THERE'S NO BUSINESS LIKE SHOW BUSINESS: CHILD ENTERTAINERS AND THE LAW

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Throughout American history there have been many changes in the perception of children as laborers. Today, society as a whole no longer considers children to be viable members of the labor force, and the federal government has enacted regulations to monitor the work a minor may do. However, there is a glaring hole in the federal laws and regulations pertaining to employment of minors. Children working in the entertainment industry are exempt from the Fair Labor Standards Act (FLSA), † thereby regulation of this industry is left to the individual states. This has led to inconsistency among the various states in regulating child entertainers, with some states offering less protection than others for minors working in this industry. Kids in entertainment face a number of challenges, from both their employers and their parents, which uniformity in the law should address.

Unfortunately, childhood can become very complicated for a young person involved in the entertainment industry. State and federal law regarding children working in this industry have interacted and developed in such a way as to leave children with less protection than is necessary. In general, society views parents as protectors of their children, and leaves to them almost absolute control over decisions regarding their children’s well-being. However, when the money and perks of a career in entertainment enter the picture, some parents can no longer be presumptively viewed as protectors of their children. Minors working as entertainers are frequently left without anyone to look out for them, and it is for this reason that the federal government needs to step in and take action. This comment will offer historical background of the laws pertaining to child entertainers; discuss the laws in the three states where a majority of entertainment production takes place, California, Florida, and New York; and finally, argue that federal intervention is needed to address the problems inherent in the disparate state legislation in place today.

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I. BACKGROUND

A. Contract Law

As in a number of other industries, the entertainment industry revolves around a series of contracts. Contracts between the talent and the studio, between the directors and the studio, and between the studio and the movie's insurers are just a few examples of the contracts that are needed before production can begin. While hiring an adult actor requires the actor to sign a contract in order to start work, this picture is complicated when the actor is a minor.

The common law of contracts does not recognize children as entities capable of validly signing a contract.2 "The 'infancy law doctrine' holds that a minor does not possess the required contractual capacity to be bound under the law of contract."3 Because of this belief in the inherent inability of a minor to agree to a contract with a full understanding, the common law allows the minor to void the contract at any time.4 This is in accordance with "one of the oldest and most venerable of our common law traditions . . . ."5 Under the infancy law doctrine, disaffirmance can be done at any time and, once the minor comes of age, he or she can disavow any contract entered into during minority. This doctrine is founded on the paternalistic premise that:

Children are so much more vulnerable to exploitation than adults that, in order to protect them from being exploited, the common law allow[s] all minors the right to disaffirm or void contracts at will. The public policy reason behind this common law principle [is] "to protect minors against their own improvidence."6

2. See JOHN P. DAWSON ET AL., CONTRACTS 533-38 (7th ed. 1998); see, e.g., Webster St. P'ship v. Sheridan, 368 N.W.2d 439 (Neb. 1985); Halbman v. Lemke, 298 N.W.2d 562 (Wis. 1980); RESTATEMENT (SECOND) OF CONTRACTS §§ 12 & 14 (1981) (capacity and infants, respectively); U.C.C. § 1-103 & cmt. 2 (1995) (providing that general principles of law applicable to "capacity to contract" shall supplement the UCC).


4. DiMatteo, supra note 3, at 486.

5. Id. at 487 (quoting Halbman, 298 N.W.2d at 564-65).

Minors are considered to lack the capacity to make an informed agreement, an important factor in deciding whether a true contract has been formed. Under a traditional theory of contracts, "any missing element will place a given instrument or 'agreement' in the realm of noncontract . . . . This Willistonian formalism reasons that since a minor lacks legal capacity, then, by definition, there can be no contract." Such reasoning would seem to render it impossible to contract with a minor; however, as we will observe, adults have entered, and continue to enter into, contracts with minors.

B. Minors Under the Fair Labor Standards Act

The FLSA regulates the employment of minors in the United States. This federal statute applies to all aspects of employment such as working conditions and allowable hours of work per week. Enacted in 1938, "[t]he FLSA generally prohibits the employment of children under eighteen in any occupation detrimental to their well-being or health. In particular, the Act forbids an employer from producing goods for commerce by utilizing oppressive child labor." But, the FLSA provides an exception for "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions." The Act provides that:

Minors employed as actors or performers in motion pictures or theatrical productions, or in radio or television productions are exempt from Fair Labor Standards Act (FLSA) coverage. Therefore, FLSA rules regarding total allowable number of work hours in one day and allowable times of day to work do not apply.

The lack of uniform federal legislation pertaining to the employment of minors in entertainment has left the states to their own devices in regulating this industry within their borders. The states do not always have the minors' best interests in mind when determining what laws are needed in this area. "Many of these unregulated states are in the Southeast, and they often compete with each other for film production. In order to solicit filmmakers, many of the production companies in the Southeast boast

from the Perspective of Fair Exchange, 50 N.C. L. REV. 517 (1972).
7. DiMatteo, supra note 3, at 484 (citations omitted).
about their lack of labor laws for children in the entertainment industry."\textsuperscript{12} Thus, the states' interest in revenues can outweigh the interest in protecting children from unsafe or unfair working conditions, leaving children who desire to work in entertainment in a precarious situation.

