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Chapter 667: Instituting Proper Trust Funds and Safeguarding the Earnings of Child Performers from Dissipation by Parents, Guardians and Trustees

Saira Din

Code Sections Affected

Family Code §§ 6750, 6752, and 6753 (amended); Labor Code § 308.9 (new).
SB 210 (Burton); 2003 STAT. Ch. 667.

*“[A]t some future date a newly awakened adult will turn to one of us and ask, ‘What happened to my money?’ and we’ll have an easy answer: ‘It’s at The Actors Fund. We’ve been waiting for you.’”*¹

I. INTRODUCTION

When actor Jackie Coogan turned eighteen in 1932, he found that his mother and stepfather had squandered his four million dollar earnings.² Coogan, a television star who earned millions as a child, learned that almost all his earnings were depleted because his mother and stepfather had spent his money—legally.³ In 1938, California enacted the “Coogan Law” in response to Jackie Coogan’s situation.⁴ The Coogan Law permitted courts to establish trust funds in which to deposit a minor’s earnings.⁵ However, the Coogan Law did not bring all child contracts under the court’s protection and also did not change laws which authorized parents to claim their child’s earnings.⁶ For example, child actor Shirley Temple supported a household of twelve family members, including her parents, throughout her film career.⁷ When Temple’s career came to a close, she

1. See Letter from Paul Peterson, President & Founder, A Minor Consideration, to Senator John Burton, President pro Tempore, Cal. State Senate (Apr. 21, 2003) [hereinafter Peterson Letter] (on file with the *McGeorge Law Review*) (stating support for SB 210 and the continued commitment towards protecting working children).

2. Debra Kaufman, *Judicial Fix: State Bill 1162 Amends the 1939 Coogan Bill to Ensure that Earnings Today Are Not Gone Tomorrow*, HOLLYWOOD REPORTER SHOWBIZ KIDS SPECIAL ISSUE, Dec. 1999, at 81; SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 1 (Apr. 22, 2003).

3. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 1 (Apr. 22, 2003); Peter M. Christiano, *Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers*, 31 MCGEORGE L. REV. 201, 202-03 (2000).

4. Christiano, *supra* note 3, at 202-03.

5. *Id.* at 202.

6. *Id.*

7. See Marc R. Staenberg & Daniel K. Stuart, *Children as Chattels: The Disturbing Plight of Child Performers*, 32 BEVERLY HILLS BUS. ASS’N J. 21, 22 (1997) (providing examples of parental squandering of child actors’ earnings).

was left with a few thousand dollars and the deed to the dollhouse in the yard of her parents' Beverly Hills home.⁸

Chapter 667 is designed to protect children's interests even more than prior law with two approaches: (1) "by establishing a default trust account within the Actors Fund of America ["AFA"] into which employers can deposit the minors' set-aside earnings" if no Coogan trust account has been established for the minor, and (2) "requiring evidence that a Coogan trust account has been established . . . before the minor's permit to work is renewed or extended" by the Labor Commissioner.⁹ This will allow minors to gain initial employment, but enforce the creation of the Coogan trust for the child to continue employment.¹⁰ Chapter 667 provides additional changes to the Coogan Law to protect "the minor's earnings from dissipation by parents, guardians, or trustees."¹¹

II. EXISTING LAW

A. Background

In 1938, the California Legislature enacted section 36.1 of the Civil Code,¹² which became known as the Coogan Law. The Coogan Law was conceived in order to protect the minor's earnings from being spent before the minor reached adulthood.¹³ As a result of the Coogan Law, courts were permitted "to set aside up to fifty percent of the child's net earnings in a trust" for the child.¹⁴ However, such a trust could only be created for contracts brought before a court, and the decision to establish the trust was left to the discretion of the judge.¹⁵ In reality, the only reason a contract was brought before the court was to protect the employer from child actors hiding behind their minority status.¹⁶ Thus, judges often only protected employers, without establishing trusts for the child actors.¹⁷ With a lack of protection from the courts, many children continued to face the consequences of their parents' inadequate money management.¹⁸

8. *Id.*

9. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 2 (Apr. 22, 2003); *see also* Dana Mitchell, *SB 210 (Burton) Background* [hereinafter *Background Sheet*] (copy on file with the *McGeorge Law Review*) (providing a brief overview of SB 210 and explaining that the deposited funds "will be safe, growing, and accessible at any time by the minors—with the added benefit . . . of helping the acting community").

