

**CHILDREN ARE MAKING IT BIG
(FOR EVERYONE ELSE):
The Need for CHILD LABOR LAWS
Protecting Child Influencers**

Madyson Edwards

ABSTRACT

Child influencers are a large part of social media's advertising success. Child influencers earn millions each year, with the most successful of them earning upwards of \$29 million. They make their money from sponsored content and monetizing their social media platforms. Currently, child influencers have no legal rights through traditional child labor laws such as the Fair Labor Standards Act of 1938 or state-based child actor laws. Only one state—Illinois—has passed legislation specifically targeted at protecting child influencers. As a result, the risk of financial, physical, and psychological exploitation of child influencers is one that cannot be ignored. Because of the rapid expansion of child influencers and the lack of regulation or legislation to prevent the exploitation of these children, Congress must enact federal legislation to ensure the safety of children across the nation.

This Article addresses the fact that child influencers are working and should thus be afforded protection through a child labor regime. Additionally, this Article details how child influencers face their own unique risks—apart from other traditional child employment—which requires tailored laws. Specifically, this Article proposes federal legislation that would help solve financial exploitation of child influencers by requiring 15 percent of the worker's earnings to be put into a trust account. Further, the proposed legislation provides production regulations that ensures child influencers remain in school, imposes restrictions on the number of hours child influencers can work, and requires parental involvement in advertising campaigns that occur outside of the home.

ABOUT THE AUTHOR

Madyson Edwards, J.D., Texas Tech University School of Law, 2024; B.A. Psychology and Spanish, Texas A&M University, 2020. The author wishes to thank Associate Dean and Law Library Director Jamie Baker for her editorial contributions and feedback throughout the writing process of this Article. The author would also like to thank Jimmie and Amy Edwards for their continued guidance and support.

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I. INTRODUCTION

The advent of child influencing has great and immediate potential for exploitation. Parents have long taken photos and videos of their children to share with friends and family.¹ However, with the rise of social media, parents can now publicly share these photos and videos with their social media networks and monetize some of these moments.² Parents often insist that their children have fun and enjoy posting social media content.³ However, the fact

1. See generally Nila McGinnis, “They’re Just Playing”: Why Child Social Media Stars Need Enhanced Coogan Protections to Save Them from Their Parents, 87 MO. L. REV. 247 (2022) (discussing implications of social media).

2. See *id.* at 250–51.

3. Marshall Bright, “Kidfluencers” Earn Their Families Millions—But Who Is Protecting

remains that “a sponsored post or monetized video can earn thousands of dollars for both parents” of child influencers as well as the companies sponsoring posts.⁴ In fact, the most successful child influencers earn upwards of \$29 million each year.⁵ While this may seem harmless, one can imagine the complexities that have the potential to arise when parents begin to make a profit from the content they post of and with their children.

Take, for example, Myka Stauffer, a vlogger and blogger with a substantial number of followers at the peak of her career.⁶ Myka and her husband announced in May of 2020 that they “were ‘rehomeing’ their autistic son, Huxley, whom they adopted from China [just] three years prior.”⁷ Throughout the process of adopting Huxley, Myka regularly posted updates on the progress of the adoption.⁸ Huxley appeared in social media posts featuring products such as Dreft, Playtex Baby, and Danimals, that the Stauffers monetized⁹ Additionally, the monetized posts the Stauffers produced sometimes detailed personal information regarding Huxley’s disabilities and progress.¹⁰ Myka and her husband were investigated—and later cleared—from accusations of duct-taping Huxley’s hands to prevent him from sucking his thumb.¹¹ Fortunately, with the help of an adoption agency, Huxley was placed in a new home.¹² Nevertheless, no law currently entitles Huxley to any compensation from his appearances in the monetized posts the Stauffers profited from.¹³ Further, the Stauffers’ four other biological children, and most other minor child influencers, are similarly not legally entitled to their social media earnings.¹⁴

the Kids?, SHEKNOWS (Aug. 27, 2019, 6:28 PM), <https://www.sheknows.com/parenting/articles/2092003/kidfluencer-child-labor-laws-regulations> [<https://perma.cc/AS2X-JTV3>].

4. *Id.*

5. See Richard Bennett, *Top 10 Richest YouTubers in 2022 [Updated]*, FILMORA (Jan. 17, 2024), <https://filmora.wondershare.com/vlogger/top-wealthiest-youtubers.html> [<https://perma.cc/4MNF-R8WB>]; see also Betsy Reed, *Ryan Kaji, 9, Earns \$29.5m as This Year’s Highest-paid YouTuber*, GUARDIAN <https://www.theguardian.com/technology/2020/dec/18/ryan-kaji-9-earns-30m-as-this-years-highest-paid-youtuber> [<https://www.theguardian.com/technology/2020/dec/18/ryan-kaji-9-earns-30m-as-this-years-highest-paid-youtuber>] (last visited Jan. 23, 2024).

6. McGinnis, *supra* note 1, at 247.

7. *Id.*

8. Jen Juneau, *Who Is Myka Stauffer? All About YouTuber Who Placed Son with New Family 2 Years After Adoption*, PEOPLE (May 28, 2020 2:42 PM), <https://people.com/parents/myka-stauffer-youtuber-placed-son-adoption-explainer> [<https://perma.cc/76F9-X7AQ>].

9. McGinnis, *supra* note 1, at 247.

10. *Id.* at 248.

11. *Id.* at 247.

12. *Id.* at 248.

13. See sources cited *supra* notes 115–116 (discussing that Illinois is currently the only state that provides child influencers protection, and a requirement for its protection is that the content must be created in Illinois).

14. *Id.*

There is substantial popularity in influencer marketing and parents of child influencers and the companies who sponsor them stand to make a lot of money, yet most child influencers across the United States currently have no legal right to the money earned from their part in social media content.¹⁵ There are also no regulations protecting their physical and psychological health. As a result, there is significant risk of financial, physical, and psychological exploitation of child influencers.¹⁶

The time is ripe to challenge the lack of protection for child influencers.¹⁷ Though parents have the right to raise their children how they see fit,¹⁸ this right has previously been limited in the context of child labor.¹⁹ As discussed below, federal law legislating child influencers fits within an exception of family autonomy regarding the protection of children within the child labor realm.²⁰ While the government should not legislate against those parents who are simply posting their children on social media for their friends and families to see, Congress must enact legislation protecting children whose parents earn from these posts.

Due to the rapid growth of the child influencer industry and the lack of legal protections to prevent the exploitation of child influencers, Congress must enact federal legislation to ensure the safety of children across the nation. This Article discusses the history of child labor laws, the circumstances that gave rise to them, and the steps that must be taken to protect the child influencers that fall outside the purview of current federal and state child labor regimes.²¹ Despite the similarities between child actors and child influencers, this Article discusses the distinctions between the two and why child influencers require their own specific protections.²² In fact, some scholars have already called for protections for child influencers,²³ but this Article is the first to propose spe-

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15. See Marina A. Masterson, *When Play Become Work: Child Labor Laws in the Era of “Kidfluencers”*, 169 U. PA. L. REV. 577, 594 (2021).
 16. See *infra* Part III (discussing the risks of financial, physical, and emotional exploitation facing child influencers).
 17. See *infra* notes 113–117 and accompanying text (discussing that current federal and state child labor laws do not encompass child influencers).
 18. See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).
 19. Masterson, *supra* note 15, at 598.
 20. See *infra* Part III.C (discussing that legislating child influencers falls within an exception to family autonomy).
 21. See *infra* Parts II.A, II.B (discussing the history of child labor laws and child entertainment laws).
 22. See *infra* Part II.C (discussing the child influencer industry and how it is similar, but not the same as other child entertainment industries).
 23. See Ade Onibada, *The Rights and Privacy of Children Are Due to Take Center Stage in Influencer Culture, And It’s About Time*, BUZZFEED NEWS (May 13, 2022, 11:44 AM), <https://www.buzzfeednews.com/article/adeonibada/momuncharted-on-childrens-privacy-for-youtube-influencers> [<https://perma.cc/4LKR-BU2E>] (discussing the author Leah Plunkett’s belief that “the US should update its federal and state labor laws to

cific federal legislation protecting child influencers financially, physically, and psychologically. Part II details the history of child labor laws and how enactment of the laws were motivated by a desire to protect children who worked in hazardous conditions such as farms, mills, and factories.²⁴ Part II also discusses how the lack of legal protection for child actors resulted in many states enacting child labor laws to protect them.²⁵ Finally, Part II discusses the rise of social media influencers and how the now multi-billion-dollar industry has resulted in child actors and other working children facing many of the same problems in the absence of any legal protections.²⁶ Part III proposes legislation aimed to effectively target the various harms faced by child influencers.²⁷ Finally, Part III sets out the right to family autonomy and how legislating the work of child influencers falls within an exception to family autonomy.²⁸

II. CHILD LABOR LAWS AND THE ADVENT OF CHILD INFLUENCING

Child influencers do not fit within traditional federal or state child labor regimes. To understand how and why they fall outside the scope of already enacted federal and state child labor laws, we must understand the origins of the laws. While the Fair Labor Standards Act of 1938 (FLSA) has protected children working in hazardous and oppressive conditions for more than 80 years,²⁹ child influencers do not fit within the realm of the FLSA.³⁰ When enacted, the FLSA's main concern was to protect children working in perhaps the most oppressive and hazardous conditions, which, at the time, did not include child entertainers.³¹ Furthermore, current state laws protecting child actors do not encompass or protect child influencers.³² With the exception of Illinois, child influencers fall outside the purview of both current federal and state child labor laws.³³

recognize child influencers as performers and give them legal protection in terms of their earnings and their working conditions.”).