Without federal protection, and with no assured state protection either, minors desiring a career in entertainment are left with only their parents as their protectors. "Stage parents," however, are not always reliable defenders of their children. Unfortunately, as seen in many famous cases, parents often get swept up in the money and perks of fame and neglect to put their child's best interests first. Sensational stories of stars like Macaulay Culkin and Gary Coleman reinforce this point, as each lost millions of dollars to their own parents.\textsuperscript{13} A recent headline-grabbing case involves the gymnast Dominique Moceanu, who

\begin{quote}
was another recent young victim of financial loss, due to the acquisition and squandering of her money by her parents. Moceanu, who petitioned for and gained emancipation from her parents in 1998, claims that her parents stopped working after 1996, choosing instead to live completely off of her money. In addition, her father spent nearly $4,000,000 of her trust fund to build a 70,000 square foot gym . . .\textsuperscript{14}
\end{quote}

These cases and others make it clear that parents cannot, and should not, be relied upon as the minor's only protector. The fact that "there are no federal laws that ensure children in the entertainment industry will not be forced to work in unsafe and hazardous conditions for an unrealistic amount of time, and will not be compelled to do so by their parents"\textsuperscript{15} can have serious repercussions. With parents whose judgment becomes clouded by money, child entertainers may be forced to work in an unhealthy environment without any guarantee that the money they earn will be protected.

II. THREE IMPORTANT STATES: CALIFORNIA, FLORIDA, AND NEW YORK

There are several distinct concerns that surround children in the entertainment industry that states deal with in varying ways. This section will detail how the three major entertainment producing states\textsuperscript{16} deal with

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\item Siegel, \textit{supra} note 9, at 448 (footnotes omitted) (using as an example a publication of the North Carolina Film Commission).
\item \textit{Id.} at 438-41.
\item \textit{Id.} at 439-40 (footnotes omitted).
\item \textit{Id.} at 442.
\item Together, California (about 25%), Florida (about 6%), and New York (about 15%) account for almost half of the national revenue in the sector "Performing arts, spectator sports, & related industries." U.S. Census Bureau, 1997 Economic Census: Arts, Entertainment and Recreation, \textit{available at} http://www.census.gov/epcd/ec97/us
questions of contract disability, disposition of earnings, working conditions, and the degree of court supervision.

A. California

1. Coogan's Law and Other Legislation

With the famous Hollywood sign looming over the movie studios and production lots, California is probably the best known of all the states for producing entertainment. Because of the vast number of films and shows produced there, California law has always had a significant impact on minors working as actors. While the infancy law doctrine would seemingly make entering into an employment contract with a minor a risky endeavor for an enterprising adult, the entertainment industry in California found ways to protect itself from this risk. The industry was able to circumvent the common law, when "[r]esponding to pressure from the burgeoning entertainment industry, the [California] Legislature in 1927 amended the law to specifically address contracts involving young actors. This amendment prevented the minor from canceling the contract if that contract had prior court approval." Court approval did not guarantee that the contract was especially fair to the minor, and "[t]he industry, and not the children, was the winner with the 1927 amendment..." Part of the problem with this new legislation was the fact that it did not provide "specific instructions to the judiciary. The law... set no criteria for determining whether or not a contract with a child should be approved. There was no requirement that the contract adequately protect the child's interests such as establishing a trust fund to protect the child's earnings." With the benefit of hindsight, it is overwhelmingly clear that the 1927 California legislation was not enough to protect children engaged in entertaining the nation.

A milestone in the development of entertainment law, as it pertains to minors, occurred in 1939 when the sad tale of "Jackie Coogan, a famous child actor whose mother spent nearly all of his earnings," gained national

/US000_71.HTM (last visited Jan. 21, 2004).
19. Staenberg & Stuart, supra note 6, at 25.
attention. 21 Upon reaching majority, Jackie Coogan took his parents to court to recover his childhood earnings, and lost, "since the money that a child earned belonged to his parents." 22 Coogan's Law, enacted in 1939, gave California courts the power to set up trust funds and to monitor them. 23 Coogan's Law:

was enacted to extend child labor laws to minors involved in the entertainment industry by allowing courts to establish trust funds where the minors' earnings would be deposited. The Coogan Law, however, did not bring many contracts under the court's protection, and did not change the law permitting parents to claim all the child's earnings from the contract. 24

Although the tragic tale of Jackie Coogan's lost fortune provided the impetus propelling Coogan's Law into place, like California's 1927 legislation, this law offered only imperfect protection to the minors it affected. If a contract was approved by the superior court, the minor's right to disaffirm the contract became void; "[t]he result was that only the employer, not the child, benefited from this kind of court intervention because the employer's fears, not concern for the child's welfare, initiated the petition for court approval." 25 Furthermore, the trust would only be set up for the children whose contracts were brought before a court, and "even then the decision to establish the trust was left to the judge. As a result, many contracts involving children who deserved protection were not even brought before the court for approval." 26 Coogan's Law did offer some protection of a child actor's earnings, but this law by itself was not enough to protect all of the children working in the entertainment industry.

