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## Minor Changes: Altering Current Coogan Law to Better Protect Children Working in Entertainment

Danielle Ayalon

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# Minor Changes: Altering Current Coogan Law to Better Protect Children Working in Entertainment

by  
DANIELLE AYALON\*

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Put not your trust in money, but put your money in trust.

- Oliver Wendell Holmes Sr.<sup>1</sup>

## I. Introduction

It’s a story heard time and again. A child, once famous, now broke. Fame, money, and youth equal problems: Michael Jackson,<sup>2</sup> Gary Coleman,<sup>3</sup> Macaulay Culkin,<sup>4</sup> Corey Haim,<sup>5</sup> Shirley Temple.<sup>6</sup>

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1. OLIVER WENDELL HOLMES, THE AUTOCRAT OF THE BREAKFAST-TABLE 54 (1858).

2. *E.g.*, Geoff Boucher & Elaine Woo, *Michael Jackson’s Life Was Infused With Fantasy and Tragedy*, L.A. TIMES, June 26, 2009, <http://www.latimes.com/news/obituaries/la-me-jackson-obit26-2009jun26,0,1970798.story?page=1>.

3. *E.g.*, Dennis McLellan, *Gary Coleman Dies at 42; Child Star of Hit Sitcom ‘Diff’rent Strokes*, L.A. TIMES (May 29, 2010), <http://www.latimes.com/news/obituaries/la-me-gary-coleman-20100529,0,2088052.story>.

The list goes on and on: children whose parents forgot that they are supposed to protect their children—emotionally and financially. When children earn substantial amounts of money, parents have something to gain. They frequently manage their children’s money, and with the desire for personal gain, they face an enormous temptation to disregard their fiduciary responsibilities. To protect children against these potential problems caused by their parents, the California legislature has adopted a statutory scheme known as Coogan Law.<sup>7</sup>

Coogan Law is a popular name for sections 6750 through 6753 of the California Family Code.<sup>8</sup> Before the enactment of Coogan Law, common law did not help ease the financial tension between parent and child because a minor’s earnings belong to his or her parents.<sup>9</sup> Children were at the mercy of their parents, who often mismanaged the money earned by their children.<sup>10</sup> As Marc Staenberg and Daniel Stuart point out, “instances of financial exploitation of child performers by their own parents cr[ied] out for legislative intervention.”<sup>11</sup>

Coogan Law provides statutory authority designating income earned by a minor under an entertainment contract as the minor’s property, rather than the property of the minor’s parents.<sup>12</sup> These statutes were first enacted in 1939,<sup>13</sup> substantially revised in 2000,<sup>14</sup>

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4. E.g., Susie Linfield, *Trouble in the House THAT Mac Built: A Custody Battle for Macaulay Culkin by His Parent-Managers Offers a Glimpse Into What Can Happen in Hollywood When a Son Is Also a Star*, L.A. TIMES (Nov. 5, 1995), [http://articles.latimes.com/1995-11-05/magazine/tm-64948\\_1\\_macaulay-culkin](http://articles.latimes.com/1995-11-05/magazine/tm-64948_1_macaulay-culkin).

5. E.g., Dave Itzkoff, *Corey Haim, Actor, Has Died*, N.Y. TIMES (Mar. 10, 2010), <http://artsbeat.blogs.nytimes.com/2010/03/10/corey-haim-actor-has-died/>.

6. E.g., Peter M. Christiano, *Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers*, 31 MCGEORGE L. REV. 201 (2000).

7. CAL. FAM. CODE §§ 6750-6753 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.)

8. Jordana Lewis, *Minor Contracts, Major Issues: Inside the Coogan Act*, ASSOCIATION OF TALENT AGENTS (Mar. 7, 2007), [http://www.agentassociation.com/frontdoor/news\\_detail.cfm?id=544](http://www.agentassociation.com/frontdoor/news_detail.cfm?id=544).

9. CAL. FAM. CODE § 303 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.)

10. Christiano, *supra* note 6, at 205.

11. Marc R. Staenberg & Daniel K. Stuart, *Children as Chattels: The Disturbing Plight of Child Performers*, 32 BEVERLY HILLS B. ASS’N J. 21, 22-23 (Summer/Fall 1997).

