

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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>	<i>1/18/2013</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/18/2013</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/1/2013</i>

HOUSE No. 1270

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

In the Year Two Thousand Thirteen

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:

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

17 “Artistic or creative services” includes, without limitation, services as an actor, actress,
18 dancer, musician, comedian, singer, songwriter, musical producer or arranger, writer, director,
19 producer, production executive, choreographer, composer, conductor, designer, model, pageant
20 performer, stunt-person, voice-over artist, narrator or spokesperson, or other performer or
21 entertainer, performing in or participating on camera in programs or productions for radio,

22 television, motion picture film, webcast, internet, new media, or for any other distribution format
23 now known or hereafter devised for entertainment.

24 (i) If a child is employed or agrees to render services for any person or entity, that
25 person or entity shall be considered the child's employer or contracting entity for purposes of
26 this chapter.

27 (ii) If a child's services are rendered through a third-party individual or personal
28 services corporation (loan-out company), the person to whom or entity to which that third party
29 is providing the child's employment, exhibition, use or services shall be considered the child's
30 employer or contracting entity for purposes of this chapter.

31 (iii) If a child renders services as an extra, background performer, or in a similar
32 capacity through an agency or service that provides one or more of those performers for a fee
33 (casting agency), the agency or service shall be considered the child's employer or contracting
34 entity for the purposes of this chapter.

35 For the purposes of this subsection: "agent" means a person entrusted by another whose
36 business it is to acquire employment or engagements, act on behalf of, and represent such child
37 in such foregoing activities for the rendering of services by the child; "agency or service" means
38 an entity comprised of one or more agents whose business it is to acquire employment or
39 engagements, act on behalf of or represent such child in such foregoing activities.

40 (b) The provisions of subsection (a) shall not apply to the participation or employment,
41 use or exhibition of a child in a church academy or other academy affiliated with religion, a
42 school including a dancing or dramatic school, as part of the regular services or activities thereof
43 respectively; or in the annual graduation exercises of any such academy or school; or in a private
44 home; or in any place where such performance is under the direction, control or supervision of a
45 school department; or for recitals given in connection with private instruction associated with a
46 continuing education course of study; or in the performance of radio or television programs in
47 cases where the child or children broadcasting or participating do so from or in connection with a
48 school, house of worship, academy, museum, library or other religious, civic or educational
49 institution, or for not more than two hours a week from the studios of a regularly licensed
50 broadcasting company, or where the child participates or is employed, used, or exhibited in any
51 motion picture, film, theatrical or stage presentation or radio or television broadcast, simulcast,
52 web cast or program or in any format now known or hereafter devised where the child is
53 exclusively employed or used for the limited use as: an extra, background performer or in a
54 similar capacity, or day player wherein said limited use accumulates to no more than eight
55 hundred (\$800.00) dollars in total compensation to be paid to the child by the contracting entity
56 for the production and occurs during hours when attendance for instruction is not required in
57 accordance with law, or where the child's participation is amateur, nonprofessional in nature and

58 is not produced for any commercial purpose or commercial distribution and occurs during hours
59 when attendance for instruction is not required in accordance with law.

60 For the purposes of this subsection, an "extra" means a performer who is used for the
61 limited purpose of an "extra" or "audience" or "atmosphere" where the child is part of a group or
62 background scene; a "day player" means a performer who is seen and who may speak a line or
63 lines of dialogue and who is compensated for the day.

64 (c) Notwithstanding the provisions of subsection (a), a child may participate or be
65 employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in
66 said subsection (a); provided, however, that such employment, use, participation or exhibition
67 takes place pursuant to the provisions of a written contract which has been approved by the
68 probate and family court for the county in which the child resides, where the child is employed
69 or where the child participates, performs, or renders his services, or if the child is not a resident
70 of the commonwealth in at least one county where participation or performance is to take place,
71 or if the child is not a resident of the commonwealth and the employment or performance takes
72 place outside the commonwealth, in the county within the commonwealth where the employer
73 has his principal place of business.

74 (d) The probate and family court shall have jurisdiction for contract approval by and
75 between a child providing either artistic and creative services or other contracted services for
76 entertainment and a contracting entity, defined in subsection (a).