2. Case Law in California

A landmark case in California illustrated how minors in entertainment were not necessarily better off post-Coogan's Law. Warner Brothers Pictures, Inc. v. Brodel 27 was one of the first cases decided under Coogan's Law. This case involved a court-approved contract between a minor entertainer and Warner Brothers giving the employer "six separate options to extend the term of defendant's employment for additional successive

21. See, e.g., Coogan Case Speeds Bill, N.Y. TIMES, May 5, 1939, at 32 (stating that California Assembly committee had approved Child Actors' Bill "[a]s an outgrowth of the Jackie Coogan suit . . ."); Coogan's "Millions" Dwindle to $535,923, N.Y. TIMES, Apr. 28, 1938, at 27 (relating details of lawsuit against mother and stepfather).
22. Heller, supra note 18, at 166.
25. Id. at 204.
26. Id.
27. 192 P.2d 949 (Cal. 1948).
periods of 52 weeks each . . . ."28 The plaintiff presented for the court's consideration the question of whether "the approval of the agreement by the court deprived defendant Brodel of the right of disaffirmance . . . [o]nly during her minority but did not preclude disaffirmance within a reasonable time after she reached majority."29 The Supreme Court of California held that Brodel could not disaffirm the option part of the contract once she reached majority. Despite the fact that Brodel's contract was made in 1942, and that “[p]rior to 1947, California law did not expressly authorize the superior court to approve a contract that grants an employer the option to extend the term of a minor's employment[,]”30 the California Supreme Court applied the post-1947 law to a 1942 contract signed by a minor. Thus, the effect of court approval was construed against the interests of the minor by preventing the defendant from disaffirming, not the actual contract but the options for a future contract of employment, upon reaching majority. Warner Brothers is indicative of the “[c]ourt's sympathy for the film maker's business interests.”31 Furthermore, by holding that "actors who sign contracts under Section 36 may be bound into adulthood . . . the court drifted even further away from the common law principle that minors should retain the right to disaffirm contracts . . . ."32

Aside from the outcome, the Warner Brothers court made two important statements pertaining to the state of the law at that time. First, the court held that California's statute disallowing disaffirmance once court approval had been granted did "not violate constitutional rights of the defendant under the equal protection of laws clause of the United States Constitution or under the provisions of the California Constitution against special legislation."33 Second, the Warner Brothers court laid out for the first time what a court should consider when determining whether to grant approval of a contract with a minor. The California Supreme Court stated that “[a] court may consider whether the terms of the contract are reasonable in the light of the then financial and educational interests of the minor as well as the proper development of his talents and his chances for success in the profession.”34 This offered some guidance to a judiciary charged with determining the fairness of a contract with a minor as a contracting party.

A companion case, decided the same day as Warner Brothers, Loews

28. Id. at 950.
29. Id. at 951.
32. Id. at 26, 27.
33. Warner Bros., 192 P.2d at 955; see also 42 AM. JUR. 2D Infants § 61 (2002).
34. Warner Bros., 192 P.2d at 953.
v. Elmes\textsuperscript{35} further illustrated the courts’ bias toward the filmmakers. This case involved a one-year employment contract and six separate options for a continuance of the employment of a fourteen-year-old actor. The trial court had approved only the actual one-year employment term, and left the options to be approved as they arose individually.\textsuperscript{36} The California Supreme Court reversed the trial court, emphasizing its holding in \textit{Warner Brothers} that “courts may approve contracts with these options.”\textsuperscript{37} The California Supreme Court approved the entire contract, options and all. Apparently, the California Supreme Court failed to adequately consider that it might not be in the best interests of a fourteen-year-old child to bind himself to a performance contract that he would have to endure for up to seven years.\textsuperscript{38}

Again, the actions of the California Supreme Court suggest that it did not hold the best interests of the minor at the forefront of these two decisions.

