HOUSE DOCKET, NO. 3381 FILED ON: 1/18/2013

HOUSE . . . . . No. 1270

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Conroy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An act relative to the protection of talented children and their families.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Conroy	*13th Middlesex*
Lori A. Ehrlich	*8th Essex*
Steven S. Howitt	*4th Bristol*

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By Mr. Conroy of Wayland, a petition (accompanied by bill, House, No. 1270) of Thomas P. Conroy, Lori A. Ehrlich and Steven S. Howitt for legislation to provide legal protections for child performers and their families. The Judiciary.

The Commonwealth of Massachusetts

An act relative to the protection of talented children and their families.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

(a) No person or entity shall employ, exhibit or cause to be exhibited, or to use, or have custody of for the purpose of exhibition, use or employment, a child under the age of eighteen years, for artistic or creative services. Nor shall a person who is responsible for the care, custody or control of such child as a parent, relative, guardian, employer or otherwise, exhibit, use, or procure or consent to the use, exhibition or participation of such child in artistic or creative services, or neglect or refuse to restrain such child from engaging or acting in a public or private place, except as hereinafter provided, whether or not an admission fee is charged and whether or not such child or any other person is to be compensated for the use of such child therein. Nor shall any person or entity contract with a child who agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, theatre, or otherwise in the entertainment field (hereinafter referred to as "other contracted services for entertainment"). Pursuant to this subsection, no person or entity may contract with such child as such child's agent, agency or service in connection with any of the foregoing activities.

"Artistic or creative services" includes, without limitation, services as an actor, actress, dancer, musician, comedian, singer, songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, designer, model, pageant performer, stunt-person, voice-over artist, narrator or spokesperson, or other performer or entertainer, performing in or participating on camera in programs or productions for radio, television, motion picture film, webcast, internet, new media, or for any other distribution format now known or hereafter devised for entertainment.

26 (i) If a child is employed or agrees to render services for any person or entity, that person or
27 entity shall be considered the child's employer or contracting entity for purposes of this chapter.
28 (ii) If a child's services are rendered through a third-party individual or personal services
29 corporation (loan-out company), the person to whom or entity to which that third party is
30 providing the child's employment, exhibition, use or services shall be considered the child's
31 employer or contracting entity for purposes of this chapter.
32 (iii) If a child renders services as an extra, background performer, or in a similar capacity
33 through an agency or service that provides one ore more of those performers for a fee (casting
34 agency), the agency or service shall be considered the child's employer or contracting entity for
35 the purposes of this chapter.
36
37 For the purposes of this subsection: "agent" means a person entrusted by another whose
38 business it is to acquire employment or engagements, act on behalf of, and represent such child
39 in such foregoing activities for the rendering of services by the child; "agency or service" means
40 an entity comprised of one or more agents whose business it is to acquire employment or
41 engagements, act on behalf of or represent such child in such foregoing activities.
42
43 (b) The provisions of subsection (a) shall not apply to the participation or employment, use or
44 exhibition of a child in a church academy or other academy affiliated with religion, a school
45 including a dancing or dramatic school, as part of the regular services or activities thereof
46 respectively; or in the annual graduation exercises of any such academy or school; or in a private
47 home; or in any place where such performance is under the direction, control or supervision of a
48 school department; or for recitals given in connection with private instruction associated with a
49 continuing education course of study; or in the performance of radio or television programs in
50 cases where the child or children broadcasting or participating do so from or in connection with a
51 school, house of worship, academy, museum, library or other religious, civic or educational
52 institution, or for not more than two hours a week from the studios of a regularly licensed
53 broadcasting company, or where the child participates or is employed, used, or exhibited in any
54 motion picture, film, theatrical or stage presentation or radio or television broadcast, simulcast,
55 web cast or program or in any format now known or hereafter devised where the child is
56 exclusively employed or used for the limited use as: an extra, background performer or in a
57 similar capacity, or day player wherein said limited use accumulates to no more than eight
58 hundred ($800.00) dollars in total compensation to be paid to the child by the contracting entity
59 for the production and occurs during hours when attendance for instruction is not required in
60 accordance with law, or where the child's participation is amateur, nonprofessional in nature and
61 is not produced for any commercial purpose or commercial distribution and occurs during hours
62 when attendance for instruction is not required in accordance with law.
63
64 For the purposes of this subsection, an "extra" means a performer who is used for the limited
65 purpose of an "extra" or "audience" or "atmosphere" where the child is part of a group or