24. See *infra* Part II.A (discussing the history of child labor laws).

25. See *infra* Part II.B (discussing the history of child entertainment laws that have evolved to protect child actors).

26. See *infra* Part II.C (discussing the rise of social media child influencers and the lack of legal protections despite the financial, physical, and psychological exploitation).

27. See *infra* Part III (discussing the proposed federal legislation).

28. See *infra* Part III.C (discussing the right to family autonomy and the exception legislating child influencers falls into).

29. Masterson, *supra* note 15, at 585.

30. See *infra* Part II.C (discussing how child influencers do not fall within the scope of the Fair Labor Standards Act of 1938 (FLSA)).

31. Masterson, *supra* note 15, at 585, 587 (stating “Congress did not consider child acting to be oppressive but rather an opportunity for children to develop talents.”).

32. See Amanda G. Riggio, *The Smaller-er Screen: YouTube Vlogging and the Unequipped Child Entertainment Labor Laws*, 44 SEATTLE U. L. REV. 493, 501, 505, 517–18 (2021).

33. See *infra* Part II.C (discussing how child influencers do not fall within the scope of current state laws protecting child actors).

A. *The Beginning of Child Labor Laws*

Congress initially became concerned about child labor laws in the twentieth century.³⁴ When child labor laws were at the forefront of the legal reform agenda, children primarily worked in industrial settings, such as farms, mills, and factories,³⁵ completing tasks in saw-dust filled air, and were exposed to things like “open fire[s], dangerous chemicals, and crude machinery.”³⁶ Because these children worked in such unsafe conditions, “one book estimated that boys under sixteen-years-old had twice as many workplace accidents as adult men and girls under sixteen had three times as many accidents as adult women.”³⁷ As a result, Congress began creating legislation to protect children in such settings.³⁸ The Fair Labor Standards Act of 1938 (FLSA) was the first time Congress limited child labor.³⁹

While legislators finally took action to protect children, the FLSA was insufficient in protecting all working children because it only prohibited the employment of a specific group of working children—minors in “oppressive child labor.”⁴⁰ Because the legislature’s primary focus in creating this legislation was to protect children working in hazardous occupations, there was a serious lack of protection for children in other non-hazardous occupations, such as child entertainers.⁴¹ For example, federal child labor laws do “not apply to any child employed as an actor or performer in motion pictures or theatrical

34. Riggio, *supra note 32*, at 498.

35. *Id.*

36. Masterson, *supra note 15*, at 585.

37. *Id.* at 585–86 (citing Edwin Markham, Benjamin B. Lindsey & George Cree, *Children in Bondage*, 158–59 (Hearst’s International Library Co., 1914)).

38. Riggio, *supra note 32*, at 499.

39. Leigh E. Colihan, *Child’s Play: The Case Against the Department of Labor for Its Failure to Protect Children Working on America’s Tobacco Farms*, 64 AM. U. L. REV. 645, 647 (2015).

40. Riggio, *supra note 32*, at 499 (citing Michael Schumann, *History of Child Labor in the United States-Part 2: The Reform Movement*, MONTHLY LAB. REV. (2017), <http://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-2-the-reform-movement.htm> [<https://perma.cc/2J52-UUHH>]). “‘Oppressive child labor’ means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being” 29 U.S.C.A. § 203(1) (2018).

41. See Riggio, *supra note 32*, at 499.

productions, or in radio or television productions.”⁴² The two main reasons Congress did not include child actors in the FLSA were because (1) they “did not consider child acting to be oppressive, but rather an opportunity for children to develop talents” and (2) Shirley Temple was experiencing great fame at the time of the statute’s construction.⁴³ Shirley Temple would have been restricted from performing if Congress had included child actors within the scope of the FLSA, and the legislators likely did not want to bar her from continuing to act and perform.⁴⁴

Today, many of the oppressive and hazardous conditions the FLSA sought to protect children against have been largely eliminated, however, there are still over 100,000 children employed in violation of the FLSA.⁴⁵ Even still, the FLSA does not encompass—or even consider—all the issues that could arise when a child becomes an employee. Despite the improved working conditions for children today, there are still risks of exploitation and harm for children where there is a lack of federal or state protection. As such, some State legislatures have demonstrated their concerns by enacting child labor laws to encompass child actors.⁴⁶

B. *The Evolution of Child Labor Laws to Encompass Child Actors*

In the early 1900s, there was a boom of children employed in the film industry, but the FLSA did not contemplate this new area of child labor.⁴⁷ Children began to experience exploitation within the industry—and in some instances, by their parents—because there was no regulation for this type of child labor.⁴⁸

One of the first cases revolving around an exploited child working in the entertainment industry was that of Jackie Coogan.⁴⁹ Coogan was cast in Char-

42. 29 U.S.C. § 213(c)(3) (2018).

43. 83 Cong. Rec. 7441 (1938); Masterson, *supra* note 15, at 587 (citing 82 Cong. Rec. 1780 (1937)); Kimberlianne Podlas, *Does Exploiting a Child Amount to Employing a Child? The FLSA’s Child Labor Provisions and Children on Reality Television*, 17 UCLA ENT. L. REV. 39, 57–58 (2010).

44. Podlas, *supra* note 43, at 58 (discussing that the FLSA exemption for child actors is called “the Shirley Temple Act”); *see also* McGinnis, *supra* note 1, at 254.

45. HUGH D. HINDMAN, *CHILD LABOR: AN AMERICAN HISTORY* 295–97 (2002); Schuman, *supra* note 40.

46. *See infra* Part II.B (discussing enacting laws protecting child actors); *see also infra* notes 118–22 and accompanying text (discussing that current federal and state child labor laws do not encompass child influencers).

47. Riggio, *supra* note 32, at 499.

48. *See id.*

49. *See* Erin E. O’Neill, *Influencing the Future: Compensating Children in the Age of Social-Media Influencer Marketing*, 72 STAN. L. REV. ONLINE 42, 48 (2019); *see also* Jennifer Gonzalez, *More Than Pocket Money: A History of Child Actor Laws*, LIBR. OF CONG. BLOGS (June 1, 2022), <https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws> [<https://perma.cc/P794-CUSM>].

lie Chaplin's "The Kid" at a very young age.⁵⁰ The role brought him to fame and riches quickly.⁵¹ However, Coogan learned as an adult that his parents kept and spent millions of dollars from his earnings.⁵² Coogan successfully sued his mother and stepfather, but after the legal fees, he was left with only a portion of his earnings.⁵³ Jackie Coogan's case prompted California to pass legislation referred to as the Coogan Act (the Act).⁵⁴ The Act gave judges discretionary power "to require that a contract set aside some of a child-actor's income in a trust fund or savings account, only to be opened when the child reached the age of majority."⁵⁵

While the Coogan Act helped push forward the protection for child actors, the Act contained loopholes, still leaving child actors financially vulnerable.⁵⁶ For example, Judy Garland's mother successfully requested and received a stipend from her daughter's salary in exchange for a promise to chaperone Judy and ensure she complied with the studio's demands.⁵⁷ Similarly, Elizabeth Taylor's mother received 10 percent of her daughter's earnings in return for serving as Elizabeth's "manager."⁵⁸ While seemingly harmless, these salaries might have been deducted from the earnings before the mandatory set aside, which would lower the amount actually put into the trust account in accordance with the Coogan Act.⁵⁹

Instances of financial mishandling by parents were not exclusive to overtly exploitative parents.⁶⁰ Child actors' parents who seemed to prioritize their child's best interests also had issues managing the money their child earned.⁶¹ An adult Shirley Temple asked her father—who managed her money with difficulty—about the amount of money she had in her bank account, to which he told her that there was only around \$44,000 out of the approximately \$3.4 million she had earned through various projects.⁶² Similarly, Macaulay Culkin's parents spent large sums of the child actor's money on a custody

50. Gonzalez, *supra* note 49.

51. *See id.*

52. *Id.*

53. *Id.* (stating that at the end of the lawsuit between Coogan and his mother and stepfather, Coogan was only left with around \$126,000 of the millions he had earned).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *See id.* (discussing that the Coogan Act was changed in 2000 requiring the amount placed in a trust to come from the gross earning to safeguard the amount placed in a trust from management and secretarial fees).

60. *See id.*

61. *Id.*

62. *Id.*

battle.⁶³ These stories, and many, many more—spanning over 60 years—prompted the California legislature to revise the Coogan Act in 2000.⁶⁴

Now, in California, a minimum of 15 percent of a child actor's earnings must be placed in a trust fund, and judges no longer have any discretion on whether the contract will set aside some of the funds.⁶⁵ The revised Act also requires the 15 percent to come from the gross income earned by the child rather than the net income.⁶⁶ This provision provides a safeguard for any management or secretarial fees that may otherwise reduce the amount set aside.⁶⁷ Further, the revision requires employers in the entertainment industry to obtain the written consent of the state Labor Commissioner in order to employ someone under the age of sixteen.⁶⁸ Finally, the income that the child actor earns is legally the child's property (and no longer the legal property of the parent(s) or guardian(s)).⁶⁹ New York has adopted a similar law, requiring 15 percent of a child actor's income to be deposited in a Child Performer Trust Account.⁷⁰

Harms to child actors are not just financial. Historically, child actors faced working conditions that ultimately harmed both their physical and mental health.⁷¹ For example, Raven-Symone, the star of *That's So Raven*, discussed her experiences of weight shaming while she worked, which led to mental health problems.⁷² Natalie Portman discussed how the public sexualized her in many of her childhood roles, often making her feel unsafe and ultimately afraid to express and explore her sexuality.⁷³ Child actors have also routinely fallen victim to many forms of abuse.⁷⁴ A major reason that child abuse is

63. *Id.*

64. *See id.*

65. *Id.* (discussing that judicial discretion was stripped from the Act, and instead, requiring a minimum of 15 percent of the child actor's income be placed in a trust).