3. Amendment in 2000 to Coogan’s Law

While Coogan’s Law was a step in the right direction for California law, it unfortunately did not offer enough protection for minors in entertainment. Child actors still had no recourse to prevent their parents from taking the money earned from acting jobs, as “close to ninety-five percent of the money earned by child celebrities is not protected by the 1939 Coogan Law.”\textsuperscript{39} Another criticism of the 1939 Coogan’s Law is that it did not reflect the changes in the entertainment industry, especially because the once-standard, long-term studio contracts no longer prevailed. The law failed “to protect child actor’s earnings that are the result of short-term contracts . . . Their employers have no incentive to seek court approval of these contracts because, due to their short-term nature, there is very little risk of disaffirmance.”\textsuperscript{40} A lack of protection for minors also resulted from the fact that “[s]ince court approval of a minor’s contract is voluntary, if neither the parents nor the producer seek court approval, there is no voice for the child to speak to the court . . .”\textsuperscript{41} This had the effect of “leaving them vulnerable to financial exploitation by their employers,

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\footnote{35. 192 P.2d 958 (Cal. 1948).}
\footnote{36. \textit{Id}.}
\footnote{37. Staenberg & Stuart, \textit{supra} note 6, at 27.}
\footnote{38. \textit{Id}.}
\footnote{39. Heller, \textit{supra} note 18, at 161-62.}
\footnote{40. Staenberg & Stuart, \textit{supra} note 6, at 27.}
\footnote{41. Heller, \textit{supra} note 18, at 168.}
\end{footnotes}
It became increasingly apparent that California law as it stood did not offer enough protection to minors working in the entertainment industry. Thus, the California legislature amended Coogan’s law on January 1, 2000. In order “[t]o bring the Coogan Law into the next millennium and to ensure children and not the industry are the protected parties under the law, California senators unanimously passed Senate Bill 1162, an amendment to the 1939 Coogan Law.” This new law resulted in a number of positive changes in the handling of a child actor’s finances. For example, “a minimum of fifteen percent of the minor’s gross earnings will be set aside in a court-monitored trust; the child is entitled to his own representation in court proceedings; and all child stars will be covered by the new amendment, since seeking court approval is mandatory.” These changes illustrate the fact that the law is finally adapting to the realities of the lives of children entertainers, and this new legislation may serve as an example to other states seeking more protection for its child entertainers.

4. Music Managers’ Exception

While the 2000 amendment to Coogan’s Law is a worthy start toward protecting California’s child actors, a remaining problem lies in the fact that “these laws often do not address the specific environment and obligations of the child musical performer.” One aspect of this issue is the disparate treatment of talent agents and managers under the law. Unlike contracts between minors and talent agents, “the Los Angeles Superior Court will not confirm contracts between minors and managers in the entertainment industry, because such agreements are not included among the confirmable contracts enumerated under Family Code Section 6750.” This results in an “inconsistency between the representation of child musical performers and child actors, because child actors often are represented by agents whereas musicians always are represented by managers.” Due to the lack of secure contracts with minors, managers often will start a production company, since “music production agreements are affirmable. Unfortunately, production company agreements are usually significantly more onerous and invasive than management contracts.”

The countless numbers of minors who work in the recording industry are

42. Staenberg & Stuart, supra note 6, at 27.
43. See Siegel, supra note 9, at 434.
44. Heller, supra note 18, at 162 (footnotes omitted); see 1999 CA S.B. 1162 (enacted).
45. Heller, supra note 18, at 162 (footnotes omitted).
47. Id. at 30.
48. Id.
49. Id.
thus adversely affected by the exclusion of management contracts as affirmable. The attempt to protect children in the music industry has failed, as legislation intended to protect "the ability of minors to disaffirm contracts with managers—has backfired; parents and talented children are often compelled to relinquish more, financially and creatively, to production companies than they normally would have to give to managers."\(^{50}\)

5. Continuing Challenges

The negative result of the legislative exclusion of managers from affirmable contracts is not the only problem with California’s legislation regarding minor entertainers. The fact that “[u]sually, parents or guardians must be present during the performances, practices, or auditions of a minor child” may pose problems to families of lesser means because “[t]hose requirements may leave parents with little time in which to generate additional income needed to support the rest of the family. Low-income families may not be able to support a child star’s blossoming career without the income generated by that career.”\(^{51}\) This may leave the child’s parents in a no-win situation as “[t]he alternatives available to the parents would be to forego the child’s career potential or petition the court to amend the trust account, thus initiating expensive and time-consuming litigation.”\(^{52}\)

Finally, there is the general notion that laws are only effective if enforced. It is true that “California appears to be a safe haven for children in the entertainment industry, which is promising, considering that the majority of the entertainment industry is located in California. However, California, like many other states with progressive statutes, has a problem with enforcing its laws.”\(^{53}\) Thus, while on paper California law is highly protective of minors employed in the entertainment industry, in practice it is still lacking.

B. Florida

Florida is another state whose laws play an important role in the lives of working child actors. Nickelodeon Studios, for example, a large producer of shows and films featuring children, is located in Florida.\(^{54}\)

50. Id.
51. Christiano, supra note 17, at 209 (footnotes omitted).
52. Id. at 209 (footnote omitted).
53. Siegel, supra note 9, at 449 (footnote omitted).
Therefore, Florida's laws pertaining to minors in entertainment have an effect on a large number of children residing and working within its borders.