10. *See Background Sheet, supra* note 9 (explaining that "[t]his should substantially prevent the problem on a going-forward basis").

11. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 2 (Apr. 22, 2003).

12. 1939 Cal. Stat. ch. 637, sec. 1, at 2064-65 (enacting CAL. CIV. CODE § 36.1).

13. Christiano, *supra* note 3, at 204.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 203-04.

18. *Id.* at 204.

B. State Law

The Coogan Law was substantially amended in 1999 by Senate Bill 1162.¹⁹ Senate Bill 1162 required fifteen percent of a minor's earnings to be placed "into a 'Coogan trust' account, invested in low-risk financial vehicles, and blocked from use until the minor [was] emancipated or reach[e]d" the age of eighteen.²⁰ This requirement applied to both court-approved and non-approved minors' contracts for creative or artistic employment.²¹ In addition, Senate Bill 1162 imposed a duty on the employer to place the funds only into the minor's Coogan trust account.²² The Coogan trust was required to be opened by a parent or guardian at an insured financial institution and to be invested "in a manner consistent with that of a trustee."²³ However, the set aside is not limited to California institutions, a major loophole in the law.²⁴ For example, a "parent could place the money in an account in Kansas—or the Cayman Islands—and then" empty the entire account.²⁵ Senate Bill 1162 further required annual accounting and court supervision of the trust accounts with court-approved contracts continuing until the minor turned eighteen.²⁶

However, sponsors of Chapter 667, the Motion Picture Association of America ("MPAA") and the Screen Actors Guild ("SAG"), contend that "many parents still have not established Coogan trusts for their minor children," despite the fact that Senate Bill 1162 has been law since 1999.²⁷ There is no penalty for failure to establish an account.²⁸ Consequently, since Senate Bill 1162 only authorizes fifteen percent of the minor's earnings to be deposited into the Coogan trust accounts, the employers (MPAA) have been collectively holding approximately \$1.5 million²⁹ of minors' earnings.³⁰

19. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 2 (Apr. 22, 2003).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Kaufman, *supra* note 2, at 82.

25. *Id.*

26. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 2 (Apr. 22, 2003).

27. *Id.*

28. See E-mail from Dana Mitchell, Counsel, California State Senate, to Saira Din, McGeorge School of Law (Sept. 4, 2003) [hereinafter Mitchell E-mail] (copy on file with the *McGeorge Law Review*).

29. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 2 (Apr. 22, 2003).

30. *Id.*; see also *Background Sheet*, *supra* note 9 (explaining the deficiency in SB 1162 according to the MPAA, and that SB 1162 only allowed studios to pay the Coogan Trust money into Coogan Trust Accounts, thereby causing the MPAA to hold onto the Coogan monies).

Under the Unclaimed Property Law,³¹ if earnings remain unclaimed by the minor or the minor's parent or guardian after three years, the money may be forwarded by the employer to the State Controller.³² The Unclaimed Property Law allows the state to "have use of the unclaimed property until it is claimed."³³

III. CHAPTER 667

Chapter 667 ensures who the designated employer will be when a minor performs services, either (1) directly for a person or entity, (2) through a third-party or personal services corporation, or (3) through an agency or service.³⁴ A designated employer is critical in avoiding confusion regarding who is to pay the fifteen percent set aside.³⁵ Chapter 667 requires the "employer of a minor with an artistic employment contract" to deposit fifteen percent of the minor's gross earnings, into a special account held by the AFA³⁶ if a Coogan trust is not made available to an employer within 180 days of the minor's commencement of employment.³⁷ Chapter 667 further requires the AFA to notify the parent or guardian of the deposit and to notify the beneficiary within sixty days after he or she becomes emancipated or turns eighteen years old.³⁸

In addition, Chapter 667 provides that the AFA must "manage and administer [the] funds in the same manner as a trustee under the Probate Code."³⁹ The AFA is not, however, required to establish separate trust accounts for each beneficiary and may instead hold the funds in a master account, provided that the AFA maintains accounting records for each beneficiary.⁴⁰

Furthermore, Chapter 667 allows the AFA to transfer funds from the master or beneficiary account "to its general account in an amount equal to the beneficiary's balance," and allows the AFA to use the funds transferred for programs and services for young performers.⁴¹ In effect, the AFA may use the funds for programs and services for young performers until the funds, and imputed rate of return, less reasonable administrative costs, are required to be returned to the minor or the minor's parent, guardian, or trustee.⁴² Chapter 667

31. CAL. CIV. PROC. CODE §§ 1300-1615 (West 1994 & Supp. 2003).

32. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 9 (Apr. 22, 2003).