66. *Id.* Gross income is "all income derived from any source except for items specifically excluded by law." *Gross income*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/gross%20income> [https://perma.cc/3TLP-VW7P] (last visited Jan. 21, 2024). Net income is "the balance of gross income remaining after all allowable deductions and exemptions are taken." *Net income*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/net%20income> [https://perma.cc/6JP6-76CT] (last visited Jan. 21, 2024).

67. Gonzalez, *supra note 50*.

68. Masterson, *supra note 15*, at 589.

69. Gonzalez, *supra note 50*.

70. *Id.*

71. Talia Lakritz, *19 Former Child Stars Who Have Opened Up About the Price of Fame*, INSIDER (Aug. 10, 2022, 12:08 PM), <https://www.insider.com/child-stars-how-fame-affected-them-2021-1> [https://perma.cc/XV38-X5U9] (discussing child stars who suffered from eating disorders, poor mental health, being encouraged to drink alcohol, addiction, and being sexualized).

72. *Id.*

73. *Id.*

74. *E.g.*, Ryan Davis, *Former Child Actors Who Spoke Out on Hollywood Child Abuse*, RANKER (Sept. 23, 2021), <https://www.ranker.com/list/former-child-actors-who-spoke-out/>

prevalent behind the scenes is that “[c]ompanies with large assets know they can bend people’s boundaries to their will by paying them off.”⁷⁵ Children are not able to appreciate abusive situations in the same way that adults are—making them more vulnerable to abuse. Furthermore, competition is at the forefront of the child acting industry. Young children in the entertainment industry must manage a culture of perfectionism, jealousy, and rejection on a regular basis.⁷⁶ What, from the outside, seems to be a glamorous job and life, often turns out to be quite harmful.

As a result, some states impose restrictions on the amount of time a given age group can be on set.⁷⁷ These states additionally require that a teacher be on set to assist with educational needs.⁷⁸ For example, in California, the teacher on set has the responsibility to advocate for the child’s interests in “working conditions, physical surroundings, signs of minor’s mental and physical fatigue, and the demands placed upon the minor.”⁷⁹ These provisions seem to help promote the physical and emotional safety of child performers.

Though child actors and child influencers are within the entertainment industry, states have yet to encompass child influencers in their child entertainment laws. For example, California’s child entertainment regulation defines the “entertainment industry” to contain any employer of a minor in “[m]otion pictures of any type . . . using any format . . . by any medium . . . ; photography, recording, modeling, theatrical, productions; publicity; rodeos; circuses; musical performances; and any other performances.”⁸⁰ Looking at the plain meaning

rydavis [<https://perma.cc/ZTV2-Q7YX>]; Alexis Hampton, *How the ‘Romeo and Juliet’ Lawsuit Could Force Hollywood to Reckon with Its History of Child Abuse*, BUS. INSIDER (Jan. 15, 2023, 11:00 AM), <https://www.businessinsider.com/hollywood-history-of-child-abuse-romeo-and-juliet-lawsuit-2023-1> [<https://perma.cc/5FUL-LHDW>]; Michael Kaplan, *Former Child Stars Reveal Sex Abuse, Emotional Trauma of Hollywood*, N.Y. POST (July 11, 2020, 7:41 PM), <https://nypost.com/2020/07/11/former-child-stars-reveal-sex-abuse-emotional-trauma-of-hollywood> [<https://perma.cc/9UEG-SUDP>] (discussing sexual and emotional abuse of child actors).

75. Itziar Gomez, *Behind the Scenes: The Exploitation of Child Actors*, GREEN HOPE FALCON (Nov. 2, 2022), <https://ghfalcon.com/5136/editorial/behind-the-scenes-the-exploitation-of-child-actors/#:~:text=Companies%20with%20large%20assets%20know,throwing%20money%20at%20their%20victims> [<https://perma.cc/5Y47-K2Y3>].

76. . Wanda Behrens-Horrell, *The Child Performer*, PSYCH. TODAY (June 22, 2011), <https://www.psychologytoday.com/us/blog/in-the-trenches/201106/the-child-performer> [<https://perma.cc/3GYM-PAWQ>].

77. CAL. CODE REGS. tit. 8, § 11760 (1986) (setting the amount of time minors can be at the place of employment in a twenty-four-hour period, which ranges from two hours for babies in between fifteen days and six months and, with the permission of school authorities, no more than two consecutive days for minors in between fourteen years and eighteen years).

78. Masterson, *supra* note 15, at 590.

79. *Id.* (quoting CAL. CODE REGS. tit. 8, § 11755.3 (2020)).

80. *Id.* (quoting CAL. CODE REGS. tit. 8, § 11751(a) (2020)).

of the text, child influencers are not included in this definition.⁸¹ Moreover, while this definition could arguably capture social media production because of the broad language, social media marketing and production were not contemplated by the California legislature when it created child actor statutes.⁸² Furthermore, of the states that do have child labor laws protecting child actors, there are currently no states applying them to social media production.⁸³

Because the FLSA does not include or encompass child entertainers, they must rely solely on state law to protect them.⁸⁴ Several states have no specific laws for child entertainers, meaning that these children rely solely on general child labor laws (which, as mentioned previously, do not encompass child entertainers).⁸⁵ Even though some states have created laws protecting child actors, there is no uniform protection because those states with child entertainment laws each have their own approach to addressing the harms facing child actors.⁸⁶ For example, some states have extensive requirements like limitations on hours of work, required working conditions, and forbidden practices for children working in the entertainment industry, while others require only permits.⁸⁷ This lack of consistency across state laws points to the need for a consistent federal regime protecting all child influencers across the United States.

C. *The Multi-Billion-Dollar Influencer Industry and Child Influencers*

The Merriam-Webster Dictionary defined “influencer” in 2019, as “a person who is able to generate interest in something (such as a consumer product) by posting about it on social media.”⁸⁸ Child influencers are children who have a large following on social media or are building a presence on social media platforms, who create content for views and engagements, and who receive

81. CAL. CODE REGS. tit. 8, § 11751(a) (2020).

82. Masterson, *supra* note 15, at 590.

83. See Wage and Hour Div., *Child Entertainment Laws as of January 1, 2023*, U.S. DEP’T OF LAB. (Jan. 1, 2023), <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [https://perma.cc/38LZ-RCAD] (providing state-by-state analysis of child entertainment laws).

84. Gonzalez, *supra* note 49.

85. *Id.* (discussing that where state laws are inadequate, child actors can “turn to trade unions such as the Screen Actors Guild – American Federation of Television and Radio Artists . . . to protect them [for a fee]”); *see also* (detailing that seventeen states do not regulate child entertainers directly, but of those, some require permits or other specific restrictions).

86. See Wage and Hour Div., *supra* note 83.

87. See *id.* Alaska and California have extensive requirements for children working in the entertainment industry, such as a permit requirement and regulations establishing permissible hours of work and working conditions. Other states, like Georgia and Nebraska, require only permits.

88. *Influencer*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/influencer> [https://perma.cc/D9MR-CU6N] (last visited Dec. 29, 2023).

compensation through sponsored posts and monetizing their platforms.⁸⁹ Child influencers' social media platforms practically work in the same way that adult influencers do: their posts are about their hobbies and different personal experiences, while simultaneously marketing products for various companies.⁹⁰

Parents often control the social media presence of their young children.⁹¹ Ross Smith described children as “the new social influencer.”⁹² She remarked: “Kids grow up and become less relevant. The sweet spot is between 2 and 4, [after which] they're not that cute.”⁹³ However, research shows that videos featuring children under thirteen-years-old receive as much as three times the number of views as videos not featuring children.⁹⁴

While the phenomenon of influencers is relatively new to the twenty-first century, influencers on social media are increasingly becoming important in advertising.⁹⁵ The digital marketing practice of selecting children who have a large following and influence on platforms such as Instagram, YouTube, and TikTok has become an important entrepreneurial practice.⁹⁶ Companies largely focus on advertising through influential figures rather than large mass media campaigns.⁹⁷ According to “Influencer Marketing Hub’s ‘State of Influencer Marketing 2022’ benchmark report” marketing through influencers is projected to reach \$16.4 billion (an increase of 19 percent from 2021’s \$13.8 billion) in 2022.⁹⁸ The COVID-19 Pandemic accelerated the social

89. See Masterson, *supra* note 15, at 583.

90. Amelia Hayes, *Kid Influencers: How Kids Are Becoming Famous on Instagram*, INFLUENCER MATCHMAKER (Apr. 2, 2019), [HTTPS://INFLUENCERMATCHMAKER.CO.UK/NEWS/KID-INFLUENCERS-HOW-KIDS-ARE-BECOMING-FAMOUS-INSTAGRAM](https://influencermatchmaker.co.uk/news/kid-influencers-how-kids-are-becoming-famous-instagram) [https://perma.cc/J9P9-5L9H] (Feb. 4, 2019).

91. See McGinnis, *supra* note 1, at 249.

92. Masterson, *supra* note 15, at 583 (quoting Katherine Rosman, *Why Isn't Your Toddler Paying the Mortgage?*, N.Y. TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/style/viral-toddler-videos.html> [https://perma.cc/EW43-QBEV]).

