Proportions</b>								
1971	62%	27%	3%	3%	3%	2%	<0%	<0%
1976	58%	29%	2%	6%	2%	3%	0%	0%
1981	59%	25%	6%	4%	3%	3%	<0%	<0%
1986	62%	22%	6%	5%	4%	1%	<1%	<1%
1991	53%	27%	11%	4%	4%	1%	1%	1%
1996	47%	27%	13%	7%	4%	<1%	1%	1%
2001	50%	25%	12%	5%	5%	1%	1%	1%

Source: Compiled by the Australian Film Commission using unpublished data from the Census of Population and Housing, 1971, 1976, 1981, 1986, 1991, 1996, 2001.

For the purposes of the Census, employed persons are defined as “those aged 15 years and over, who in the week prior to the Census:

- worked for payment or profit, or as an unpaid helper in a family business;
- had a job from which they were on holidays or paid leave; or
- were on strike or temporarily stood down.”<sup>8</sup>

Those working in a voluntary capacity are not classified as employed. Importantly, “If a person had more than one job in the week prior to the Census, then ‘main job’ refers to the job in which the person usually worked the most hours.”<sup>9</sup>

<sup>7</sup> *Get the Picture*, the former Australian Film Commission, now Screen Australia, see online at <http://www.afc.gov.au/gtp/oepatternsxstate.html#Rac89620>

<sup>8</sup> *Employment in Culture – Australia – 2006*, Australian Bureau of Statistics, 2008, see online at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6A0842636FC03C4CCA2573FB000BCD2D/\\$File/62730\\_2006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6A0842636FC03C4CCA2573FB000BCD2D/$File/62730_2006.pdf)

<sup>9</sup> *Ibid.*

Consequently, given the characteristics of the arts and entertainment industries, where performers typically have an unemployment rate as performers of more than 90 per cent, the number of performers in Australia is understated in the Census.

**5.6** PERSONS EMPLOYED IN CULTURAL INDUSTRIES (a)(b)(c), By state or territory of usual residence(d)—2006

Industry	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.(b)
<b>Heritage</b>									
Libraries and archives	1 847	2 059	867	418	552	325	78	858	7 007
Museum operation	1 865	1 751	736	251	448	250	115	997	6 413
Zoological and botanic gardens operation	702	603	594	229	301	45	34	55	2 571
Nature reserves and conservation parks operation	2 019	1 646	1 179	250	374	255	318	81	6 144
<b>Total Heritage industries</b>	<b>6 433</b>	<b>6 059</b>	<b>3 376</b>	<b>1 148</b>	<b>1 675</b>	<b>875</b>	<b>545</b>	<b>1 991</b>	<b>22 135</b>
<b>Arts</b>									
Printing	13 033	12 185	5 646	2 569	2 745	635	149	579	37 541
Newspaper publishing	9 836	6 110	4 715	1 890	2 678	719	216	409	26 573
Magazine and other periodical publishing	5 517	1 491	858	232	378	38	10	53	8 577
Internet publishing and broadcasting	752	220	76	45	48	4	—	13	1 158
Book publishing	2 229	2 801	666	300	266	39	16	58	6 375
Music publishing	136	64	26	4	7	—	—	—	237
Reproduction of recorded media	1 262	823	108	35	39	11	3	7	2 288
Music and other sound recording activities	315	247	64	30	132	7	5	14	814
Book and magazine wholesaling	1 794	1 091	332	185	174	25	5	16	3 622
Entertainment media retailing	1 885	1 300	1 028	451	606	199	36	128	5 633
Newspaper and book retailing	9 546	6 372	5 926	1 878	2 719	905	158	504	28 008
Architectural services	9 766	8 473	6 134	1 610	2 867	522	158	557	30 087
Advertising services	11 626	8 053	4 050	1 521	1 769	304	80	246	27 649
Other specialised design services	6 647	5 850	2 868	1 204	1 426	281	90	265	18 631
Motion picture and video production	3 575	2 007	994	337	306	56	25	62	7 362
Postproduction services and other motion picture and video activities	445	247	97	69	28	7	3	4	900
Motion picture and video distribution	516	220	67	18	37	4	—	9	871
Motion picture exhibition	3 013	2 712	1 406	598	809	124	79	159	8 900
Radio broadcasting	1 850	1 079	1 195	372	432	127	85	87	5 227
Free-to-air television broadcasting	6 216	2 478	1 473	734	735	341	212	459	12 648
Cable and other subscription broadcasting	1 423	674	646	62	70	20	17	15	2 927
Performing arts operation	1 738	1 300	581	311	270	44	27	47	4 318
Creative artists, musicians, writers and performers	5 359	3 921	2 537	865	1 146	265	113	273	14 479
Performing arts venue operation	953	686	329	371	233	45	22	37	2 676
Video and other electronic media rental	3 507	2 274	2 549	836	1 295	205	77	233	10 976
Professional photographic services	2 613	1 848	1 307	532	591	117	34	73	7 115
Arts education	5 731	3 991	2 761	1 074	1 375	300	72	401	15 705
<b>Total Arts industries</b>	<b>111 283</b>	<b>78 517</b>	<b>48 439</b>	<b>18 133</b>	<b>23 181</b>	<b>5 344</b>	<b>1 692</b>	<b>4 708</b>	<b>291 297</b>
<b>Other culture</b>									
Religious services	9 649	6 884	5 196	2 062	2 582	563	165	456	27 557
Funeral, crematorium and cemetery services	1 664	1 401	798	471	445	134	17	30	4 960
<b>Total Other culture industries</b>	<b>11 313</b>	<b>8 285</b>	<b>5 994</b>	<b>2 533</b>	<b>3 027</b>	<b>697</b>	<b>182</b>	<b>486</b>	<b>32 517</b>
<b>Total cultural industries</b>	<b>129 029</b>	<b>92 861</b>	<b>57 809</b>	<b>21 814</b>	<b>27 883</b>	<b>6 916</b>	<b>2 419</b>	<b>7 185</b>	<b>345 949</b>