33. *Id.*

34. CAL. FAM. CODE §§ 6750(b)(1)-(3); 6752(d)(7)(A) (West Supp. 2004) (amended by Chapter 667).

35. *Id.*

36. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 5 (Apr. 22, 2003) (explaining that the AFA is a national nonprofit organization with a mission "to advance, foster and benefit the welfare of all professionals in the entertainment community who are in need of help, ensuring that these efforts are accomplished with compassion, confidentiality and preservation of dignity for the individuals concerned").

37. CAL. FAM. CODE § 6752(b)(9)(A) (amended by Chapter 667).

38. *Id.* § 6752(d)(7)(C).

39. *Id.* § 6752(f)(1).

40. *Id.*

41. *Id.* § 6752(f)(2).

42. *Id.*

makes it clear that “use of the funds does not limit or alter the” AFA’s duty to disburse the funds “to the beneficiary, or the beneficiary’s parent, guardian, trustee, or estate pursuant to” the Coogan Law.⁴³ The AFA is required to disburse the set aside funds, including imputed interest, to either a Coogan account upon notice that such an account has been instituted for a minor, or directly to a beneficiary who has attained eighteen years of age.⁴⁴

Chapter 667 states that all funds received by the AFA are exempt from California’s Unclaimed Property Law.⁴⁵ In addition, Chapter 667 sets forth the requirements that the financial institution that holds the money must be located in California and must name the trust account “Coogan Account.”⁴⁶ Finally, Chapter 667 declares that the Labor Commissioner may only issue a work permit for a minor to perform under an artistic employment contract for a period of six months.⁴⁷ In addition, the work permit shall become void after ten business days from the issuance of the permit, if the work permit is not attached to a trustee’s statement demonstrating the creation of a Coogan trust account.⁴⁸

IV. ANALYSIS OF CHAPTER 667

A. *The AFA’s Use of the Default Trust: Further Squandering or Effective Use of the Funds?*

The AFA “has helped entertainment industry professionals in need” since 1882.⁴⁹ During its earlier years, the AFA was known to provide financial assistance to indigent actors, as well as providing burial services to those without family or monetary means.⁵⁰ Today, the AFA “provides comprehensive human services to more than 10,000 people nationally.”⁵¹ According to Joseph P. Benincasa, Executive Director of the Actors’ Fund, Chapter 667 conveys three

43. *Id.*

44. *Id.* § 6752(f)(3)(A)-(B).

45. *Id.* § 6752(i); *see also* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 9 (Apr. 22, 2003) (explaining that otherwise, under the Unclaimed Property Law, if earnings remain unclaimed by the minor or the guardian after three years, the employers may forward the money to the State Controller and the state would have use of the money until it is claimed).

46. CAL. FAM. CODE § 6753(a) (amended by Chapter 667).

47. CAL. LAB. CODE § 1308.9 (enacted by Chapter 667).

48. *Id.*

49. Letter from Joseph P. Benincasa, Executive Director, The Actors’ Fund of America, to Senator John Burton, President pro Tempore, Cal. State Senate (Mar. 20, 2003) (on file with the *McGeorge Law Review*).

50. *Id.*

51. *See id.* (stating that fund programs are responsive to the needs of entertainment industry professionals).

The Actors’ Fund has three main program areas: a) social services that includes case management, financial assistance, and client advocacy, (c) [sic] a nursing home/assisted living facility, affordable and supportive housing, and a facility for people with AIDS in West Hollywood, and (d) [sic] education and training programs through its Actors’ Work Program.”