77 (1) Said proceeding shall be commenced by the child's parent or legal guardian, by
78 verified petition that sets forth:

79 (i) the full name, residence and date of birth of the child with certified copy of birth
80 certificate affixed;

81 (ii) the full name and residence of the petitioner and proposed conservator;

82 (iii) the full name and business address of the contracting party or entity;

83 (iv) a brief statement as to the child's participation, employment, use and/or exhibition
84 and compensation under the contract, including the location(s) of the child's participation,
85 exhibition, use or performance;

86 (v) a statement that the durational term of the contract shall extend for no more than
87 three years from the date the contract is signed or approved by the court, whichever is first to
88 occur inclusive of extensions by option or otherwise except for scripted television broadcast or
89 program contracts which shall extend for no more than five years inclusive of extensions by
90 option or otherwise;

91 (vi) disclosure of any prospective role or responsibilities by the petitioner pursuant to
92 the child's fulfillment of the contract;

93 (vii) disclosure that the petitioner is or is not a party to the contract and that he or she
94 does or does not have a financial interest or stake in either the contract or in the child's
95 participation, employment, use or exhibition;

96 (viii) the total gross earnings received and deposited from any and all prior contracts
97 described in subsection (a) above together with the current balance in a bank/trust account;

98 (ix) the total gross earnings generated under the current contract and the percentage of
99 fees intended for deposit;

100

101 (x) consent to the contract by the parent(s) or legal guardian with the acknowledgment
102 and release that all gross earnings belong to the child;

103 (xi) a statement of compliance in accordance with G.L. c.76 § 1 and the payment of
104 tutoring services by the contracting entity if a child is contracted to work three (3) or more
105 consecutive days or if the child is expected to miss more than seven (7) days of school in a six-
106 month period

107 (2) The petition shall establish that all or a substantial portion of the child's gross
108 earnings, subject to the criteria contained in (i) and (ii) of this paragraph 2, shall be set aside,
109 protected, prudently invested, and preserved for distribution to the child at age eighteen. All
110 gross earnings and other compensation earned by, paid to or provided to the child belong to the
111 child. Moreover, the petitioner(s) acknowledge that the creditors of any person, other than of the
112 child, shall not be entitled to the child's earnings or property.

113 The court shall consider the following factors when assessing the allocation of funds for
114 preservation, investment and the protection of earnings for the child:

115

116 (i) a bank or trust account, and written trust if any, established in Massachusetts with a
117 financial institution that is and remains insured at all times by the Federal Deposit Insurance
118 Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National
119 Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company
120 that remains registered under the Investment Company Act of 1940 to be used expressly for the
121 deposit of fees generated under the contract and the relationship of any proposed trustee of the
122 child's funds;

123 (ii) the percentage of gross earnings to be set aside and deposited shall be determined
124 after considering:

125 the payment of taxes and reasonable expenses associated with the child's status as an
126 entertainer and which may relate to the performance under the contract but which are not paid by
127 or reimbursed by the contracting entity; and

128 the child's legal obligation, if any, to pay child support

129 (iii) If and under what terms a financial advisor or other third party has been engaged to
130 render investment advice for the child and administer the bank or trust account.

131 (3) In assessing the suitability of the petitioner(s) to serve as conservator, the court shall
132 consider the following factors:

133 (i) the information set forth in the petition pursuant to subsection (d)(1)(vi)-(d)(1)(x)
134 inclusive;

135 (ii) facts regarding the property and financial resources and circumstances of the
136 parent(s) or legal guardian to meet their ordinary support obligations to the child;

137 (iii) facts regarding relevant experience, education and training of the parent(s) or legal
138 guardian

139 If, after review, the court in its discretion finds that the best interest of the child would be
140 better served by an independent conservator, the court shall appoint one. In the event the court
141 does not appoint an independent conservator, the parent or legal guardian shall be deemed a de
142 facto conservator and shall be bound by the obligations set forth in this chapter and subsection.

143 (4) The conservator shall file a bond with surety pursuant to which the court, in its
144 discretion, shall determine the bond type.