— nil or rounded to zero (including null cells)

(a) In their main job in the week before Census Night.

(b) Components may not add to Australian totals which include Other Territories (Christmas Island, Cocos (Keeling) Islands, and the Jervis Bay Territory).

(c) The cultural industries included were selected by matching ANZSIC 2006 codes to the Industry Classification of the *Australian Culture and Leisure Classifications, 2007* (cat. no. 4902.0).

(d) In this table, state or territory refers to the person's place of usual residence. This may, or may not, be the place where the person was counted on Census Night.

Source: *Employment in Culture – Australia – 2006*, Australian Bureau of Statistics, 2008.<sup>10</sup>

Although believing the data in the above table underestimates the number of performers working in Australia, it does, however, show that the predominance of activity is in New South Wales. This is further supported by the geographic spread of Alliance performer members with 46.83 per cent residing in this state.

<sup>10</sup> See online at

[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6A0842636FC03C4CCA2573FB000BCD2D/\\$File/62730\\_2006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6A0842636FC03C4CCA2573FB000BCD2D/$File/62730_2006.pdf)

### Alliance performer members by state

	NSW	VIC	Qld	SA & NT	WA	Tas	ACT
Performers	46.83%	31.32%	10.84%	3.65%	4.73%	1.74%	0.88%

#### Improving the licensing regime in New South Wales

The Alliance believes that appropriate enforcement is key to the effective operation of the licensing regime.

#### Management of trust accounts

Under the Act, funds handled in trust are required to be held in trust and the Department of Industrial Relations should know that this is the case. To that end:

- The Department of Industrial Relations should require and should be provided with full details of trust accounts operated by agents and managers. Such records should be automatically updated annually in addition to notification should the details change at any time.
- Trust accounts should be subject to annual audits and the agents should be required to lodge a copy of the certified audit with the Department of Industrial Relations.
- The Department of Industrial Relations should undertake random spot auditing of all registered agents.
- Bonds are essential. However, the quantum is currently far too low and they are repaid too soon. Bonds should be increased and they should be retained until such time as the agency is no longer in business.
- Interest that accrues on bonds should be held by the Department in a fund to assist performers affected by an agency defaulting on their obligations.

Notwithstanding the current requirement for lodgement of a bond and the establishment of a trust account, New South Wales has not been problem free.

The Alliance and some of our members are currently bearing the costs of a licensing regime that is inadequately monitored and whose requirements and obligations are not enforced.

In a recent case – raised with the Department of Industrial Relations by the Alliance – Pacific Artist Management operated as an agent but without a license. It was not closed down. Following complaints by members regarding non-payment of monies paid to the agency by employers, the Alliance ultimately was forced to commence legal proceedings. The agency went into administration and is now in the process of being liquidated. Performers remain unpaid. The resources of the Alliance are now being sought by the liquidator in order to progress the liquidation and to ascertain whether the principal of the agency can be found to be responsible for the corporate debt of the agency.

Unfortunately, this is not an isolated example. Despite arguing for appropriate enforcement in its submission of 2001, the Alliance has found that raising matters such as agents operating without a license has usually resulted in no action being taken by the Department.

Consequently, the Alliance urges the licensing regime to be adequately monitored and enforced by Government.

#### Barriers to entry

Barriers to entry are too low – not only in respect of the quantum of the bond, but the precondition of having sufficient industry knowledge is not tested.

In the United States, agents are required to sit written examinations to establish whether or not they have sufficient industry knowledge, specifically in regard to the industrial instruments governing employment conditions in the industry, the conditions governing the employment of children and so on, and are able to competently represent their clients' best interests.