Id.

responsibilities to the Actors' Fund: "(a) to serve as trustee of unclaimed Coogan funds, (b) to make best efforts to get these funds to their rightful owners, and (c) to provide programs and services for young performers in the State of California, while keeping its obligation to disburse set aside funds to the beneficiaries."⁵²

First, as trustee of the unclaimed Coogan funds, the AFA provides evidence of its conscientious history in managing other trusts, estates, and gift annuities.⁵³ Furthermore, the AFA identifies trustees who have "skills in assisting organizations in fulfilling their fiscal responsibilities."⁵⁴ Moreover, the AFA asserts that its Finance Committee meets quarterly and, through "an independent financial advisor, evaluates the performance of the portfolio managers."⁵⁵

Second, the AFA affirms its commitment to using every means of communication possible in reaching the rightful owners of unclaimed Coogan funds.⁵⁶ This includes notification through telephone, regular mail, e-mail, Internet access, placing ads in the industry trade papers and articles in both SAG and American Federation of Television and Radio Artists ("AFTRA") publications.⁵⁷ Although all activities will be conducted out of the AFA's Los Angeles office, the commitment to reach rightful owners will extend to national and international levels.⁵⁸

Finally, the AFA upholds its ongoing support and services to young performers.⁵⁹ The AFA has provided social services in areas such as "substance abuse treatment, and financial support in times of need."⁶⁰ In working with SAG, the AFTRA Young Performers Committee, and A Minor Consideration, the AFA unveiled a program in November 2002 called "Looking Ahead," a program for young performers between the ages of twelve and eighteen years old.⁶¹ The goal of Looking Ahead is "to give young performers and their families needed support during the adolescence years that will enable them to become productive adults."⁶²

52. *Id.*

53. *See id.* (stating that "[t]he Fund has managed trusts, estates, and gift annuities, in partnership with institutions such as State Street Global Advisors, Fleet Bank and US Trust").

54. *See id.*

Phil Smith, our Treasurer, is also the President of the Shubert Organization, a major force in the theatreworld [sic]. Under his stewardship, our endowments and other investments have been managed conservatively and professionally by JP Morgan-Chase and SEI, the largest trust back-office provider with \$72 billion under its asset management.

Id.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

The Looking Ahead Advisory Committee, includes by Richard Thomas (chair), members of SAG and AFTRA, and Presidents John Connolly and Melissa Gilbert.⁶³ The Committee also includes Paul Petersen, President and founder of A Minor Consideration, “a leading advocacy group dedicated to current and former young performers.”⁶⁴ Other Committee members include teachers, coaches, “industry executives, child psychologists, parents of young performers, and members of the Los Angeles education community.”⁶⁵ The program provides comprehensive “career and education counseling; individual, family, and group counseling to address communication, relationship and peer pressure issues; a mentoring program utilizing former young performers; community service opportunities; financial planning seminars; and weekend retreats aimed at developing leadership skills.”⁶⁶

The authority granted to the AFA to use the funds from the beneficiaries’ accounts raises issues of concern, despite the fact that there is an obligation to pay the beneficiaries with interest when a demand for payment is made.⁶⁷ Due to the fiduciary relationship, trustees are generally not granted permission to use funds from trust accounts.⁶⁸ Although a trustee has power over the beneficiary’s funds, the funds are not the property of the trustee.⁶⁹ Chapter 667 recognizes the fiduciary relationship with the beneficiary and “creates an exception” authorizing the AFA “to use funds from the beneficiaries’ or the master beneficiaries’ accounts, albeit at some imputed rate of interest.”⁷⁰ It is the creation of this exception which raises concerns.⁷¹

The sponsors of Chapter 667 believe the only practical use of the unclaimed funds is for the general benefit of the same class of persons—child performers—who are the ultimate intended beneficiaries of the trust.⁷² Additionally, if the AFA is not granted the opportunity to use the unclaimed funds for the benefit of child performers, the funds will escheat to the state under the Unclaimed Property Law and terminate the beneficiaries’ rights within a definite amount of time.⁷³ Moreover, the equitable doctrine of *cy pres*, which allows a court freedom in interpreting a will or gift if the original purpose of the donor cannot be fulfilled, is recognized in California.⁷⁴ In fact, putting the trust funds “to the next best use if the trust purpose can no longer be accomplished was well established and has

63. Actors Fund of America, *Looking Ahead Fact Sheet* (copy on file with the *McGeorge Law Review*).

64. *Id.*

65. *Id.*

66. *Id.*

67. SENATE FLOOR SENATE REPUBLICAN ANALYSIS OF SB 210, at 74 (May 8, 2003).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 75.