Like California, Florida originally "followed the common law, which held that the earnings of a minor under a contract are not the property of the minor, but rather belong to the parents." Also, as in California, following the common law in Florida meant that minors were considered legally incapable of making a contract. However, this all changed with the passage of the 1995 Child Performer and Athlete Protection Act, which is based, in part, upon Coogan's Law. This new legislation was enacted "[i]n response to the expanding entertainment and sports industries in Florida, and to prevent enslavement of the minor through contracts that may not be in his or her best interest. . . ." This legislation affected Florida common law in many ways, it:

- Reverses the common law so that all the earnings of the minor under an approved contract belong to the minor;
- Requires proof that continued performance of the contract would not be damaging to the well-being of the minor and that the contract is in the best interest of the minor;
- Removes the disability of minority so that the contracting party could obtain injunctive relief against the minor in the event of breach; and
- Provides procedures for establishing a guardianship account for the earnings of the minor under the contract, which can be held until age 18 or distributed upon court approval.

Unlike the recent California legislation, court approval in Florida is not mandatory and is left to the discretion of the contracting parties. Thus, it remains that "all of the problems and difficulties regarding contracts with minors which have been noted above will vex and hinder the performance of any contract with a minor which is not approved under the act." Florida has made great strides in its protection of minors. The law

57. FLA. STAT. ch. 743.08 (1995).
58. Carlisle & Wolfe, supra note 55, at 94.
59. Id.
60. Id.
seemingly puts a great emphasis on the best interest of the child actor, while still maintaining the balance between the parties on which contract law is founded. One of the most important aspects of the protection in place for Floridian child entertainers is that “all earnings, royalties, or other compensation earned or received by the minor pursuant to said approved contract shall become the property of the minor.”61 This rule provides a high level of protection for the child working in the entertainment industry as it ensures the retention of the child’s earnings for the child alone.

As in California, however, the system set up in Florida is imperfect. The rule in place regarding the security of a child actor’s earnings will only apply in Florida when a contract is subject to court approval. If the contract is never approved, then the earnings still belong to the parents. The statute, then, cannot be truly effective because, as previously emphasized, there is rarely a motive to have the contract approved in the entertainment industry today.62

If a contract is approved by the court, then the protections set up for child actors very securely protect their earnings. However, as approval is not mandatory, the regulations still cannot touch parents who desire to commandeer all of their child’s acting earnings.

C. New York State

New York is the third highly significant state affecting the rights and lifestyles of child actors. “New York’s answer to the Coogan Law is a general provision relating to contracts with minors offering a set-aside provision (if judicial approval is sought) and the inability for a minor to disaffirm the contract.”63 This law clearly borrows from California, with one difference being the amount of money a judge can set aside. “In contrast to Coogan’s Law, where there was a fifty percent cap on the amount of earnings a judge could set aside, in New York, the judge may set aside as much of the child’s earnings as is deemed appropriate.”64 Additionally, the fact patterns found in the California cases Warner Brothers and Loews would be addressed differently in New York, as “the New York laws differ from the earlier Coogan’s Law in that contracts cannot be approved if they exceed three years . . . .”65

There are also laws in place in New York which focus on the physical conditions and environment that minors are placed in while working in the entertainment industry; however, “[New York] has not adopted the detailed

62. Siegel, supra note 9, at 437.
64. Siegel, supra note 9, at 435-36.
65. Id. at 436.
rules regarding education and hours that are in place in California. New York supplies a set of conditions that must be met in order for child performers to be exempt from the restriction on employment of minors under fourteen years of age.\textsuperscript{66} In order to partake in a job as an entertainer, "a child performer in New York must be issued a permit, which is granted by the mayor's office. The permit will not be issued if it will intrude upon the welfare, development, or proper education of the child."\textsuperscript{67}

Recently the New York Legislature gained applause from both the president of the Screen Actors Guild, Melissa Gilbert, and the president of the American Federation of Television and Radio Artists, John Connolly, with the 2003 passage of the Child Performer Education and Trust Act.\textsuperscript{68} While this Act "does not alter . . . the process of seeking judicial approval of minor's contracts,"\textsuperscript{69} it does make significant improvements to the financial and educational well-being of child performers.

The Child Performer Education and Trust Act requires that the child's guardian establish a child performer trust account for the child and further requires the child's employer to "transfer fifteen percent of gross earnings to the custodian of the child performer's child performer trust account."\textsuperscript{70} The legislation allows the child performer's parent or guardian to serve as the custodian of the trust account, however "[o]nce the child performer trust account balance reaches two hundred fifty thousand dollars or more a trust company shall be appointed as custodian of the account."\textsuperscript{71} Through these legislative protections of child performers' finances, the New York Legislature has addressed one of the most pressing issues for young entertainers.

