

Assembly Bill No. 533

Passed the Assembly June 27, 2013

Chief Clerk of the Assembly

Passed the Senate June 24, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 6752 of the Family Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 533, Ian Calderon. Artistic employment contracts: minors.

Existing law regulates certain contracts for artistic employment between an unemancipated minor and 3rd parties, including employment as an actor, dancer, musician, comedian, singer, stunt-person, voice-over artist, or sports player. Existing law requires the minor's employer under one of these contracts to set aside 15% of the minor's gross earnings, as specified, and provides for the establishment of a trust for the purpose of preserving for the minor a portion of the minor's gross earnings, as defined.

This bill would exempt an employer of a minor under a contract as described above for services as an extra, background performer, or in a similar capacity from the requirement that the employer set aside 15% of the minor's gross earnings in trust for the benefit of the minor.

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

SECTION 1. Section 6752 of the Family Code is amended to read:

6752. (a) A parent or guardian entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750 shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(b) (1) Notwithstanding any other statute, in an order approving a minor's contract of a type described in Section 6750, the court shall require that 15 percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer, except an employer of a minor for services as an extra, background performer, or in a similar capacity, as described in paragraph (3)

of subdivision (b) of Section 6750. These amounts shall be held in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753.

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

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

(4) The minor's employer shall deposit or disburse the 15 percent of the minor's gross earnings pursuant to the contract within 15 business days after receiving a true and accurate copy of the trustee's statement pursuant to subdivision (c) of Section 6753, a certified copy of the minor's birth certificate, and, in the case of a guardian, a certified copy of the court document appointing the person as the minor's guardian. Notwithstanding any other law, pending receipt of these documents, the minor's employer shall hold, for the benefit of the minor, the 15 percent of the minor's gross earnings pursuant to the contract. This paragraph does not apply to an employer of a minor for services as an extra, background performer, or in a similar capacity, as described in paragraph (3) of subdivision (b) of Section 6750.

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

(6) Once the minor's employer deposits the set-aside funds pursuant to Section 6753, in trust, in an account or other savings plan, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the

trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

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

(8) A parent or guardian entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside the funds in accordance with the order, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to paragraph (7) amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement pursuant to Section 6753 and, if applicable, a true and accurate photocopy of the new or amended order.

(9) (A) If a parent, guardian, or trustee fails to provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to Section 6753 within 180 days after the commencement of employment, the employer shall forward to The Actors' Fund of America 15 percent of the minor's gross earnings pursuant to the contract, together with the minor's name and, if known, the minor's social security number, birth date, last known address, telephone number, email address, dates of employment, and title of the project on which the minor was employed, and shall notify the parent, guardian, or trustee of that transfer by certified mail to the last known address. Upon receipt of those forwarded funds, The Actors' Fund of America shall become the trustee of those funds and the minor's employer shall

have no further obligation or duty to monitor or account for the funds.

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

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

(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, except an employer of a minor for services as an extra, background performer, or in a similar capacity, as described in paragraph (3) of subdivision (b) of Section 6750. These amounts shall be held in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, shall determine that

appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

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

(3) The minor's employer shall deposit 15 percent of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to Section 6753, or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract. Notwithstanding any other statute, pending receipt of the trustee's statement or the final court order, the minor's employer shall hold for the benefit of the minor the 15 percent of the minor's gross earnings pursuant to the contract. When making the initial deposit of funds, the minor's employer shall provide written notification to the financial institution or company that the funds are subject to Section 6753. This paragraph does not apply to an employer of a minor for services as an extra, background performer, or in a similar capacity, as described in paragraph (3) of subdivision (b) of Section 6750.

(4) Once the minor's employer deposits the set-aside funds in trust, in an account or other savings plan pursuant to Section 6753, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(5) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor

resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary and, if the beneficiary is then a minor, to the parent or guardian, if any, and to the trustee or trustees of the funds with opportunity for all parties to appear and be heard.

(6) A parent or guardian entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to paragraph (5) amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to Section 6753 and, if applicable, a true and accurate photocopy of the new or amended order.

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

(B) The Actors' Fund of America shall make best efforts to notify the parent, guardian, or trustee of their responsibilities to provide a true and accurate photocopy of the trustee's statement pursuant to Section 6753 and in the case of a guardian, a certified copy of the court document appointing the person as the minor's

legal guardian. After receiving those documents, The Actors' Fund of America shall deposit or disburse the funds as directed by the trustee's statement, and in accordance with Section 6753, within 15 business days. When making that deposit or disbursement of the funds, The Actors' Fund of America shall provide notice to the financial institution that the funds are subject to Section 6753, and shall thereafter have no further obligation or duty to monitor or account for the funds.

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

(d) Where a parent or guardian is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750, the relationship between the parent or guardian and the minor is a fiduciary relationship that is governed by the law of trusts, whether or not a court has issued a formal order to that effect. The parent or guardian acting in his or her fiduciary relationship, shall, with the earnings and accumulations of the minor under the contract, pay all liabilities incurred by the minor under the contract, including, but not limited to, payments for taxes on all earnings, including taxes on the amounts set aside under subdivisions (b) and (c) of this section, and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subdivision shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

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

all beneficiaries, provided it maintains accounting records for each beneficiary's interest in the master account.

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

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

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

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

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

(2) The Actors' Fund of America may assess and deduct from the balance in the beneficiary's account reasonable management, administrative, and investment expenses, including

beneficiary-specific fees for initial setup, account notifications and account disbursements, and a reasonably allocable share of management, administrative, and investment expenses of the master account. No fees may be charged to any beneficiary's account during the first year that the account is held by The Actors' Fund of America.

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

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

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

Approved _____, 2013

Governor