93. *Id.*

94. *Id.* (citing Patrick Van Kessel, Skye Toor & Aaron Smith, *A Week in the Life of Popular YouTube Channels*, PEW RSCH. CTR. (July 25, 2019), <https://www.pewresearch.org/internet/2019/07/25/a-week-in-the-life-of-popular-youtube-channels/>) [https://perma.cc/N2XU-JF5C].

95. Katharina Buchholz, *Influencer Marketing Becomes Multi-Billion Dollar Business*, STATISTA (Aug. 28, 2020), <https://www.statista.com/chart/22744/market-size-number-of-agencies-in-influencer-marketing-worldwide> [https://perma.cc/4VW3-NZA4].

96. Catherine Archer, *How Influencer ‘Mumpreneur’ Bloggers and ‘Everyday’ Mums Frame Presenting Their Children Online*, 170 MEDIA INT’L AUSTL., 47, 48 (2019).

97. McGinnis, *supra* note 1, at 248 (citing Jason Gordon, *Influencer Marketing - Explained. What is Influencer Marketing?*, BUS. PROFESSOR (July 23, 2021), https://thebusinessprofessor.com/en_US/principles-of-marketing/what-is-influencer-marketing) [https://perma.cc/V4K2-PPTD] (last visited Dec. 29, 2023).

98. Steven Lai, *77% of Marketers Will Have a Dedicated Influencer Marketing Budget in 2022*, INFLUENCER ORCHESTRATION NETWORK, <https://www.ion.co/77-percent-of-marketers-will-dedicate-budget-to-influencer-marketing> [https://perma.cc/VV2J-SLWA] (last

media industry's growth by billions from 2020 and 2021, with a \$4.1 billion jump just between the two years.⁹⁹ Seventy-seven percent of respondents of the Influencer Marketing Hub's survey reported that they plan to dedicate a portion of their budget solely to influencer marketing (which is up from 37 percent in 2017).¹⁰⁰

This newfound industry has amassed to more than \$16 billion as of 2022 (more than double the amount in 2019) and is rapidly growing.¹⁰¹ A report detailing influencer marketing campaigns stated that "one dollar spent on influencer marketing generated \$11.69 in earned media value (unpaid social media exposure) for brands."¹⁰² Further, monetization on YouTube is split between the platform and content creator with 45 percent and 55 percent going to each respectively.¹⁰³ This money is made when a company-featured advertisement is included in a content creator's video, with companies paying anywhere from 10–30 cents per thirty-second viewing or click.¹⁰⁴ Thus, when videos on YouTube are monetized, YouTube makes a direct profit alongside the creator.¹⁰⁵

Because social media platforms require their users to be above the age of thirteen, companies are not required to comply with the federal rules limiting advertising and data collection.¹⁰⁶ As a result, parents often create accounts for their children and simply note in the account's biography that a parent manages the page.¹⁰⁷ For example, YouTube's terms of service specify that "[YouTube] is not intended for children under 13 and that users must affirm they are over 13."¹⁰⁸ However, "[t]he fact that brands are using actual children as influencers is a very clear sign that they're targeting children that they know are on these platforms."¹⁰⁹ Social media platforms are likely turning a blind eye to these types of social media accounts because (1) they are technically run by

visited Dec. 29, 2023).

99. *Id.*

100. *Id.*

101. Statista Research Dept., *Global Influencer Marketing Value 2016–2022*, STATISTA (Oct. 18, 2022), <https://www.statista.com/statistics/1092819/global-influencer-market-size/> [<https://perma.cc/C8YT-44Q9>].

102. Taylor Mooney, *Companies Make Millions off Kid Influencers, and the Law Hasn't Kept Up*, CBS NEWS (Aug. 26, 2019, 06:19 AM), <https://www.cbsnews.com/news/kid-influencers-companies-make-millions-law-hasnt-kept-up-cbsn-originals> [<https://perma.cc/EA8B-RVSY>].

103. *Id.*

104. *Id.*

105. *Id.*

106. Sapna Maheshwari, *Online and Making Thousands, at Age 4: Meet the Kidfluencers*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html> [<https://perma.cc/9WR9-HF64>].

107. *Id.*

108. Mooney, *supra note* 102 (quotations omitted).

109. Maheshwari, *supra note* 106 (quotations omitted).

their parents, and (2) they are creating a high volume of traffic on their websites and in turn, increasing profits.¹¹⁰

Like child actors, child influencers likely fall outside the scope of the FLSA because their job is seemingly non-oppressive and seen—on balance—as providing more benefits than harms.¹¹¹ Granted, social media was not in existence at the time of the FLSA’s creation in 1938.¹¹² Child influencers are also likely excluded from the scope of the FLSA because the FLSA does not provide protection for children employed by their parents.¹¹³ Additionally, there are no state laws protecting child actors that reference child influencers.¹¹⁴

To date, Illinois is the only state that has passed legislation protecting child influencers. Effective July 1, 2024, SB1782 (the Bill) entitles child influencers under the age of sixteen to a percentage of earnings based on how often they appear in online content that generates at least 10 cents per view.¹¹⁵ To qualify, the content must be created in Illinois and the children have to be featured in at least 30 percent of the total amount of content created in a 30-day-period.¹¹⁶

Those filming the profitable content (most likely the parents) are legally responsible for maintaining records of any appearances of minors in their content as well as the number of vlogs that generate compensation and must put

110. See *id.*; see also Ellen Simon, *How Instagram Makes Money*, INVESTOPEDIA (Mar. 17, 2022), <https://www.investopedia.com/articles/personal-finance/030915/how-instagram-makes-money.asp> [<https://perma.cc/N5VG-VR8Q>] (discussing that because platforms like Instagram and Facebook have so many users, so they are making billions in advertising fees).

111. Masterson, *supra* note 15, at 588.

112. See Alexandra Samur & Colleen Christison, *The History of Social Media in 33 Key Moments* (Apr. 6, 2023), <https://blog.hootsuite.com/history-social-media> [<https://perma.cc/Z6TD-KU9A>] (stating that the first social media platform was invented in 1997).

113. 29 U.S.C. § 213(c)(1)(A)(i) (2018) (excluding children employed by their parents “or a person standing in place of a parent”).

114. Masterson, *supra* note 15, at 588.

115. S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023); Claire Savage, *Child Social Media Stars Have Few Protections. Illinois Aims to Fix That*, AP, (May 14, 2023, 6:02 AM) <https://apnews.com/article/tiktok-influencer-child-social-media-illinois-law-65a837e2ba7151c91c17f69b08862022> [<https://perma.cc/RDB2-X75Y>]. “For example, if the minor is in 100% of the video content, 50% of the gross compensation from the video content must be set aside, while if the minor is in 50% of the video content, 25% of the gross compensation would need to be set aside. If multiple minors are in the video content, the percentage that is set aside is calculated based on the total time all minors are in the video content and must be split equally among accounts for each minor regardless of the time each minor was included in the video content.” Monique N. Bhargava & Edward A. Fultz, *Illinois Law Closes Gap for Child Influencers*, REED SMITH (Aug. 21, 2023), <https://www.reedsmith.com/en/perspectives/2023/08/illinois-law-closes-gap-for-child-influencers> [<https://perma.cc/3MFB-EEF3>].

116. S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023).

aside gross earnings in a trust account for when the child turns 18.¹¹⁷ If the person filming the content fails to do so, the child can sue.¹¹⁸

Though a step in the right direction, one state protecting child influencers is not enough. Individuals located in Illinois can easily avoid the scope of the Bill by creating content outside Illinois or feature the child influencer in less than 30 percent of content in a given 30-day-period. In reality, the best way to ensure that all child influencers benefit from the same protections is to enact federal legislation.

The Commerce Clause gives Congress broad authority to regulate interstate commerce.¹¹⁹ Congress has said that “[t]he Internet is well recognized as a method of distributing goods and services across State lines and using the Internet constitutes transportation in interstate commerce.”¹²⁰ While the Supreme Court has not yet ruled on whether the internet constitutes interstate commerce, “there is unanimous consent from courts of appeal and district courts that the Internet is a channel of interstate commerce.”¹²¹ Furthermore, Congress has used its Commerce power to regulate various online activities thus far, such as “internet safety of children,” “prohibitions against certain unfair and deceptive Internet sales practices,” and “activities relating to material involving the sexual exploitation of minors.”¹²² Because social media is inherently on the internet, and because Congress has the power to regulate interstate commerce, Congress could enact federal legislation to protect children working within the realm of social media.¹²³

117. *Id.*

118. *Id.*; see also. Meera Navlakah, *Child Influencers in Illinois Can Now Sue Their Parents*, MASHABLE (Aug. 14, 2023), <https://mashable.com/article/illinois-child-influencers-law-payment-compensation> [<https://perma.cc/M66X-4C9P>]. The Bill provides: “If a vlogger knowingly or recklessly violates [Section 12.6], a minor satisfying the criteria described in subsection (a) of Section 2.6 may commence an action to enforce the provisions of this Section regarding the trust account.” S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023) The court may award actual and punitive damages, as well as litigation costs and attorney’s fees. S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023).

119. Nina I. Brown & Jonathan Peters, *Say This, Not That: Government Regulation and Control of Social Media*, 68 SYRACUSE L. REV. 521, 531 (2018).

120. U.S.CONST. art. I, § 8, cl. 3 (granting Congress the power “[t]o regulate Commerce . . . among the Several States.”); Masterson, *supra* note 15, at 588 n.72 (quotations omitted) (quoting Effective Child Pornography Prosecution Act of 2007, *Pub. L. No. 110–358*, § 102(6)-(7), 122 Stat. 4001, 4002 (codified at 18 U.S.C. § 2251)).