12. CAL. FAM. CODE § 7500(a) and (c) (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.)

13. Lewis, *supra* note 8.

and subsequently amended in 2004.<sup>15</sup> But despite these ongoing efforts to provide financial protection, the adverse interests of parents and their children persist. The concern that many child entertainers are not yet adequately protected invites close scrutiny of the law to assess whether changes are still required to assure children in the entertainment business have optimal protection.

This note examines the current Coogan Law and proposes changes to afford greater protection to children working under entertainment contracts. Part II of this note explains the history of Coogan Law from its inception to its most recent revision. Part III examines the current law and its loopholes: (1) the problems associated with court-approval; (2) the inadequacy of the fifteen percent requirement; (3) the inherent problems with parents as trustees; and (4) the statutory termination of the trust at the age of majority. Finally, part IV of this note proposes changes to the existing laws, aimed at curtailing each of the problems above and ultimately increasing the financial protection available to children working as performers in the entertainment industry.

## II. Background

### A. A History of Coogan Law

In 1919, Charlie Chaplin discovered a child actor by the name of Jackie Coogan.<sup>16</sup> Chaplin chose Coogan to play opposite him in his famous film, *The Kid* (1921), laying the foundation for Coogan's successful career and fame.<sup>17</sup> In 1923, at the age of nine, Coogan was one of the highest paid actors in Hollywood.<sup>18</sup> But when he turned twenty-one in 1935 and asked his mother for his earnings, he learned that his hard-earned money was gone.<sup>19</sup> The reasons underlying Coogan's fame shifted when he notoriously sued his mother in an effort to recover his earnings.<sup>20</sup> In 1939, his litigation prompted the

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14. Amanda Bronstad, *Coogan Law Loophole Leaves Child Actors at Financial Risk*, THE NAT'L LAW JOURNAL (Apr. 18, 2011), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202490167503>.

15. Ben Davis, Comment, *A Matter of Trust for Rising Stars: Protecting Minor's Earnings in California and New York*, 27 J. JUV. L. 69, 74 (2006).

16. *Coogan Law*, SCREEN ACTORS GUILD, <http://www.sag.org/content/coogan-law> (last visited Jan. 17, 2012).

17. *Id.*

18. *Jackie Coogan*, IMDB.COM, <http://www.imdb.com/name/nm0001067/bio> (last visited Jan. 17, 2012).

19. SCREEN ACTORS GUILD, *supra* note 16.

20. *Id.*

enactment of what is referred to as Coogan Law: the California state legislature's attempt to help protect child entertainers' earnings from their parents.<sup>21</sup>

Children's earnings have to be protected for a number of reasons. Traditionally, contracts entered into by a minor are subject to disaffirmance if the contracting minor elects to do so before reaching the age of majority or shortly thereafter.<sup>22</sup> In 1872, long before the 1939 statutes went into effect, the California state legislature enacted sections 35 and 36 of the Civil Code<sup>23</sup> "to protect employers from the common law and statutory rights of minors to disaffirm contracts."<sup>24</sup> These statutes did not protect minors but rather revoked the limited protection a child did have in most circumstances.<sup>25</sup>

Under these early statutes, minors could still disaffirm a contract under which they earned more money than needed to financially support themselves.<sup>26</sup> Thus, the film industry wanted a way to protect itself from minors disaffirming their contracts.<sup>27</sup> In 1927, the California state legislature amended section 36, specifically revoking a minor's right to disaffirm entertainment contracts if the contract had been court-approved.<sup>28</sup> This statute provided some protection to minors working under contracts that had not been court-approved,<sup>29</sup> but it failed to provide protection because the legislation did not specify criteria for judges to apply when deciding whether to grant approval to contracts submitted to the court for approval.<sup>30</sup> Thus, the statutes gave some protection to movie producers, but did little to protect the children.<sup>31</sup>

Enter Jackie Coogan, circa 1939. Coogan's famous lawsuit against his mother exposed the inadequacies of the law.<sup>32</sup> The California legislature responded to public concern by changing the

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21. *Id.*

22. Staenberg & Stuart, *supra* note 11, at 24 (explaining rationale behind the right to disaffirmance is to protect children from exploitation and public policy of "protect[ing] minors from their own improvidence").