The Act also provides for the educational well-being of child performers. The law "requires an employer to provide a New York state-certified teacher, or a teacher with credentials recognized by the state, when a child performer's work schedule results in missed classes."\textsuperscript{72} The New York Legislature has also provided that the "department of labor will be able to monitor and enforce violations of child performers' rights to education provided under the laws of the state of New York . . . [and] will enforce the requirement of a child performer trust account."\textsuperscript{73} The Child

\textsuperscript{66} Id. at 446-47.
\textsuperscript{67} Id.
\textsuperscript{69} Andrew Schepard, \textit{A Bi-Coastal Movement to Protect Child Stars}, N.Y.L.J., Sept. 11, 2003, at 3.
\textsuperscript{70} N.Y. EST.. POW. & TRST. § 7-7.1 (2003).
\textsuperscript{71} Id.
\textsuperscript{72} Armbrust, \textit{supra} note 68, at 4.
\textsuperscript{73} N.Y. EST.. POW. & TRST. §§ 1 & 2.
Performer Education and Trust Act does not go into effect until March 28, 2004. Thus, the practical effects of its passage are yet to be known. However, its passage illustrates that the New York Legislature has both acknowledged the ills associated with the employment of child entertainers and has addressed these ills in a significant manner.

III. FILLING THE GAP: PROTECTING CHILD ENTERTAINERS

A. Emancipation as a Flawed Solution

While there may be no perfect solution to solve all of the problems inherent in the employment of children in high profile positions, the solutions currently available, such as emancipation, are riddled with problems. Currently in the headlines, singer Aaron Carter has begun the court procedure to become legally emancipated from his mother, claiming she has mishandled his finances. Emancipation is something that “[f]requently, parents and minors contemplate . . . as a way to avoid the restrictions and limitations on minors in the entertainment industry. In California, a minor may be emancipated by a court declaration under the emancipation of minors law.”

For a minor actor who believes that he or she alone can make the best decisions for his or her career, emancipation may be a benefit as “[e]mancipated minors may enter into binding contracts without court confirmation. An emancipated minor may also grant a delegation of power . . . Similarly, an emancipated minor may also compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor.” Most importantly, emancipation can allow a minor to protect earnings, since an “emancipated minor may also apply for the release of any entertainment earnings from a blocked account.” Therefore, a minor may feel that the only way to access and protect his or her earnings is to become legally emancipated.

74. See BLACK’S LAW DICTIONARY 539 (7th ed. 1999) (defining emancipation as “[a] surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of child; the act by which a parent (historically a father) frees a child and gives the child the right to his or her own earnings.”).


76. Berry, supra note 46, at 33.

77. Id.

78. Id.
While emancipation will allow a minor to fully protect his or her earnings, it is a rather large step to take for any child. If the states were required to protect the earnings of a child in this situation, then the need to break from one’s family in order to accomplish these goals may not be the only solution for a minor working in the entertainment industry.

B. Child Entertainer Welfare Plans and the Establishment of a Federal Oversight Board

Currently, the federal government leaves specific regulation of child actors to each individual state. However, there is no guarantee that a state will take steps to protect child entertainers. It is important that the states maintain their sovereignty in this area but it is also important and necessary for child entertainers to be more adequately protected through uniform federal legislation. Enacting federal legislation that creates a federal oversight board to monitor the employment of minors in the entertainment industry offers a careful balance to these potentially conflicting interests.

The federal legislation would require each state to submit a Child Entertainer Welfare Plan to the federal oversight board. The legislation would set general parameters as to what areas each Plan must address (i.e. financial, educational, psychological), while at the same time recognizing that individual states will continue to have the autonomy to regulate child actors within their borders as they see fit as long as a Plan is developed for each child entertainer.

The federal oversight board would be under the auspices of the Department of Labor. Thus, whenever the music, acting, or sports industry employs a minor, the state in which that entertainer is working has a specified amount of time in which it must file a Plan for that child with the federal oversight board. It would be up to the individual states to determine which existing agency would have the responsibility of developing each plan or whether the creation of a new state agency would

79. See infra note 1 and accompanying text (explaining that children working in the entertainment industry are exempted from the provisions of the Fair Labor Standards Act).


81. The areas each Child Welfare Plan would be required to address are discussed in detail in Section III.D. infra.
be appropriate. A copy of the plan would also be sent to the child's parent or guardian.

C. Monitoring and Compliance of the Plans

The enacting federal legislation would give the federal oversight board oversight authority over the Child Entertainment Welfare Plans and would charge it with monitoring and compliance responsibilities. The board should have an advisory council made up of representatives from the major facets of the entertainment industry. This would ensure that the board would stay current with the latest industry changes.\(^{82}\)

The federal oversight board would conduct frequent inspections at random and upon the filing of a complaint to ensure that: 1) each child entertainer is covered by a Plan filed with the board and 2) each Plan is implemented appropriately. The enacting legislation would give the Secretary of Labor the ability to enforce the terms of a Plan through a right of action.\(^{83}\) The legislation would also give child entertainers and their parents, or guardians, a private right of action to enforce the terms of the Plan.\(^{84}\) A grievance procedure would also be established so that a complainant could file a complaint with the federal oversight board and resolve disputes without resorting to the judicial system. Thus, the federally mandated Plans and the federal oversight board would improve upon current protections given to child actors. The federal legislation proposed would have the dual effect of requiring each state to take responsibility for the child entertainers working within its borders, while leaving the states discretion to determine how to best organize such protection within that state.