121. Brown & Peters, *supra* note 119, at 231 n.76.

122. *Id.* at 531–32 (citing 15 U.S.C. § 6551 (2012); 15 U.S.C. § 8402 (2012); 18 U.S.C. § 2252 (2012)).

123. McGinnis, *supra* note 1, at 254–55.

III. CONGRESS MUST ENACT LEGISLATION TO PROTECT CHILD INFLUENCERS FROM FINANCIAL EXPLOITATION, PSYCHOLOGICAL HARM, AND UNSAFE WORKING CONDITIONS.

Legal protections for child workers should not exclude child influencers simply because they do not fall within a traditional category of entertainers. Because child influencers are entertainers, like child actors, they must be afforded legal protection. Without protection, child influencers may suffer psychological harm or turn eighteen and discover that their parents have misappropriated their earnings.¹²⁴

State and federal legislators are likely not excluding child influencers from the protections of entertainment laws intentionally; rather, it seem lawmakers just have yet to prioritize this area.¹²⁵ An explanation might be that legislatures may be uncomfortable regulating what they may see as a home movie of sorts.¹²⁶ Parents have long taken photos and videos of their children only to be seen by family members and close friends—with no motivation of publicizing the context of their children to earn a profit.¹²⁷ However, parents are now sometimes allowing these photos and videos to become public and are spending a substantial amount of time creating content, in hopes that it may ultimately lead to monetary gain.¹²⁸ For example, a post on a child influencer's platform can earn “as much as \$100 per 1,000 followers.”¹²⁹

Due to the unique features of content created by child influencers that distinguish it from the type of context that a traditional entertainer would produce, there is a need for tailored legislation protecting child influencers. For example, the content on Instagram, TikTok, YouTube, and other social media platforms are typically people's real lives—albeit sometimes embellished—while traditional entertainers are typically playing a part in a movie or television show.¹³⁰ This can prove to be especially harmful, because when children's real lives are publicized for many to see, child influencers are at risk of being exploited in ways that child actors are not.¹³¹ This factor alone suggests that special care should be afforded when drafting child influencer laws.

Congresswoman Grace Meng introduced a bill to the House seeking to federally regulate the child actor industry by imposing a Coogan trust

124. See Ana Saragoza, *The Kids Are Alright? The Need for Kidfluencer Protections*, 28 AM. U.J. GENDER SOC. POL'Y & L. 575, 586 (2020).

125. Riggio, *supra* note 32, at 515.

126. *Id.* at 516.

127. See McGinnis, *supra* note 1.

128. See Riggio, *supra* note 32, at 516.

129. Zulie Rane, *The Terrifying Rise of the Child Influencer and the Parents who Profit*, ONEZERO (Oct. 25, 2021), <https://onezero.medium.com/the-terrifying-rise-of-the-child-fashion-influencer-e7b03278d887> [<https://perma.cc/ETU3-GCP9>].

130. See Riggio, *supra* note 32, at 516.

131. *Id.*

requirement and regulating the number of hours a child actor can work. This is an indication that the federal government has already begun to think about imposing federal legislation for child actors.¹³² As such, federal legislation protecting child influencers seems like a logical next step.

Children have long been thought to lack the capacity to make decisions or handle transactions like adults.¹³³ “For example, children don’t have the right to vote, [o]wn property, consent to medical treatment, sue or be sued, or enter into certain types of contracts.”¹³⁴ Likewise, the law should recognize that they do not have the capacity to handle their funds or make decisions about how their image is used on social media for monetary gain. Because of the expansion of the child influencer industry and the lack of regulation or legislation to prevent the exploitation of these children, a federal enactment of legislation is necessary to ensure the safety of children across the nation. The time is ripe to implement federal legislation that protects child influencers.¹³⁵

A. *Proposed Legislation Protecting Child Influencers*

The following proposed legislation should be enacted federally to protect child influencers from financial exploitation and physical and psychological harm. Sections I and II of the proposed legislation call for a trust account that resembles a Coogan trust required in California and has accompanying requirements similar to those in other states.¹³⁶ Section III of the proposed legislation proposes production regulations to ensure child influencers are working in safe conditions and are meeting academic standards as required by the state of which the child is a resident.¹³⁷

Federal legislation regarding child influencers is permissible because social media inherently affects interstate commerce.¹³⁸ A state-based regime for protecting child influencers would be insufficient because state-based child labor laws for the protection of child actors are not uniform and thus, some states provide more protection than others, indicating the same would happen for child influencer labor laws.¹³⁹ Moreover, a state-based regime would mean that some states would not enact laws protecting child influencers at all, thus

132. See Masterson, *supra* note 15, at 607.

133. See Jade Yeban, *What are the Legal Rights of Children*, FINDLAW (Dec. 29, 2022), [HTTPS://WWW.FINDLAW.COM/FAMILY/EMANCIPATION-OF-MINORS/WHAT-ARE-THE-LEGAL-RIGHTS-OF-CHILDREN.HTML](https://www.findlaw.com/family/emancipation-of-minors/what-are-the-legal-rights-of-children.html) [<https://perma.cc/ZK3S-M5V6>].

134. *Id.*

135. See *supra* Part II.C (discussing that current federal and state child labor laws do not encompass the child influencer).

136. Wage and Hour Div., *supra* note 83; see *infra* Part III.A.1 (discussing the proposed model legislation creating a trust account for child influencers).

137. See *infra* Part III.A.2 (discussing the proposed model legislation creating production regulations protecting child influencers).

138. See McGinnis, *supra* note 1, at 254–55.

139. . . See Wage and Hour Div., *supra* note 83.

allowing those children to fall victim to exploitation (indicated by the fact that some states afford no legal protection for child actors).¹⁴⁰ Additionally, because state-based legislation and the mobility of social media would allow for forum shopping,¹⁴¹ only federal legislation can ensure that all child influencers have consistent protection throughout the United States. As such, the proposed legislation is drafted for federal enactment but grants deference to some state-specific laws, such as academic codes.

1. A Trust Account Similar to a Coogan Trust

The following proposed legislation sets out the requirements of a trust account for the benefit of a child influencer.

- a. *Section I. Providing copy of minor's birth certificate to other party; percentage of minor's gross earnings set aside in trust of minor's benefit; deposits; trustee or trustees*¹⁴²
 1. A parent or guardian entitled to the physical custody, care, and control of a minor who enters into a contract for advertisements, sponsorships, or other paid work shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.
 2.
 - a. Notwithstanding any other statute, in an order approving a minor's contract of a type described in part (1), the court shall require that 15 percent of the minor's gross earnings pursuant to the contract be set aside by the entity paying the minor for work (the entity). These amounts shall be held in trust, in an account

140. *See id.* The states that provide legal protection for child actors are not all uniform in the way that their laws are set up. *Id.* *See also* Gonzalez, *supra* note 49 (discussing that there are seventeen states with no specific laws protecting child entertainers).

141. Masterson, *supra* note 15, at 588. "Forum shopping refers to the practice of pursuing a claim subject to concurrent jurisdiction in the court that will treat the claim most favorably. Forum shopping can occur between courts in different states, between federal and state courts in the same state, or between courts in separate countries. While forum shopping is still permitted under limited circumstances, the practice is generally discouraged in the modern legal system . . ." *Forum Shopping*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/forum_shopping#:~:text=Forum%20shopping%20refers%20to%20the,between%20courts%20in%20separate%20countries [https://perma.cc/9X7X-C72J] (last visited Jan. 9, 2024).

142. Modeled after Cal. Fam. Code § 6752 (a), (b)(1)–(2), (6)–(7) (West 2004).

or other savings plan, and preserved for the benefit of the minor in accordance with Section II.

- i. In cases where the contract includes more than one child, an adult or multiple adults, or any combination, the parties or parties to the contract must, prior to the execution of the contract, allot the percentage or amount of funds each party to the contract will receive.
 - b. Once the entity deposits the set-aside funds pursuant to Section I, in trust, in an account or other savings plan, the entity shall have no further obligation or duty to monitor or account for the funds. The trustees of the trust shall be the only one with the obligation or duty to monitor and account for those funds once they have been deposited by the entity.
 - c. The court shall require that at least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time the order is issued be appointed as trustee of the funds ordered to be set aside in trust for the benefit of the minor, unless the court shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.
 - d. The court shall have continuing jurisdiction over the trust established pursuant to the order and may at any time, upon petition of the parent or legal guardian, the minor, through the minor's guardian ad litem, or the trustee or trustees, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary and, if the beneficiary is then a minor, to the parent or guardian, if any, and to the trustee or trustees of the funds with opportunity for all parties to appear and be heard.
- b. *Section II. Establishment of Trust Account; consent of court required for withdrawals; written statement; handling of funds*¹⁴³
1. *The trustee or trustees shall establish a trust account on behalf of the child pursuant to this section at a bank, savings and loan institution, credit union, brokerage firm, or company registered under the Investment Company Act of 1940, that is located in the State of residence. The trustee or trustees shall establish the trust pursuant to this section within fourteen business days after the minor's contract*

143. Modeled after Cal. Fam. Code § 6753 (a)–(d) (West 2004).

is signed by the minor, the third-party individual or personal services corporation (loan-out company) and by the entity paying the minor for work (the entity).