23. CAL. CIV. CODE §§ 35 and 36 *repealed by* Statutes 1993, ch. 219 §2 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots..

24. Staenberg & Stuart, *supra* note 11.

25. *Id.*

26. *Id.* at 25.

27. *See id.*

28. *Id.*

29. *Id.*

30. *See id.*

31. *See* Bronstad, *supra* note 14.

32. Staenberg & Stuart, *supra* note 11, at 25.

law to allow the court to use its discretion to set aside a percentage of the net earnings of a child in a trust account.<sup>33</sup> The child's parent was required to establish a trust and provide the information about the trust to movie producers, who were then required to deposit a portion of the child's earnings into the trust.<sup>34</sup> This new law became known as Coogan Law, but because it was filled with loopholes, it still failed to provide child-entertainers with adequate protection.<sup>35</sup>

Despite this modification requiring establishment of a trust account, most children's earnings continued to go largely unprotected.<sup>36</sup> One of the most notable loopholes in the original law was that it only afforded protection to contracts that were "court-approved" and very few contracts were.<sup>37</sup> Many contracts involving children were never brought before the court for approval.<sup>38</sup> This was because producers often didn't seek court approval for contracts for short-term projects "such as a single film or commercial."<sup>39</sup> Another notable loophole was the fact that the law's protection extended to a percentage of a child's "net earnings," with "net earnings" defined as "the income of the child, less taxes, support and care, expenses associated with the contract, and manager's and attorney's fees."<sup>40</sup> This allowed parents to drain the income before it could be protected.<sup>41</sup> Yet another loophole included the fact that the amount of income set aside was a "discretionary" percentage determined by judicial discretion rather than by a fixed proportion.<sup>42</sup> Moreover, despite the new law, parents still had a right to the income earned by their minor children.<sup>43</sup> The law, as enacted, did not clarify ownership of the child's earnings.

Even though the law afforded very little protection, it remained in effect for more than half a century. The only change was in 1992, when it was transferred from the California Civil Code to the newly

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33. Christiano, *supra* note 6, at 203.

34. *Id.* at 207.

35. *See generally id.* (explaining prominent loopholes in the law included that ninety-five percent of contracts were not court approved, the decision to establish trusts was left to the judge, and the continued parental control over substantial amounts of child's income).

36. *See* Staenberg & Stuart, *supra* note 11, at 25.

37. *See id.*

38. Christiano, *supra* note 6, at 204.

39. *See* Davis, *supra* note 15, at 72.

40. Christiano, *supra* note 6, at 203.

41. *Id.* at 205.

42. Bronstad, *supra* note 14.

43. FAM. § 7500

enacted Family Code.<sup>44</sup> In 2000, the state legislature finally revised the law in an attempt to correct its many loopholes.<sup>45</sup> The legislature made further revisions to remedy these loopholes again in 2004.<sup>46</sup>

### B. The Current Law

The law currently in effect has been more successful at protecting minors' financial assets than any of its previous versions.<sup>47</sup> The law applies to contracts "pursuant to which a minor is employed or agrees to render artistic or creative services . . . . [which] include[s] . . . services as an actor, actress, dancer, musician, comedian, singer" etc.,<sup>48</sup> and to contracts in which a minor is employed to participate in a sport.<sup>49</sup> As in the earlier versions of Coogan Law, a minor cannot disaffirm a contract as long as the court in the county of the minor's residence has approved the contract.<sup>50</sup> While a contract is still subject to disaffirmance if the court has not approved it, commentators have pointed out that under the new law, the earnings under the contract are subject to statutory protection regardless of whether the contract has been court approved.<sup>51</sup> Thus, the law finally favors children over movie producers.

Other changes also aim to provide greater financial protection for minors. While children's earnings under all other contracts legally belong to their parents,<sup>52</sup> the revised Coogan Law provides that children's earnings under Coogan contracts are property that belong solely to the minor.<sup>53</sup> Whereas earnings that were previously placed in trust were subject to a *discretionary* percentage, the current law requires that no less than fifteen percent of the child's earnings be set aside in trust.<sup>54</sup> Moreover, the revised law bases that percentage on

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44. Christiano, *supra* note 6, at 203.