145 (i) The conservator shall render annual accounts as set forth in Article V, subsection 5-
146 418 of chapter one hundred ninety (B) (190B) and other applicable court rules which, upon
147 filing, shall be reviewed by the court for allowance. Pursuant thereto, the court may appoint a
148 guardian ad litem or next friend in accordance with the foregoing Chapter and Article to ensure
149 the continuous and ongoing preservation and savings, prudent investment and protection of the
150 child's earnings.

151 (ii) The Massachusetts personal income tax return required for the child who is unable to
152 make a Massachusetts personal income tax return by reason of his or her minority must be made
153 and filed by his conservator. Failure to make and file said return timely shall subject the
154 conservator to liability for income taxes owed, interest, penalties and other associated costs.

155 (5) The court shall ensure that the contract shall describe all the requirements for the
156 child's participation, employment, use and/or exhibition and all gross earnings to be paid to the
157 child.

158 (6) The court shall ensure that the contract shall be limited to a term of three years,
159 inclusive of extensions by options or otherwise, except for scripted television broadcast or
160 program contracts which shall be limited to a term of five years inclusive of extensions by option
161 or otherwise.

162 (7) The court in its discretion may appoint a guardian ad litem to represent the interests
163 of the child. The guardian ad litem fee shall be paid by the party contracting with the child.

164 (8) The court shall further ensure that the contract provides the child with continuing
165 education in compliance with section one of chapter seventy-six and that the contracting entity
166 shall provide said education by way of tutoring services if said child provides his services or
167 participation for three or more consecutive days or if the child is expected to miss more than
168 seven (7) days of school in a six-month period. Costs for said education shall be paid by the
169 contracting entity.

170 (9) The court shall not approve of any contract executed by the child unless the parent,
171 parents or guardian of the child have assented to such contract, in writing, or the court shall find
172 that the child is emancipated.

173 (10) Prior to determining whether to approve the contract, the child shall appear
174 personally before the court so that the court may make inquiry of the wishes of the child.

175 (11) The court shall not approve of any contract unless its finds that the contract is in the
176 best interest of the child and the criteria expressed in paragraphs (5) to (10) inclusive of
177 subsection (d) have been complied with.

178 (e) The approval of a contract by the court shall not exempt the child or any person
179 employing such child from other provisions of law regarding employment of minors.

180 (f) Court approval of a valid contract shall serve to bind the child as if such child
181 executed the contract personally as an adult; and the child shall be bound to all provisions
182 including the permanent sale of intellectual property rights; provided, however, that the probate
183 and family court approving such contract shall retain the authority to either revoke approval of
184 the contract in its entirety or modify its terms if the court finds that the well being of the child so
185 requires and provided further that such revocation of approval of the contract by the court shall
186 not include the transfer back to the child of intellectual property rights unless there has been a
187 finding of fraud or misrepresentation by the contracting entity.

188 (g) For the purposes of subsection (f), intellectual property rights shall be defined as
189 those rights of copyright and trademark explicitly assigned, licensed or otherwise conveyed in
190 the contract by the child to the contracting entity. Any and all rights of privacy and rights of
191 publicity assigned, licensed or otherwise conveyed by the child to the contracting entity shall
192 transfer back to the child upon such revocation of approval.

193 For purposes of this chapter, a child’s “gross earnings” shall mean the total compensation
194 payable to the child under the contract including the payment of advances to the child or, if the
195 child’s services are being rendered through a third-party individual or personal services
196 corporation (loan-out company), the total compensation payable to that third party for the
197 services of the minor including the payment of advances. Notwithstanding the foregoing, with
198 respect to contracts pursuant to which a child is employed or agrees to render services as a
199 musician, singer, songwriter, musical producer, or arranger only, for purposes of this chapter, the
200 child's "gross earnings" shall mean the total amount paid to the child pursuant to the contract,
201 including the payment of any advances to the child pursuant to the contract, but excluding
202 deductions or other expenses incurred by the employer pursuant to the contract to offset those
203 advances, or, if the child's services are being rendered through a third-party individual or
204 personal services corporation (loan-out company), the total amount payable to that third party for
205 the services of the child.