2. *Except as otherwise provided in this section, prior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation of the minor under [the emancipation code of the State where the child is domiciled], no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the superior court. Upon reaching the age of 18 years, the beneficiary may withdraw the funds on deposit in trust only after providing a certified copy of the beneficiary's birth certificate to the financial institution where the trust is located.*
3. *The trustee or trustees shall, within 21 business days after the minor's contract is signed by the minor, third-party individual or personal services corporation (loan-out company), and the entity, prepare a written statement under penalty of perjury that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional information needed by the entity to deposit into the account the portion of the minor's gross earnings. The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.*
4. *The trust shall be established in [State of residence] either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. The trustee or trustees of the trust shall be the only one with the obligation or duty to ensure that the funds remain in trust, in an account or other savings plan insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.*

These Sections are an essential step to ensure the financial protection of child influencers. Modeled after existing legislation,¹⁴⁴ Section I above requires

144. Cal. Fam. Code § 6752 (a), (b)(1)–(2), (6)–(7) (2004); Cal. Fam. Code § 6753 (a)–(d) (West 2004).

that those legally responsible for the child give notice to the entity they are contracting with¹⁴⁵ that a minor is involved and alert the entity of the requirement of placing the correct funds into a trust.¹⁴⁶ The responsibility of the entity to place the money in a trust is on par with other states' legislation protecting child actors, and precludes parents or legal guardians from mismanaging those funds.¹⁴⁷ Also similar to other states' laws,¹⁴⁸ the entity is relieved of further liability of the funds once it has complied with its duty to put the money into trust.¹⁴⁹ The requirement that 15 percent of the child's gross income be put in a trust is the same amount required by many states' laws protecting child actors.¹⁵⁰ While arguably 15 percent of the child influencer's earning is not enough to truly compensate them for their work, this portion is a good starting point as many states require 15 percent of a child actor's money be saved in a trust.¹⁵¹ Additionally, in cases of multiple parties contracting at the same time, all parties are required to allot each person the percentage or amount they will earn from the agreement prior to the execution of the contract.¹⁵² While this specific provision is not modeled after another piece of legislation, this requirement ensures that no confusion will arise as to what amount the 15 percent should be derived from as that amount will be determined during contract negotiations.

Section II acts as a guide for establishing the trust account, requirements for withdrawals, written statements, and the handling of funds in the trust.¹⁵³ The trustee, in most cases the parent, will be required to open a trust within

145. See *supra* Part III.A.1 (requiring the person or persons legally responsible for the child to give notice to the entity that they are contracting with a minor).

146. See *supra* Part III.A.1 (discussing the notice that is required to be given to the entity contracting with a minor).

147. See Cal. Fam. Code § 6752 (b)(1) (West 2004) (requiring the minor's employer to set aside the 15 percent to be put in a trust).

148. Cal. Fam. Code § 6752 (b)(6) (West 2004) (stating that “[o]nce the minor's employer deposits the set-aside funds . . . the minor's employer shall have no further obligation or duty to monitor or account for the funds).

149. See *supra* Part III.A.1 (detailing that once the entity puts the money into the trust, they are relieved from further responsibility).

150. Cal. Fam. Code § 6752 (West 2004) (requiring 15 percent of the child gross earnings be put into a trust account); Kan. Stat. Ann. § 38–620 (West 2000) (requiring 15 percent of the child's gross earnings be put into a trust account); Nev. Rev. Stat. Ann. § 609.540 (West 2003) (requiring no less than 15 percent and no more than 50 percent of the minor's net earnings be put into a trust account); N.Y. Est. Powers & Trusts Law § 7–7.1 (McKinney 2014) (requiring 15 percent of the child's gross earnings into the child's performer trust account).

151. See sources cited *supra* note 150.

152. See *supra* Part III.A.1 (requiring that where a contract is entered into in which multiple parties are going to be paid, the parties to the contract must know the percentage or amount they will personally be receiving from the contract).

153. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

fourteen business days after the contract is signed by all required parties.¹⁵⁴ This requirement places the responsibility on the person legally responsible for the child because they will likely have knowledge of the contract and will often have access to banks or other financial institutions in the state of residence, which is a requirement for the trust.¹⁵⁵ In theory, this will allow for easy access to the trust. The proposed legislation requires the trust to be opened within fourteen business days, which is seven days longer than required for the Coogan Trust in California,¹⁵⁶ to allow for more time for the parents or legal guardians to find the best financial institution to meet their needs. The trustee will have twenty-one business days to provide a written statement of all information entity needs to deposit the funds into the account along with the information received from the financial institution.¹⁵⁷ This lessens the burden on the entity because the entity will be allowed ample time and provided with all the details needed to put the funds in a trust account seamlessly. The bracketed information—“*the emancipation code of the State where the child is domiciled*”—is included because each state has their own emancipation code, which should be given deference.¹⁵⁸ While this legislation is drafted for federal enactment, referring to state law in this regard will allow for states to continue governing through their emancipation codes without federal intervention.

2. Production Regulations

The following proposed language lays out production regulations for instances where a child influencer is creating social media content.

*a. Section III. Production Regulations*¹⁵⁹

No child influencer under 18 years of age may be required to participate in child influencing:

1. *in a manner that results in a failure to receive class credits because of unexcused class absences, or any violation of the [State] Compulsory School Attendance Law, [State] Education Code, either as it is presently worded or may hereafter be amended to read, or of any rules promulgated thereunder;*

154. See *supra* Part III.A.1 (requiring the trustee must open the trust account within fourteen days of the execution of the contract).

155. See *supra* Part III.A.1 (requiring the trust to be opened in the state of residence of the child influencer).

156. Cal. Fam. Code § 6753 (a) (2023) (requiring the opening of the trust account “within seven business days after the minor’s contract is signed by the minor”).

157. See *supra* Part III.A.1 (requiring the trustee to give all of the pertinent information to the entity in order for them to effectively place the required funds into the trust account).

158. See *supra* Part III.A.1 (allowing deference to a given state’s emancipation code).

159. Modeled after 40 Tex. Admin. Code § 817.33 (1)–(3), (5)–(9) (2023).

2. *in a position declared hazardous by the Fair Labor Standards Act (FLSA);*
3. *during hours that would not be within the limits set by [State] Labor Code, except that the child is permitted, with parental consent, to work during otherwise prohibited hours, so long as the minor does not work in excess of five hours in one day or 40 hours in one week;*
4. *where the child is not provided with a suitable place to rest or play;*
5. *where the child is sent to wardrobe, makeup, or hair-dressing, unless the child is under the general supervision of the child's parent, guardian, or person having custody of the child if the parent, guardian or person having custody is physically present at the place where the child is working;*
6. *where the child's parent, guardian, or person having custody of the child is prevented from being present at the place where the child is working while the child is working;*
7. *where the child's parent, guardian, or person having custody of the child is prevented from being within sight and sound of the child at any time during work; or*
8. *for more than two consecutive school days during a school year in which the child is legally required to attend school without being furnished a tutor for the child's continuing education. The tutor shall be certified to teach in [State] by the [State] Education Agency or the State Board for Educator Certification, and shall make reasonable efforts to coordinate subjects and assignments with the child's classroom teachers.*
 - a. *In instances of home schooling, the parents, guardian, or person having custody of the child must ensure that the child is maintaining their schoolwork as required by State law.*

Section III above is an important step in ensuring the physical and psychological protection of child influencers as it lays out the production regulations.¹⁶⁰ Modeled after existing legislation protecting child actors,¹⁶¹ this Section requires that child influencers remain in school in accordance with the laws of the state in which they reside.¹⁶² This provision, like other legislation regarding children who work, seeks to minimize the extent to which

160. See *supra* Part III.A.2 (discussing the mandatory production regulations protecting child influencers).

161. 40 Tex. Admin. Code § 817.33 (1)–(3), (5)–(9) (2023).

162. See *supra* Part III.A.2 (requiring the child influencer to maintain their education).

the child's work infringes on a child's ability to continue their education.¹⁶³ This Section also provides that no child influencer can work in a position that is hazardous within the meaning of the FLSA.¹⁶⁴ As discussed above, child influencers currently fall outside the protections of the FLSA, so this provision acts as a further protection to prevent child influencers from participating in anything deemed hazardous by the FLSA. Other state statutes have included this provision for child actors.¹⁶⁵ The proposed Section also requires that the child cannot work in excess of the limits provided by the labor code of the child's state of residence. While this provision allows the parents to consent to more hours than required by the state's labor code, the child cannot work more than forty hours per week.¹⁶⁶ Again, this is similar to statutes protecting child actors.¹⁶⁷ Provisions 5–8 are for instances in which the child influencer is on a set or other places outside of the home. These provisions require that a parent or legal guardian always accompany the child to prevent the abuses discussed below.¹⁶⁸ Each state has its own education agency authority, which is why provision 8 references state law.¹⁶⁹ While this legislation is federal, referring to state law in this regard will allow for states to continue governing their educational system.

B. *Harms to Child Influencers and Benefits to Proposed Legislation*

Similar to the harms faced by child actors which prompted legislators to enact child labor laws, child influencers are at risk of both financial exploitation and physical and psychological harms requiring legal protection.¹⁷⁰ Some of the harms child entertainers are subject to include working long hours, missing school, losing privacy, and having to grow up in the public eye.¹⁷¹ This Section

163. 40 Tex. Admin. Code § 817.33 (1) (2023) (prohibiting child actors from working if they fail “to receive class credits because of unexcused class absences, or any violation of the State Compulsory School Attendance Law . . .”).

164. *See supra* Part III.A.2 (prohibiting child influencers from working in conditions deemed hazardous by the FLSA).