45. Bronstad, *supra* note 14.

46. *New Coogan Rules, A MINOR CONSIDERATION*, <http://www.minorcon.org/cooganupdate.html> (last visited Feb. 19, 2012).

47. *See* Bronstad, *supra* note 14.

48. FAM. § 6750(a)(1).

49. FAM. § 6750(a)(3)

50. FAM. § 6751.

51. Erica Siegel, *When Parental Influence Goes Too Far: The Need for Adequate Protection of Child Entertainers and Athletes*, 18 CARDOZA ARTS & ENT. L.J. 427, 434–35 (2000).

52. FAM. § 7500(a).

53. CAL. FAM. CODE § 771 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

54. FAM. § 6752.

gross earnings rather than *net* earnings.<sup>55</sup> The law defines gross earnings as “the total compensation payable to the minor under the contract.”<sup>56</sup>

The current law additionally requires that when the minor begins employment, the trustee<sup>57</sup> is required to provide the trust account information to the child’s employer.<sup>58</sup> The employer is then required to deposit the mandated fifteen percent of the minor’s gross earnings directly into the fund for the duration of the child’s employment.<sup>59</sup> Once the employer deposits the funds, he or she “shall have no further obligation or duty to monitor or account for the funds.”<sup>60</sup> The funds can only be reached by the minor beneficiary upon reaching the age of majority,<sup>61</sup> or by the child’s parent or guardian in a petition to the court showing good cause to amend or terminate the trust.<sup>62</sup>

### III. Analysis

Despite the relatively recent revisions to California’s Coogan Law, there are still several loopholes that diminish the protection afforded to children working in the entertainment industry. These problems include: (1) the application to employment contracts (and very rare application to contracts entered into by minors for related services);<sup>63</sup> (2) lack of statutory protections to ensure that a child is protected from his or her parent(s) spending the eighty-five percent of earnings not in trust;<sup>64</sup> (3) the designation of parents as trustees,<sup>65</sup> which creates an inherent conflict of interest; and (4) allowing trust assets to be reached by the minor beneficiary immediately upon reaching the age of majority.<sup>66</sup>

Thus, although California’s Coogan Law has made substantial progress in protecting its child entertainers from financial abuse, the current law should be improved to better protect children. Even

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55. *Id.*

56. FAM. § 6750.

57. FAM. § 6752 (statutorily designates the minor’s parent or legal guardian as trustee).

58. *Id.*

59. *Id.*

60. *Id.*

61. FAM. § 6753.

62. FAM. § 6752.

63. *See Lewis, supra* note 8.

64. *See Bronstad, supra* note 14.

65. FAM. § 6752.

66. FAM. § 6753.

though California currently requires employers and parents or guardians of children working under entertainment contracts to comply with Coogan Law, the law is inadequate to fully protect their financial interests, and therefore must be further revised to ensure better protection.

#### A. The Limited Scope of “Court Approval”

The first problem with the current law is the limitation inherent in contracts subject to court approval. Minors cannot disaffirm contracts that have been court-approved.<sup>67</sup> This is problematic because most contracts are not court-approved.<sup>68</sup> Specifically, “the Coogan Act does not apply to agency or management contracts in which the minor pays fees in exchange for services.”<sup>69</sup> The law specifically makes *employment* contracts eligible for court approval,<sup>70</sup> and does nothing to ensure that contracts entered into by the minor for related services are eligible for court approval—and thus protected against disaffirmance by the minor.<sup>71</sup> The California Labor Code does afford some protection to these contracts by making them subject to court approval if the contracting party is licensed under the Talent Agencies Act,<sup>72</sup> but this requirement often is not met.<sup>73</sup> This loophole encourages parties contracting with minors for services to contract with their parents or guardians instead, which creates a conflict of interest between parents, who are parties to contracts for professional services provided for their children, and the children who are recipients of those services.<sup>74</sup>

In the recent case of *Berg v. Traylor*,<sup>75</sup> the mother of a minor signed an agreement for personal management services for her son, an actor.<sup>76</sup> The minor did not sign the agreement, but his mother wrote his name on the contract.<sup>77</sup> The agreement expressly provided

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67. FAM. § 6751.