82. For example, the Public Company Accounting Oversight Board, established under the Sarbanes-Oxley Act of 2002, is made up of "5 members, appointed from among prominent individuals of integrity and reputation who have demonstrated commitment to the interests of investors and the public . . . ." Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).
84. Providing the child with a private right of action to enforce the Plan is inconsistent with the traditional notion that an unemancipated minor does not have the capacity to sue in his own right, but it is necessary and justified in situations where there is a strong possibility that the interests of the child's parent or guardian will conflict with the interests of the child. See, e.g., Nancy J. Moore, Conflicts of Interests in the Representation of Children, 64 FORDHAM L. REV. 1819, 1828 (1996) ("Under the procedural codes of most jurisdictions, a minor does not have the capacity to sue on her own behalf . . . ."). However, the federal legislation granting children a right of action in these circumstances would preempt any state law to the contrary. See generally Louisiana Public Serv. Comm'n v. FCC, 106 S. Ct. 1890, 1898-99 (1986) (noting the instances in which federal law preempts state law).
While there are laws in place in some states, such as California, Florida, and New York, that aim to put the child's best interests above all other considerations, the entertainment industry is quickly changing and each state should be required to enact laws to regulate the employment of child actors "because the centers for movie and television production are no longer located only in California and New York..." While laws in California, Florida, and New York are on the right track, there is still a need for the rest of the states to follow in their path. A federal oversight board with a specific plan for each child entertainer would offer protections not currently in place nationally, as "[o]nly a few states... have tried to update the exemption from federal child labor laws, and their efforts have been inefficient." For those states that have enacted laws protecting child entertainers, the protections afforded in those laws would be used as a floor for the Child Entertainer Welfare Plans developed in those states.

In summary, there is simply no way to ensure that a given state will create and/or enforce laws regulating children working as entertainers. Some state legislation may be out-of-date and in need of amendment, since, in most states, child performers "are vulnerable to exploitation due to the lack of effective statutes. Many of these statutes date back well into the first half of this century and have not been redrawn to reflect the realities of the modern entertainment industry." Even if a given state were to enact or amend legislation, there is no guarantee that the result would favor the minor's best interests, rather than financial gain for the state, studio, and parents. As it stands, "[t]he current mix of statutes applying to child performers is complex, inconsistent and invites such unwelcome activities as forum shopping, excessive travel, and family relocation as parents and studios vie for access to laws that suit their own financial interests." The creation of a federal oversight board requiring a specific welfare plan for each minor would help ensure that the child's best interests are not overshadowed by a desire for financial gain.

D. Specific Areas Each Child Entertainer Welfare Plan Must Address

The various issues facing minors working in entertainment, such as unfair contracts, mentally and physically challenging working conditions, and greedy parents, would be best addressed by a Child Entertainer

85. Siegel, supra note 9, at 464.
86. Heller, supra note 18, at 173.
87. Staenberg & Stuart, supra note 6, at 30.
88. See, e.g., Katherine V.W. Stone, Employee Representation in the Boundaryless Workplace, 77 CHI.-KENT L. REV. 773, 813 (2002) ("This is the well-known danger of the race to the bottom...").
89. Staenberg & Stuart, supra note 6, at 30.
Welfare Plan, which would be specific to the situation of that individual minor. While the enacting federal legislation will set the parameters for which areas each state welfare plan must address, the states are free to address more issues of concern in its plans. The legislation should specifically require that each plan cover at a minimum, hours worked, protection of the child’s earnings, psychological needs of the child, and hours and method of education.

The enacting federal legislation would require that the plan submitted by each state for its child entertainers deal with the protection of that minor’s future earnings. If the government requires the states to address the protection of a child’s earning through the Child Entertainers Welfare Plan, then at least a percentage of the child’s earnings would be protected from the child’s parents. This would prevent situations like that of Gary Coleman, Shirley Temple, and, more recently, Taran Noah Smith from *Home Improvement* fame, who came of age to find their parents had spent all or most of their earnings.  

Financial interests are not the only interests for which each plan filed with the federal oversight board should address. There are other issues involved in the present day entertainment industry and “laws should recognize the exigencies of the modern entertainment industry and provide adequate protections to all parties involved. The areas that need to be addressed include educational requirements, psychological and emotional counseling . . . .”  

Childhood abounds with complex issues, and growing up in front of cameras adds to the array of psychological difficulties which children face. There are many stories of famous children “who wind up dead, addicted, depressed, in financial distress or in trouble with the law.”  