165. 40 Tex. Admin. Code § 817.33 (2) (2023) (prohibiting child actors from working “in a position declared hazardous by the Commission.”).

166. *See supra* Part III.A.2 (allowing the parents to consent to more time than the legislation allows, but no more time than allowed by their state's labor code).

167. 40 Tex. Admin. Code § 817.33 (3) (2023) (prohibiting child actors from working “during hours that would not be within the limits set by the Texas Labor Code,” but parental consent may extend the hours for children who are fourteen or fifteen years old).

168. *See supra* Part III.A.2 (requiring that the persona legally responsible for the child to accompany them throughout the entire process of out-of-the-home advertisement campaigns).

169. *See supra* Part III.A (giving deference to a given state's education code).

170. *See supra* Part II.C (discussing the exploitation to child actors that led to legislation protecting them).

171. Masterson, *supra* note 15, at 593.

addresses how the proposed legislation will overcome problems such as these that are specific to child influencers.¹⁷²

1. The Risk of Financial Exploitation

Child influencers risk financial exploitation from the companies who pay them for content largely because the companies that sponsor them are unlikely to consider them employees.¹⁷³ Aside from the product being reviewed and a general overview of what is to be said about the product, the company typically does not exert control over the influencer's work.¹⁷⁴ As a result, these children are unlikely to find protection under federal or state statutes aimed at protecting employees.¹⁷⁵ Further, this means that these children are not guaranteed wage standards, workers compensation, or the right to unionize under the National Labor Relations Act—rights typically held by legally-recognized employees.¹⁷⁶ Likewise, if the child is not represented by an agency and the parent(s) or legal guardian(s) are not educated in contracts or negotiating, the child may be at a disadvantage against the lawyers and other negotiators of the large companies they may be contracting with.¹⁷⁷ As such, there needs to be safeguards to ensure that massive companies are not financially exploiting child influencers.

Not only are child influencers at risk of exploitation from the companies that pay them for advertisements, as mentioned previously, they are also at risk

172. See *supra* Part III.B.2, 4 (discussing how the proposed legislation will overcome financial and physical and psychological exploitation).

173. *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992) (citing RESTATEMENT (SECOND) OF AGENCY § 220(2) (1958)) (discussing that whether someone is an employee is dependent on many factors regarding the employer's control over the work); see Masterson, *supra* note 15, at 594.

174. Cathrin Manning, *How Sponsorships Work On YouTube // What You Need to Know About Paid Sponsorships (Beginner's Guide)*, YOUTUBE (Mar. 21, 2021), <https://www.youtube.com/watch?v=7LFJEWXf1qE> (discussing a general overview of how sponsorships work). Manning discusses that with every sponsorship she does, she signs a contract that includes what she can and cannot talk about in the video and other limitations and requirements. *Id.* She further mentions that a sponsorship can come about either from her reaching out to the company or the company reaching out to her. *Id.* From there, a lot of negotiating and planning occurs—topics such as deliverables (what is included in the pay point) how many posts are required, on which platforms, and the amount of time of the advertisement (if a video advertisement). *Id.* Once the negotiation is complete—which can sometimes take weeks or months—the person may start creating content. *Id.* The influencer will create the content with their own style, but often the ultimate post may sometimes require approval by the company before posting. *Id.*

175. Masterson, *supra* note 15, at 594.

176. See *id.*

177. See *id.*; see also Manning, *supra* note 175 (discussing uses of a management agency to assist in negotiation and contract review because of the complexity of sponsorship deals).

of financial exploitation by their parents.¹⁷⁸ As Sheila James Kuehl, a former child star and legal expert, said: “It is not play if you’re making money off of it.”¹⁷⁹ Any parent with a device capable of posting on social media can see that thousands of families are profiting off sponsorships of their young children and believe that they have the same potential to earn millions.¹⁸⁰

Child influencers are currently at the mercy of their parents’ financial decisions with regard to their earnings.¹⁸¹ When a child influencer turns eighteen and discovers that their parents have financially exploited them, one of their only recourses may be to bring a lawsuit against their parents.¹⁸² This might prove to be ineffective as there are currently no legal rights for them to base a legal claim on (just like that of Jackie Coogan whose case prompted the Coogan Trust).¹⁸³

Fast Company conducted an interview with the parents of child influencers discussing how those parents spend their child’s earnings.¹⁸⁴ Simone Gittens, a parent of a five-year-old child influencer, treats her daughter’s Instagram account as a business.¹⁸⁵ Gittens takes anywhere from 15–20 percent of her daughter’s monthly earnings as a payment for herself for managing the behind-the-scenes aspect of the account.¹⁸⁶ This is akin to the stories mentioned previously where child actor’s parents were taking fees from their earnings.¹⁸⁷ Gittens told *Fast Company*: “Sometimes I do feel like, ‘Should I be taking a percentage?’”¹⁸⁸ This would seem to imply that parents are already questioning whether they have a right to some of the earnings. In fact, a poll suggests that only around 12 percent of Americans believe it is permissible for parents to profit off of photos of their children.¹⁸⁹ Gittens also manages an Ins-

178. Saragoza, *supra note* 124, at 586.

179. Lisa Bubert, *I Made Money Off Pictures of My Kid on Instagram—What Should I Do With It?*, PARENTS (June 2, 2021), <https://www.parents.com/parenting/money/i-made-money-off-pictures-of-my-kid-on-instagram-what-should-i-do-with-it> [<https://perma.cc/XS9K-CEGM>].

180. Saragoza, *supra note* 124.

181. *See id.*

182. *See id.*

183. *See supra notes* 113–117 and accompanying (discussing that current federal and state child labor laws do not encompass child influencers).

184. Saragoza, *supra note* 124, at 587 (citing Pavithra Mohan, *My Kid Is an Instagram Influencer. Here’s What I Do with Her Money*, FAST COMPANY (May 8, 2019), <https://www.fastcompany.com/90343690/my-kid-is-an-instagram-influencer-heres-what-i-do-with-her-money> [<https://perma.cc/YEQ6-W4Y9>]).

185. Mohan, *supra note* 184.

186. *See id.*

187. *See supra notes* 49–76 and accompanying text (discussing examples of child actors’ parents financially exploiting them).

188. Mohan, *supra note* 184.

189. Jacob Shamsian, *Nearly 90% of Americans Think It’s Wrong to Make Money from Photos of Children on Social Media*, INSIDER (Dec. 28, 2018, 1:57 PM), <https://www.insider.com/poll-parents-profit-children-social-media-photos-instagram-youtube-2018-12> [<https://>]

tagram account for her daughter.¹⁹⁰ Gittens takes around a 15 percent cut from these earnings as well, and then divides the rest into a trust account, business expenses, and charitable donations.¹⁹¹

If parents are in fact saving money in a trust account for their child, there might not be a problem. But there is no way to guarantee each parent is doing this without legislation. In fact, the California Court of Appeals analyzed the legislative purpose behind the Coogan law and found it to be to protect the child's gross earnings.¹⁹² Therefore, the court also stated that these trusts are not to be deducted from for any reason without court approval.¹⁹³ While Gittens and many like her are saving some of the money for their child influencer, taking any unregulated amount from the child's earnings is contrary to the legislative intent behind the Coogan Act for child actors, and should likewise be impermissible for those managing child influencers' money.¹⁹⁴ As it stands, nothing is stopping parents from paying themselves 100 percent of their child's earnings from content creating.¹⁹⁵

Some parents may even believe that they have a right to their child's earnings because they are often the ones posting and editing the content and making the deals with the company.¹⁹⁶ Kyler Fisher, parent of twin internet sensations Taytum and Oakley, suggests that parents of child influencers perform all of the labor and conduct all of the business while the children simply pose for the pictures.¹⁹⁷ In the *CBSN Originals* documentary, *Kid Influencers: Few Rules, Big Money*, Madison and Kyler Fisher "can both be seen sporting Gucci's Ace sneakers, valued at over \$500 per pair."¹⁹⁸ This example is analogous to that of Leighton Meester's mother and how she misappropriated the use of Leighton's funds.¹⁹⁹ The Fisher twins are said to make a substantial amount of money by the time they turn eighteen.²⁰⁰ However, because child influencers are not protected in the same way that child actors are, there is no guarantee that they would be able to secure a default judgment against their

perma.cc/YEQ6-W4Y9].

190. See Mohan, *supra* note 184.

191. *Id.*

192. Saragoza, *supra* note 124, at 587 (citing *Phillips v. Bank of Am., N.A.*, 186 Cal. Rptr. 3d 434, 438 (2015) (discussing the legislative purpose behind Coogan laws)).

193. *Id.*

194. See *Phillips*, 186 Cal. Rptr. 3d at 438.

195. Saragoza, *supra* note 124, at 587.

196. See *id.*

197. *Id.* at 588 (citing *KID INFLUENCERS: FEW RULES, BIG MONEY* (CBS News Aug. 32, 2019), <https://www.cbsnews.com/video/kid-influencers-few-rules-big-money/#x>).

198. Saragoza, *supra* note 124, at 588.

199. *Id.* (citing Complaint for Declaratory Relief ¶ 11, *Meester v. Meester*, 2011 WL 2941537 (Cal. Super. Ct. July 22, 2011) (No. BC466072), where the plaintiff alleged that her mother spent her money for the use of cosmetic procedures).

200. Saragoza, *supra* note 124, at 588 (citing *KID INFLUENCERS: FEW RULES, BIG MONEY*, *supra* note 198).

parents.²⁰¹ Instances such as these are alarming, and further point to the need for legislation protecting child influencers.