68. Bronstad, *supra* note 14.

69. Lewis, *supra* note 8.

70. FAM. § 6750 (Coogan statutes apply to a “contract pursuant to which a minor is employed or agrees to render artistic or creative services, either directly or through a third party”) (emphasis added).

71. See *Berg v. Traylor*, 56 Cal. Rptr. 3d (Ct. App. 2007).

72. CAL. LAB. CODE § 1700.37 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

73. See Lewis, *supra* note 8.

74. See generally *id.*

75. 56 Cal. Rptr. 3d 140 (Ct. App. 2007)

76. *Id.* at 142.

77. *Id.*

that if the minor attempted to disaffirm the contract, his mother, a party to the contract, would be liable.<sup>78</sup> With the agreement still in effect, the mother sent a letter to the manager to cancel the contract.<sup>79</sup> The parties subsequently entered arbitration and the manager was awarded damages from the minor defendant.<sup>80</sup> The minor filed a petition to vacate the arbitration award on the basis of his statutory right to disaffirm the original agreement and the arbitration award.<sup>81</sup> The manager argued that the contract should not be subject to disaffirmance by the minor because his mother signed the contract.<sup>82</sup> The court, however, held that the child was permitted to disaffirm the agreement and the resulting arbitration agreement, but his mother remained liable for the arbitration award under the agreement.<sup>83</sup>

The contract involved in *Berg v. Traylor* was a contract for services. The very fact that the minor's contract was not an *employment* contract, but a contract for *related services*, exemplifies a significant loophole in the current law. As the court explained, "[i]t was therefore not in [the mother's] interest to have [her son] disaffirm the agreement because [the manager] would look to her, personally, for satisfaction of [the child's] obligations under the agreement. As such, [the mother's] interests in the lawsuit were in direct conflict with those of her son's."<sup>84</sup> Because her minor son disaffirmed the contract, the mother was responsible for the resulting damages.<sup>85</sup> Thus, California's statutory omission concerning court approval for contracts entered into by minors for fees in exchange for professionally related services is inherently flawed. Although protected from recourse by the contracting party, the minor child is hardly in a better position because he is left in a position directly opposed to his parent's interest.

#### **B. The Fifteen Percent Problem**

While the statutory deposit requirement of fifteen percent of a minor's earnings is significantly better than the previous discretionary rule, it is not enough to ensure adequate financial protection. Section 6752 of the California Family Code requires the minor's employer to

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78. *Id.* .

79. *Id.*

80. *Id.* at 142–43.

81. *Id.* at 144.

82. *Id.* at 146.

83. *Id.* at 149–50.

84. *Id.* at 149.

85. *Id.*

set aside fifteen percent of a child's gross earnings into the child's trust account,<sup>86</sup> but it does not specify any restrictions regarding the remaining eighty-five percent.<sup>87</sup> Despite being property legally belonging to the child, if the child's parents do not choose to put the remaining money in trust, this remaining part of the minor's earnings is not protected.<sup>88</sup>

A child working in entertainment usually requires the aid of professional services.<sup>89</sup> The American Federation of Television and Radio Artists lists: "agents, managers, attorneys, acting lessons, professional photographs, transportation costs, tutoring, publicists and accountants," among the operating expenses of a child performer.<sup>90</sup> While it is difficult to argue that these services are not costly, it is also difficult to argue that eighty-five percent of a minor's income is required for their payment. But how much money *should* be required to be set aside in trust?

A related question is whether, or to what degree, parents should be compensated for their time and work done in furtherance of their child's career. Parents are often required to be with their minor children when the children are working.<sup>91</sup> The child's employer, however, does not compensate parents for their time.<sup>92</sup> Not only are parents not compensated, but they also often sacrifice their own careers and income to help their child pursue a career. This creates a disproportionate problem in low-income families where a child's parent or guardian cannot support the child's career unless the parent is entitled to rely on income for his or her investment of time and labor.<sup>93</sup> Thus, the requirement of fifteen percent needs to be increased and steps need to be taken to decrease the parents' incentives to invade their children's earnings as compensation for their own efforts.

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86. FAM. § 6752.

87. *Id.*

88. Bronstad, *supra* note 14.

89. See CALIFORNIA "COOGAN" LAW, AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (AFTRA) (Jul. 18, 2009), <http://www.sagaftra.org/content/coogan-law-full-text>.