66 background scene; a "day player" means a performer who is seen and who may speak a line or
67 lines of dialogue and who is compensated for the day.
68
69 (c) Notwithstanding the provisions of subsection (a), a child may participate or be employed,
70 used or exhibited in any of the exhibitions, rehearsals or performances set forth in said
71 subsection (a); provided, however, that such employment, use, participation or exhibition takes
72 place pursuant to the provisions of a written contract which has been approved by the probate
73 and family court for the county in which the child resides, where the child is employed or where
74 the child participates, performs, or renders his services, or if the child is not a resident of the
75 commonwealth in at least one county where participation or performance is to take place, or if
76 the child is not a resident of the commonwealth and the employment or performance takes place
77 outside the commonwealth, in the county within the commonwealth where the employer has his
78 principal place of business.
79
80 (d) The probate and family court shall have jurisdiction for contract approval by and between a
81 child providing either artistic and creative services or other contracted services for entertainment
82 and a contracting entity, defined in subsection (a).
83
84
85 (1) Said proceeding shall be commenced by the child's parent or legal guardian, by
86 verified petition that sets forth:
87
88 (i) the full name, residence and date of birth of the child with certified copy of birth
89 certificate affixed;
90
91 (ii) the full name and residence of the petitioner and proposed conservator;
92
93 (iiii) the full name and business address of the contracting party or entity;
94
95 (iv) a brief statement as to the child's participation, employment, use and/or exhibition
96 and compensation under the contract, including the location(s) of the child’s participation,
97 exhibition, use or performance;
98
99 (v) a statement that the durational term of the contract shall extend for no more than
100 three years from the date the contract is signed or approved by the court, whichever is first to
101 occur inclusive of extensions by option or otherwise except for scripted television broadcast or
102 program contracts which shall extend for no more than five years inclusive of extensions by
103 option or otherwise;
104
105 (vi) disclosure of any prospective role or responsibilities by the petitioner pursuant to

106 the child’s fulfillment of the contract;
107
108 (vii) disclosure that the petitioner is or is not a party to the contract and that he or she
109 does or does not have a financial interest or stake in either the contract or in the child’s
110 participation, employment, use or exhibition;
111
112 (viii) the total gross earnings received and deposited from any and all prior contracts
113 described in subsection (a) above together with the current balance in a bank/trust account;
114
115 (ix) the total gross earnings generated under the current contract and the percentage of
116 fees intended for deposit;
117
118 (x) consent to the contract by the parent(s) or legal guardian with the acknowledgment
119 and release that all gross earnings belong to the child;
120
121 (xi) a statement of compliance in accordance with G.L. c.76 § 1 and the payment of
122 tutoring services by the contracting entity if a child is contracted to work three (3) or more
123 consecutive days or if the child is expected to miss more than seven (7) days of school in a six-
124 month period
125
126 (2) The petition shall establish that all or a substantial portion of the child's gross earnings,
127 subject to the criteria contained in (i) and (ii) of this paragraph 2, shall be set aside, protected,
128 prudently invested, and preserved for distribution to the child at age eighteen. All gross earnings
129 and other compensation earned by, paid to or provided to the child belong to the child.
130 Moreover, the petitioner(s) acknowledge that the creditors of any person, other than of the child,
131 shall not be entitled to the child’s earnings or property.
132
133 The court shall consider the following factors when assessing the allocation of funds for
134 preservation, investment and the protection of earnings for the child:
135
136
137 (i) a bank or trust account, and written trust if any, established in Massachusetts with a
138 financial institution that is and remains insured at all times by the Federal Deposit Insurance
139 Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National
140 Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company
141 that remains registered under the Investment Company Act of 1940 to be used expressly for the
142 deposit of fees generated under the contract and the relationship of any proposed trustee of the
143 child's funds;
144
145 (ii) the percentage of gross earnings to be set aside and deposited shall be determined after