73. *Id.*

74. *Id.*

been expressly authorized by the legislature.”⁷⁵ The money will therefore benefit child performers through the AFA’s Looking Ahead program.⁷⁶

B. Will Chapter 667 Really Increase the Establishment of Coogan Trust Accounts by Denying Work Permit Renewals?

The second major goal of Chapter 667 is to create an incentive for a Coogan trust to be established by the parent or guardian.⁷⁷ Chapter 667 will require evidence of the Coogan account “before the minor’s permit to work is renewed or extended.”⁷⁸ This will allow a child to gain initial employment, but then require a Coogan trust for the child to continue working.⁷⁹

According to Melissa Gilbert, President of SAG, the “amendments would strengthen the incentive for parents to establish a Coogan Trust Account . . .”⁸⁰ Furthermore, Melissa Patack, Vice President of the MPAA, also stated that the amendments of Chapter 667 will encourage parents to establish Coogan accounts.⁸¹ Paul Petersen, President and Founder of A Minor Consideration, stated that “[i]f a working child’s parents fail to establish a Coogan account then, after six months, that child’s Work Permit will not be renewed.”⁸²

Currently, the Labor Commissioner’s written consent is required for the employment of a minor.⁸³ Violating the statute is a misdemeanor.⁸⁴ Chapter 667 declares that the Labor Commissioner may only issue a work permit for a minor to perform under an artistic employment contract for a period of six months.⁸⁵ In addition, the work permit shall become void after ten business days from the issuance of the permit, if the work permit is not attached to a trustee’s statement demonstrating the creation of a Coogan trust account.⁸⁶ Lack of a Coogan trust account will further prohibit renewal of the work permit unless the parent or guardian actually establishes a Coogan trust.⁸⁷ Since a minor will be authorized to work for ten days, money earned during that period may not necessarily be

75. *Id.* (quoting California Probate Code section 15409; *Kraus v. Trinity Mgmt. Servs., Inc.*, 999 P.2d 718, 728 (Cal. 2000)).

76. *Id.*

77. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 2 (Apr. 22, 2003).

78. *Id.*

79. *Id.*

80. Letter from Melissa Gilbert, President, The Screen Actor’s Guild, to Senator John Burton, President pro Tempore, Cal. State Senate (Mar. 24, 2003) (on file with the *McGeorge Law Review*).

81. Letter from Melissa Patack, Vice President, Motion Picture Association of America, to Senator John Burton, President pro Tempore Cal. State Senate (Aug. 15, 2002) (on file with the *McGeorge Law Review*).

82. Peterson Letter, *supra* note 1.

83. CAL. LAB. CODE § 1308.5 (West Supp. 2003); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 9 (Apr. 22, 2003).

84. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 9 (Apr. 22, 2003).

85. CAL. LAB. CODE § 1308.9 (enacted by Chapter 667).

86. *Id.*

87. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 210, at 3 (May 8, 2003).

placed into a Coogan account. Additionally, there may be some minors who only work for a few days and no longer wish to pursue additional contracts, thereby no longer requiring or being pressed to establish Coogan accounts for the small time period in which they were employed.

V. CONCLUSION

Chapter 667 provides “a procedure to safeguard the earnings of child performers” if parents or guardians neglect to establish a Coogan account for a “minor’s statutorily required earnings set-aside.”⁸⁸ The Actor’s Fund, a 501(c)(3) charitable organization, is designated to receive the unclaimed minors’ earnings and to act as a trustee for the funds.⁸⁹ The Actor’s Fund will continue to be responsible for the transfer of the money to the claimants, either at the formation of a Coogan account, if a minor, or to the performer, at majority, or the estate of a deceased performer.⁹⁰ Additionally, the amendments provide substance to the requirement of establishing a Coogan account by stating that “a minor’s work permit may not be renewed unless” the Coogan account is created.⁹¹

88. See Memorandum from the Motion Picture Association of America, California Group, *Explanation of Proposed Changes to Coogan’s Law* (Mar. 26, 2003) (copy on file with the *McGeorge Law Review*) (explaining amendments to the Coogan Law and the affected sections of the Family and Labor Code).

89. *Id.*

90. *Id.*

91. *Id.*