90. *Id.*

91. Davis, *supra* note 15, at 79.

92. *Id.* at 80.

93. Christiano, *supra* note 6, at 209.

### C. Trusting Parents with Management of Trust Assets

One of the biggest problems in California's current Coogan Law is inherent in the trust relationship. As beneficiaries of the trust, minor children lack the ability to protect themselves from their parent trustees. Every trust requires a valid purpose,<sup>94</sup> property to be held in trust,<sup>95</sup> and a beneficiary.<sup>96</sup> A trust also requires a trustee.<sup>97</sup> California trust law copies common law,<sup>98</sup> and a trustee is not initially required to form a valid trust because the court can easily designate an outside trustee.<sup>99</sup> The court's power to designate a trustee is not limited to cases where there is no trustee.<sup>100</sup> A court can appoint a trustee whenever the circumstances of a case require intervention.<sup>101</sup>

Despite this well-established principle, Coogan Law requires that "at least one parent or legal guardian . . . entitled to physical custody, care, and control of the minor . . . be appointed as trustee of the funds."<sup>102</sup> This statutory appointment is intrinsically problematic because Coogan Law is designed to protect children against parents who squander their assets, yet those very parents are designated as trustees with the duty to protect their children's assets by careful management.<sup>103</sup> The law, however, does make an exception to the parental appointment if "the court shall determine that appointment of a different individual . . . as trustee . . . is required in the best interest of the minor."<sup>104</sup> This exception to the law is intended to help solve the problem, but it is ineffective because often a minor child is not in the position to take his or her parents to court to petition for court protection.<sup>105</sup>

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94. CAL. PROB. CODE § 15203 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

95. CAL. PROB. CODE § 15202 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

96. CAL. PROB. CODE § 15205 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

97. CAL. PROB. CODE § 15660 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

98. CAL. PROB. CODE § 15002 (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

99. 90 C.J.S. *Trusts* § 302 (2011).

100. *Id.*

101. *Id.*

102. FAM. § 6752.

103. See generally Thom Hardin, *The Regulation of Minor's Entertainment Contracts: Effective California Law or Hollywood Grandeur*, 19 J. JUV L. 376, 384 (1998) (N.B. article was written before the 2000 revisions to the law).

104. FAM. § 6752.

105. Bronstad, *supra* note 14.

In her article on children working under entertainment contracts, Erica Siegel alludes to the fact that babies are particularly subject to financial abuse in the entertainment industry from parents who are all too eager to have them working from days after birth.<sup>106</sup> In the recent case of *Suleman v. Superior Court*, a stranger to the now infamous “Octomom” and her octuplets filed a petition seeking appointment of a guardian to the “Octomom’s” newborn children’s estates<sup>107</sup> under a California law that allows a “relative or other person on behalf of the minor” to file a petition for the appointment of a guardian of a person or estate of a minor.<sup>108</sup> The stranger was Paul Petersen,<sup>109</sup> the president of A Minor Consideration.<sup>110</sup> The court in that case found Petersen’s effort seeking appointment of a guardian “unprecedented” and “meritless”<sup>111</sup> and held that the “other person on behalf of the minor” is “a person who *pleads ultimate facts demonstrating financial misconduct or alleges other information sufficient to warrant court intervention* in the management of the minor’s money or other property.”<sup>112</sup>

In *Suleman*, the petitioner was the leader of an organization specifically dedicated to protecting the financial interests of minors working in entertainment. Despite this, the court held that he did not have the necessary information to remove the infants’ mother as the guardian of their estates.<sup>113</sup> The court set a difficult hurdle to overcome, however, by requiring that the “other person on behalf of the minor” must be someone who “pleads ultimate facts demonstrating financial misconduct.”<sup>114</sup> With this difficult requirement, how are children, particularly infants, ever to be protected from their parents? This judicial standard is too stringent to allow someone who is not the child’s parent or guardian to successfully petition the court to appoint a third party guardian.

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106. Siegel, *supra* note 51, at 451–52.

107. 103 Cal. Rptr. 3d 651, 653–54 (Ct. App. 2010).

108. CAL. PROB. CODE § 1510(a) and (b) (West, Westlaw through Ch. 876 of 2012 Reg. Sess. and all propositions on 2012 ballots.).