#### Differentiation between agents and managers

The legislation needs to differentiate between managers and agents other than merely by setting differential commission caps – 15 per cent and 10 per cent respectively.

The differing roles are defined in the United States, making it clear that managers cannot negotiate on behalf of their clients.

#### Protection of children

The Alliance also considers that legislation or regulation is required in respect of the management of income earned by child performers as is the case in the California. A copy of the Coogan Law is attached. The actor Jackie Coogan is remembered by the law. As a child star, he was one of the first to appear in merchandising and, as a child, earned in the order \$4 million. As an adult he sought access to the income he had earned from his mother and step-father. Unsuccessful, he then sued. The law at the time did not give him rights to that income and the Coogan Law sought to ensure that other child performers' income could no longer be used entirely by parents. Rather, some must be held in trust so child performers may benefit from their own work in adulthood.

The Alliance has long thought it appropriate that Australian child performers be protected in the same way.

**ATTACHMENT: The Coogan Law: Full Text**

BILL NUMBER: SB 1162 CHAPTERED  
BILL TEXT

CHAPTER 940  
FILED WITH SECRETARY OF STATE OCTOBER 10, 1999  
APPROVED BY GOVERNOR OCTOBER 10, 1999  
PASSED THE SENATE AUGUST 26, 1999  
PASSED THE ASSEMBLY AUGUST 23, 1999  
AMENDED IN ASSEMBLY AUGUST 18, 1999  
AMENDED IN ASSEMBLY JULY 8, 1999  
AMENDED IN ASSEMBLY JUNE 29, 1999  
AMENDED IN ASSEMBLY JUNE 9, 1999  
AMENDED IN SENATE APRIL 21, 1999  
AMENDED IN SENATE APRIL 12, 1999

INTRODUCED BY Senator Burton

(Coauthors: Senators Costa, Solis, and Speier)  
(Coauthors: Assembly Members Havice, Kuehl, Washington, and Wildman)

FEBRUARY 26, 1999

An act to amend Sections 771, 6750, 6751, and 7500 of, and to repeal and add Sections 6752 and 6753 of, the Family Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1162, Burton. Minors: contracts.  
Existing law governs the earnings and accumulations of minors, as specified.

This bill would regulate the disposition of earnings or accumulations by an unemancipated minor by requiring a certain portion to be held in trust, as specified. The bill would require the trustee of the trust to, among other things, prepare a specified written statement under penalty of perjury, thereby expanding the crime of perjury and creating a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 771 of the Family Code is amended to read:

771. (a) The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.

(b) Notwithstanding subdivision (a), the earnings and accumulations of an unemancipated minor child related to a contract of a type described in Section 6750 shall remain the sole legal property of the minor child.

SEC. 2. Section 6750 of the Family Code is amended to read:

6750. 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:

(a) 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.

(b) 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.

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

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

SEC. 3. Section 6751 of the Family Code is amended to read:6751. (a) A contract, otherwise valid, of a type described in Section 6750, 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 such reasonable notice to all other parties to the contract as is fixed by the court, with opportunity to such 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 chapter, 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.

SEC. 4. Section 6752 of the Family Code is repealed.

SEC. 5. Section 6752 is added to the Family Code, to read:

6752. (a) 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 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. The court may also require that more than 15 percent 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 Section 6753, upon request of the minor's parent or legal guardian, or the minor, through his or her guardian ad litem.

(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) 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 subdivision

(c) of Section 6753.

(4) 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 Section 6753. 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.

(5) 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.

(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, 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.

(8) 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 paragraph

(7) amending or terminating the employer's obligations under the original order. The written notification shall include the information set forth in paragraph (3) and shall be accompanied by a true and accurate photocopy of the new or amended order.

(c) (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) 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 subdivision (c) of 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.

(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 subdivision (c) of 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.

(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, 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.

(6) 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 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 subdivision (c) of Section 6753, or a true and accurate photocopy of the new or amended order.

(d) 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 Section 6750, 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 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.

(e) 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 chapter 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.

SEC. 6. Section 6753 of the Family Code is repealed.

SEC. 7. Section 6753 is added to the Family Code, to read:

6753. (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, 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 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 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) 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 (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. If the trust is established outside the United States, the financial institution shall be a first-class international bank. 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 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 chapter 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 chapter.

(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, 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 FDIC, SIPC, or NCUSIF if within the United States or maintained in

a first-class international bank 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.

SEC. 8. Section 7500 of the Family Code is amended to read:

7500. (a) The mother of an unemancipated minor child, and the father, if presumed to be the father under Section 7611, are equally entitled to the services and earnings of the child.

(b) If one parent is dead, is unable or refuses to take custody, or has abandoned the child, the other parent is entitled to the services and earnings of the child.

(c) This section shall not apply to any services or earnings of an unemancipated minor child related to a contract of a type described in Section 6750.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Source: Screen Actors' Guild, available online at [www.sag.org](http://www.sag.org).