146 considering:
147
148 the payment of taxes and reasonable expenses associated with the child's status as an
149 entertainer and which may relate to the performance under the contract but which are not paid by
150 or reimbursed by the contracting entity; and
151
152 the child's legal obligation, if any, to pay child support
153
154 (iii) If and under what terms a financial advisor or other third party has been engaged to render
155 investment advice for the child and administer the bank or trust account.
156
157 (3) In assessing the suitability of the petitioner(s) to serve as conservator, the court shall
158 consider the following factors:
159
160 (i) the information set forth in the petition pursuant to subsection (d)(1)(vi)-(d)(1)(x) inclusive;
161
162 (ii) facts regarding the property and financial resources and circumstances of the parent(s) or
163 legal guardian to meet their ordinary support obligations to the child;
164
165 (iii) facts regarding relevant experience, education and training of the parent(s) or legal
166 guardian
167
168 If, after review, the court in its discretion finds that the best interest of the child would be better
169 served by an independent conservator, the court shall appoint one. In the event the court does
170 not appoint an independent conservator, the parent or legal guardian shall be deemed a de facto
171 conservator and shall be bound by the obligations set forth in this chapter and subsection.
172
173
174 (4) The conservator shall file a bond with surety pursuant to which the court, in its discretion,
175 shall determine the bond type.
176
177 (i) The conservator shall render annual accounts as set forth in Article V, subsection 5-418 of
178 chapter one hundred ninety (B) (190B) and other applicable court rules which, upon filing, shall
179 be reviewed by the court for allowance. Pursuant thereto, the court may appoint a guardian ad
180 litem or next friend in accordance with the foregoing Chapter and Article to ensure the
181 continuous and ongoing preservation and savings, prudent investment and protection of the
182 child's earnings.
183
184 (ii) The Massachusetts personal income tax return required for the child who is unable to make
185 a Massachusetts personal income tax return by reason of his or her minority must be made and

186 filed by his conservator. Failure to make and file said return timely shall subject the conservator
187 to liability for income taxes owed, interest, penalties and other associated costs.
188
189
190 (5) The court shall ensure that the contract shall describe all the requirements for the child's
191 participation, employment, use and/or exhibition and all gross earnings to be paid to the child.
192
193 (6) The court shall ensure that the contract shall be limited to a term of three years, inclusive
194 of extensions by options or otherwise, except for scripted television broadcast or program
195 contracts which shall be limited to a term of five years inclusive of extensions by option or
196 otherwise.
197
198 (7) The court in its discretion may appoint a guardian ad litem to represent the interests of the
199 child. The guardian ad litem fee shall be paid by the party contracting with the child.
200
201 (8) The court shall further ensure that the contract provides the child with continuing
202 education in compliance with section one of chapter seventy-six and that the contracting entity
203 shall provide said education by way of tutoring services if said child provides his services or
204 participation for three or more consecutive days or if the child is expected to miss more than
205 seven (7) days of school in a six-month period. Costs for said education shall be paid by the
206 contracting entity.
207
208 (9) The court shall not approve of any contract executed by the child unless the parent, parents
209 or guardian of the child have assented to such contract, in writing, or the court shall find that the
210 child is emancipated.
211
212 (10) Prior to determining whether to approve the contract, the child shall appear personally
213 before the court so that the court may make inquiry of the wishes of the child.
214
215 (11) The court shall not approve of any contract unless its finds that the contract is in the best
216 interest of the child and the criteria expressed in paragraphs (5) to (10) inclusive of subsection
217 (d) have been complied with.
218
219 (e) The approval of a contract by the court shall not exempt the child or any person employing
220 such child from other provisions of law regarding employment of minors.
221
222 (f) Court approval of a valid contract shall serve to bind the child as if such child executed the
223 contract personally as an adult; and the child shall be bound to all provisions including the
224 permanent sale of intellectual property rights; provided, however, that the probate and family
225 court approving such contract shall retain the authority to either revoke approval of the contract

226 in its entirety or modify its terms if the court finds that the well being of the child so requires and
227 provided further that such revocation of approval of the contract by the court shall not include
228 the transfer back to the child of intellectual property rights unless there has been a finding of
229 fraud or misrepresentation by the contracting entity.
230
231 (g) For the purposes of subsection (f), intellectual property rights shall be defined as those
232 rights of copyright and trademark explicitly assigned, licensed or otherwise conveyed in the
233 contract by the child to the contracting entity. Any and all rights of privacy and rights of
234 publicity assigned, licensed or otherwise conveyed by the child to the contracting entity shall
235 transfer back to the child upon such revocation of approval.
236
237 For purposes of this chapter, a child's "gross earnings" shall mean the total compensation
238 payable to the child under the contract including the payment of advances to the child or, if the
239 child's services are being rendered through a third-party individual or personal services
240 corporation (loan-out company), the total compensation payable to that third party for the
241 services of the minor including the payment of advances. Notwithstanding the foregoing, with
242 respect to contracts pursuant to which a child is employed or agrees to render services as a
243 musician, singer, songwriter, musical producer, or arranger only, for purposes of this chapter, the
244 child's "gross earnings" shall mean the total amount paid to the child pursuant to the contract,
245 including the payment of any advances to the child pursuant to the contract, but excluding
246 deductions or other expenses incurred by the employer pursuant to the contract to offset those
247 advances, or, if the child's services are being rendered through a third-party individual or
248 personal services corporation (loan-out company), the total amount payable to that third party for
249 the services of the child.
250
251