While tales of the difficulties child performers find themselves in may be fodder for the national media, such as the arrest of Todd Bridges or young Drew Barrymore’s drinking problem, these stories “provide more evidence of a disturbing pattern of severe coping difficulties among child performers.”

Children pursuing a career in entertainment are thrust into the fast-paced life that comes with success in this industry without any psychological safeguards. As they age, and often have trouble finding new work, many child performers have “difficulty adjusting to life as adults.”

The fact that the media abounds with stories of the difficulties that child

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90. Siegel, *supra* note 9, at 438-39 (explaining that Shirley Temple supporting her entire household and Gary Coleman’s parents depleting his income by creating a pension fund are examples of abuse of earnings).
91. Berry, *supra* note 46, at 34.
93. *Id.*
94. *Id.* at 22.
actors have found themselves in makes it clear that "[t]he psychological distress suffered by so many child performers should be of significant concern to both the entertainment industry and to lawmakers . . . . [T]hese two power bases could and should work together to develop laws and systems to provide legal protection and require psychological and career transition counseling to child performers." 95 In defining the areas which each Plan must address, the federal legislation would require the state plan filed for each child to include a section on psychological testing of the child. This could prevent children preconditioned to psychological difficulties from pursuing a career in show business. The states may choose to address this requirement by having each child participate in a brief, yet thorough interview, which would serve as a basic psychological evaluation and allow the child to articulate his or her reasons for wanting to be employed. The idea behind interviewing the child is to illustrate whether the child is well-suited for a career in entertainment. If a child is extremely shy and introverted, the interview would show that he or she might not want to choose to forego a normal education and childhood in favor of working in the entertainment industry or a sport. This assessment would deter overbearing parents from compelling their children to pursue a career that could be physically or psychologically detrimental. For very young children, including infants, the parents should participate in the cursory interview to ensure their proper intentions and to inform them of the possible inherent risks. 96

A key aspect of mandatory psychological counseling would be that the children would be able to express themselves to the counselor without their parents in the room. Also, this interview would provide parents and minors with a realistic view of what to expect when pursuing a career in the entertainment industry as a child. This would prevent parents and their children from delving into the pursuit of employment in this area with unrealistic expectations and without knowing the basics or the pitfalls such a pursuit may bring.

The federal oversight board would only approve state plans accounting for the psychological well-being of a child. The board also would require the states to prepare a system providing for a satisfactory education for the child entertainer, which currently is not guaranteed. 97 While in some states, such as California, there are rules in place regarding

95. Id.
96. Siegel, supra note 9, at 465 (proposing a method for monitoring child laborers operating under the work permit system).
97. Id. (envisioning how a permit system requiring counseling could include mandatory education and a process to ensure education is being received by the child).
the amount of time each day that must be spent on education, "in practice these regulations are often unknown, ignored, or routinely overlooked . . . in the music industry, especially as deadlines and budget restrictions loom. When a musical artist is touring or recording an album, many of these provisions are rendered meaningless."

The adults with control over the minor actor or singer's activities have concerns they often find more pressing than their young employee's education, and as such "[l]abor laws should . . . hold education in a higher regard."

Part of the plan submitted to the federal oversight board would include the state's plan for the child's education. This in a sense would make education mandatory. A state could meet the education requirement of the plan by mandating that "studio teachers should be present on every set in every state to report any questionable incidents. As in California, the laws should set specific limitations on hours for children, incorporating strict rules for newborns that are gradually expanded as children grow older."

If possible, the states should provide some sort of training or certification for teachers who will specifically be working with child entertainers; this way the teachers would be aware of any problems specific to learning in an unnatural environment such as on a tour bus or in a studio lot. The teachers also could act as a check on the other adults and could report problems to the federal board for investigation. This would be an effective way to safeguard the children from any unsafe conditions.

IV. CONCLUSION

The regulation of minors working in the entertainment industry has gone through a variety of changes since the early twentieth century when the common law and infancy law doctrine made contracts with minors legally unenforceable. California, Florida, and New York, the three main states where the entertainment industry is located, and thus the three main states where child performers work, have developed legislation along the right path towards protecting the interests of minors who are entertainers. Despite the promise the regulations in these states offer, there is still much to be desired. Federal legislation providing for a federal oversight board would allow the states to retain their control over the labor conditions of minors in the entertainment industry within their particular borders, while at the same time ensuring that the states provide the best protection to each individual child.

In many ways our society provides for the well-being of minors

98. Berry, supra note 46, at 32.
99. Siegel, supra note 9, at 465.
100. Id.
101. See infra Section I.A.
through regulations. Mandatory education rules and the foster care system are two examples of the government stepping in to ensure that children are cared for and protected. Children working as entertainers should be treated no differently from their non-actor peers. The creation of a federal oversight board monitoring state regulation of children working in entertainment would serve to guarantee the safety and security of these children who work so hard to entertain us.