109. *Suleman*, 103 Cal. Rptr. 3d at 654.

110. A Minor Consideration is a nonprofit corporation formed by Petersen to help safeguard the financial interests of children working in the entertainment industry. A MINOR CONSIDERATION, [www.minorcon.org](http://www.minorcon.org) (last visited Nov. 12, 2012).

111. 103 Cal. Rptr. 3d at 654.

112. *Id.* at 660.(emphasis in original).

113. *Id.* at 662–63.

114. *Id.* at 660.

The depth of this problem is illustrated more fully in *Berg v. Traylor*<sup>115</sup> where a guardian ad litem should have been, but was not appointed to represent the minor child during arbitration and litigation.<sup>116</sup> The court expressed its dismay at the failure of so many officers of the court and the court to protect the minor child's interests:

Where our difficulty lies is in understanding how counsel, the arbitrator and the trial court repeatedly and systematically ignored Craig's interests in this matter. From the time Meshiel signed the agreement, her interests were not aligned with Craig's. That no one—counsel, the arbitrator or the trial court—recognized this conflict and sought appointment of a guardian ad litem for Craig is nothing short of stunning.<sup>117</sup>

In contrast to *Suleman v. Superior Court*,<sup>118</sup> where the petitioner was a third party without the required "ultimate facts demonstrating financial misconduct,"<sup>119</sup> there were several parties in *Berg*, including the court, who had direct responsibilities to ensure that the minor child's interests were protected.<sup>120</sup> The child's interests in *Berg*, however, were ignored.

Thus, the current law under which a child's parent is that child's guardian and trustee "unless the court shall determine that appointment of a different individual as guardian ad litem is required in the best interests of the minor,"<sup>121</sup> is ineffective at protecting the very citizens it is supposed to protect.

#### **D. Trust Termination**

The fourth and final problem with the current state of the law is that the law allows the trust beneficiary, the minor child, to access the trust holdings as soon as he or she turns eighteen.<sup>122</sup> This is problematic for two reasons. The first is that once the child comes into possession of the trust assets, creditors can go after the money in

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115. *Berg*, 56 Cal. Rptr. 3d at 140.

116. *Id.* at 144.

117. *Id.* at 144–45.

118. 103 Cal. Rptr. 3d at 651.

119. *Id.* at 660.

120. *Berg*, 56 Cal. Rptr. 3d at 140.

121. FAM. § 6751.

122. FAM. § 6752.

satisfaction of any outstanding claims from contracts entered into by the child's parent(s) or guardian(s) on behalf of the child during his or her minority.<sup>123</sup>

The second problem is that Coogan Law trusts are established to protect a child's earnings from their parents so that their earnings are preserved upon reaching the age of majority. Even if creditors do not go after the minor's assets once the minor is in possession of them, the trust assets are susceptible to loss by the beneficiary's own spending upon reaching the age of majority. The earnings of the child are compromised because the child-turned-adult has access to all the earnings upon the age of eighteen. This situation is best viewed in light of the common law argument favoring a minor's ability to disaffirm contracts entered into while a minor.<sup>124</sup> Just as a child is subject to improvidence when he has not yet attained the age of majority, a child attaining the age of majority is subject to that same improvidence. The fact that a minor child has access to all of his or her funds in trust upon the age of eighteen defeats the purpose of protecting the child from not having the earnings as a young adult.

#### IV. Proposal

Although Coogan Law has come a long way since its inception, it must be further improved to provide children working under entertainment contracts with better financial protection. While the 2004 revision to the law made all *employment* contracts subject to Coogan Law without the need for court approval, other contracts related to minors' employment, such as contracts for agent and management services, should also be subject to Coogan Law without the stringent requirement of court approval. This would go a long way to ensuring that the interests of children and their parents are not opposed to one another if minors should try to raise their right to disaffirmance.

The statutory requirement placing fifteen percent of a child's gross earnings in trust is insufficient and should be increased to better protect children's financial assets. However, it is unreasonable to set aside everything a child earns until he reaches majority. Working in the entertainment industry does require a minor to incur expenses for related services. In his assessment of the problem, Ben Davis

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123. See Bronstad, *supra* note 14 (pointing out case in which parents had failed to pay income taxes on child's earnings and her trust assets were wiped out upon attaining age eighteen).

124. Staenberg & Stuart, *supra* note 11, at 24.

suggests that both California and New York should increase the statutory requirement to twenty-five percent.<sup>125</sup> Furthermore, an incremental formula for the required trust deposit based on the amount of the minor's earnings would be preferable because children, especially those working in entertainment, are so susceptible to financial abuse.

In addition to increasing the statutory trust funding requirements, rules should be made for an income designation for the child's parent or guardian.<sup>126</sup> With the current law, a parent or guardian is free to spend the performer's earnings that are not set aside in trust and is likely to do so if there is no other means of earning a living while making every effort to further their child's career.<sup>127</sup> Statutorily designating a capped percentage of a child's income to be paid to the parent or guardian could help this situation, alleviating the conflict of interests between children and parents.<sup>128</sup> "Their parents would be compensated for their time and effort, but could not be unjustly enriched at their child's expense by squandering their child's earnings."<sup>129</sup> Moreover, such a designation would actually align the interests of children with those of their parents because parental income would be based upon the child's earnings.

Appointing parents or guardians as the trustees of their children's trust funds is complicated. On the one hand, they are likely to be in the best and most efficient position to manage their children's money without having to involve a third party. On the other hand, it is too easy for their interests to become directly adverse to the interests of the children. One proposal is to follow the example set by the state legislature in New York. In 2004, New York implemented new legislation aimed at solving the problem when a parent or guardian acts as trustee to their child's account.<sup>130</sup> New York law continues to allow the child's parent or guardian to act as the custodian of his or her child's trust account, but a trust company must be appointed as custodian of the account once it reaches \$250,000.<sup>131</sup>

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125. Davis, *supra* note 15, at 80.

126. See Staenberg & Stuart, *supra* note 11, at 31. (Arguing that parental compensation would enable parents to be "compensated for their time and effort, but could not be unjustly enriched at their child's expense by squandering their child's earnings.")

127. See Bronstad, *supra* note 14.

128. See Staenberg & Stuart, *supra* note 11, at 31.

129. *Id.*

130. Davis, *supra* note 15, at 78.

131. N.Y. EST. POWERS & TRUSTS Law § 7-7.1 (McKinney 2004).

The purpose of Coogan Law is to protect the financial assets of minors employed in entertainment. If their assets can be reached the moment they turn eighteen, the very purpose of the law is defeated.<sup>132</sup> The law should extend the public policy rationale of “improvidence” that allows minors to disaffirm contracts to include restrictions on Coogan Law trust accounts that increase the age of termination, unless the child, upon reaching the age of majority, has compelling reasons for terminating the trust early. Additionally, the law should also ensure that creditors could not reach the child’s assets upon the trust’s termination.

In the context of professional sports, Susan McAleavey suggests an alternative to the NBA age rule, arguing that the spendthrift trust is an alternative way to protect against the naiveté of an NBA player who is a young adult.<sup>133</sup> “The trustee . . . manages and invests the principle in a manner that provides for a continuous income flow to the player. This allocation removes the stress on the player of managing his own finances and prevents an accountant or family member from manipulating the player and his earnings.”<sup>134</sup> Adapting McAleavey’s suggestion to fit the needs of other child entertainers, spendthrift provisions on Coogan Law trust accounts would help protect children from creditors reaching their assets. Moreover, increasing the age at which the minor may access the funds is another strategy that would work to provide greater protection for minors’ earnings. Creditors would then be unable to reach the trust assets upon the minor reaching the age of majority, and minors would be protected from foolishly spending all their assets immediately upon reaching the age of majority.

## V. Conclusion

Children are some of the most-susceptible to individuals’ abuse in the context of trust management. Those working in the public eye are no less susceptible. Thus, children working in entertainment need the best protection our legal system can provide. The current law offers some protection, but there is room for improvement. California legislators need to take a closer look at the California Coogan Law and make some additional changes to ensure children are receiving the most effective financial protection possible.

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132. See e.g., Lewis, *supra* note 8.

133. Susan McAleavey, Note, *Spendthrift Trust: An Alternative to the NBA Age Rule*, 84 ST. JOHN’S L. REV. 279, 301 (Winter 2010).

134. *Id.*