2. Overcoming Financial Exploitation

The proposed legislation attempts overcome the risk of financial exploitation of child influencers. Section I requires that once the minor has entered into a contract with the entity paying the minor for work (the entity), the person entitled to the physical custody, care, and control of the minor must provide a copy of the minor's birth certificate indicating the minor's minority.²⁰² This will give notice to the entity that they are contracting with a minor and now have a duty to place 15 percent of the gross earnings into a trust.²⁰³ This provision requires the entity to oversee that the money that goes into the trust, so that parents are not able to either purposely or inadvertently skip this step. The entities might argue that they should not have to be responsible for the money other than handing the money over to the parents. However, many states' laws regulating the work of child actors require the employer of the child to be responsible for putting the money into trust for the child.²⁰⁴ This implies that companies have long been successful at putting a portion of the money in a trust. Even if the entities targeted under the proposed legislation are different than the companies who put money in a trust for child actors, the process is similar, and companies have been successfully doing it for many years.²⁰⁵ Further, this provision does not impose a substantial hardship on the entities because their duties are discharged once the money is put into the trust account.²⁰⁶ As such, they will not be liable for what happens to the money once they have placed it in a trust account.²⁰⁷

The 15 percent requirement by the proposed legislation, while significantly lower than what the child is actually earning, is on par with current required savings in states throughout the United States for child actors.²⁰⁸ While one could argue that 15 percent is too much compensation for a child influencer because the parents are often doing the behind-the-scenes work,

201. Saragoza, *supra* note 124, at 588.

202. *See supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

203. *See supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

204. *See supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

205. *See*, Cal. Fam. Code § 6752 (West 2004) (requiring companies to place the child actor's money into trust since 2000).

206. *See supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

207. *See supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

208. *See, e.g.*, sources cited *supra* note 150.

the companies are paying for the child influencer to promote the products, and therefore are arguably more vital than the behind the scenes work of their parents.²⁰⁹ Additionally, because current state legislation protecting child actors are already requiring around 15 percent to be put into a trust account, requiring the same amount for another branch of child entertainers should be permissible.²¹⁰

The legislation further requires the parent(s) or legal guardian(s) to be trustee of the account.²¹¹ This allows the parents to have autonomy over the family but ensures that the child's earnings are safe from depletion before the child is eighteen. This requirement is on par with other state statutes requiring trust accounts for minors.²¹²

Section II requires the trustee to open a trust within fourteen business days after the contract is signed by all required parties.²¹³ The responsibility to open a trust falls on the eventual trustee or trustees since they will have knowledge of the contract and will often have access to the required financial institutions.²¹⁴ With a timeframe seven business days longer than the Coogan Trust, this provision also allows for more planning.²¹⁵ The trustee will have twenty-one business days to provide a written statement of all information needed by the entity to deposit the funds into the account along with the information received from the financial institution.²¹⁶ This allows ample time for the entity to put the funds in a trust account and again lessens the burden on the entity.

Finally, the proposed legislation requires that the contract entered into must allocate individual amounts to each person in the contract for the post.²¹⁷ This provision is specifically targeted for those contracts in which the whole

209. See Masterson, *supra* note 15, at 600.

210. See sources cited *supra* note 150.

211. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

212. See Cal. Fam. Code § 6752(2) (2004) (requiring “at least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time the order is issued be appointed as trustee of the funds ordered to be set aside in a trust for the benefit of the minor, unless the court shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor”).

213. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

214. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

215. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

216. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

217. See *supra* Part III.A.1 (discussing the requirements for establishing and maintaining the trust account).

family or multiple children are participating in the same paid content. While this may lead to more work upfront in the negotiation process, the entities can more readily ascertain the amount attributed to each person in the post, and more importantly, to the child whose money will be in question for purposes of the trust. While this Article does not propose apportionment of money in such contracts, one suggestion is for the calculation to be based on the extent of the child's participation in the post.

3. The Risk of Physical and Psychological Harms

Financial exploitation is not the only concern for child influencers. Child influencers are likely also working long hours to generate content.²¹⁸ Additionally, child influencers are more likely to have anxiety, depression, and substance issues. This is largely result of their profession being centered around things like public approval, which can impact their self-esteem, and children of that age typically have not yet developed the coping skills to handle failure and disappointment in the same way that adults do.²¹⁹ Moreover, when a child is the sole income earner or is the product in the so-called family business, parents may often put that child's best interest in the back-seat. Because there are no current regulations applying to parents of child influencers, there are concerns about how the parents sets the rules for themselves in this family business model due to the constant and intrusive nature of child influencing.²²⁰

Along with child influencing comes an "extreme loss of privacy that social media influencers experience"—a unique threat to the physical and mental well-being of the child.²²¹ Many adults put extensive thought into what they post on social media and have fears of losing their privacy in other areas related to having an online presence such as security breaches on cloud sources.²²² Therefore, it would seem that lawmakers would put a heavy emphasis on regulating child influencers,²²³ yet lawmakers have yet to enact such legislation.

Additionally, child influencers are subject to substantial risk for online harassment or stalking due to the public nature of social media platforms, which sometimes allow fans or any person who dislike the child influencers to message the children directly.²²⁴ For example, TikTok star Ava Majury was

218. See e.g., Manning, *supra* note 174 (discussing a general overview of the amount of time spent creating a sponsored post).

219. *What Are the Psychological Effects of Being A "Kid Influencer"?*, CBS NEWS (Aug. 23, 2019) <https://www.cbsnews.com/video/what-are-the-psychological-effects-of-being-a-kid-influencer/#x>.

220. See *id.*

221. Masterson, *supra* note 15, at 595.

222. See Ellen Walker, *Nothing Is Protecting Child Influencers from Exploitation*, WIRED (Aug. 25, 2022, 9:00 AM), <https://www.wired.com/story/child-influencers-exploitation-legal-protection>.

223. See *id.*

224. Masterson, *supra* note 15, at 596.

confronted by an armed stalker in Florida.²²⁵ Ava began creating content on the platform in 2020 during the lockdown phase of the COVID-19 pandemic.²²⁶ Ava grew in popularity and eventually monetized her platform.²²⁷ She made efforts to speak with her fans through the comments, but one 18-year-old male fan sought her attention through several means such as TikTok and Instagram comments and Snapchat.²²⁸ The situation took a turn when he asked Ava for explicit photos.²²⁹ She denied, and Ava's father responded to the fan warning him to refrain from further contact with his daughter.²³⁰ Unfortunately, the situation escalated to the point where the fan shot a gun through the front door of Ava's family home in Florida.²³¹ Incidents like these are eye-opening and display the immediacy for protection.

4. Overcoming Physical and Psychological Harms

Section III of the legislation mitigates the physical and psychological harms child influencers face by providing production regulations for them.²³² Section III provides that no child influencer under the age of 18 may be required to work unless they are still receiving class credit in accordance with their state's law.²³³ This ensures that child influencers will continue to receive education in accordance with the state education laws where the child influencer resides.²³⁴ Additionally, the Section provides that the child cannot work in hazardous conditions as outlined in the FLSA, which is similar to laws for child actors.²³⁵

The Section further requires that child influencers are not to work in excess of the state's labor codes without parent's consent, and no more than eight hours a day and forty hours per week.²³⁶ This provision may be hard to regulate because parents will likely consent to the maximum amount of hours

225. *Teenage TikTok Influencer Confronted By Armed Stalker at Family's Florida Home*, Soc. MEDIA VICTIMS L. CTR., <https://socialmediavictims.org/blog/tiktok-influencer-armed-stalker> [<https://perma.cc/U3BF-WXZX>] (last visited Jan 17, 2024).

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *See supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

233. *See supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

234. *See supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

235. *See supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

236. *See supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

allotted and because a lot of the content is produced within the home, but this model will be a good first step in legislating the amount of time children actually spend creating content. The proposed legislation also requires that children have a suitable place to play and rest,²³⁷ seeking to ensure that the child influencer is still able to do normal adolescent activities. These provisions still give parents great deference in how they manage their children, but put in place limitations similarly afforded to child actors.²³⁸

Provisions 5–8 are for instances in which the child influencer is on a set or other places outside of the home.²³⁹ They require the parent(s) or legal guardian(s) to accompany the child influencer to promote the child’s physical safety.²⁴⁰

C. *Exception to Family Autonomy*

Despite the readily identifiable harms for child influencers, constitutional questions arise any time the government seeks to regulate what occurs within a family unit. The Supreme Court has long acknowledged the right of family autonomy.²⁴¹ The Court has “establish[ed] that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”²⁴² In *Meyer v. Nebraska*, the Court held that the Fourteenth Amendment of the Constitution protected the right “to marry, establish a home and bring up children”²⁴³ Just two years later, the Court stated that the “the liberty of parents and guardians to direct the upbringing and education of children under their control” was also protected under the Constitution.²⁴⁴ Additionally, “parents are typically exempted from child-labor laws and entrusted with their children’s online privacy.”²⁴⁵ As such, family autonomy was thought to be untouchable and parents generally had the right to raise their children free from any regulation.

Furthermore, Congress passed the Childhood Online Privacy Protection Act (COPPA), which acknowledged parents’ authority to control their children’s privacy on the internet.²⁴⁶ Passed in 1998, COPPA “imposes cer-

237. See *supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

238. See 40 Tex. Admin. Code § 817.33 (1)–(3), (5)–(9) (requiring certain protections for child actors such as an adequate place to play and rest and limiting the amount of time child actors can spend working on a set).

239. See *supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

240. See *supra* Part III.A.2 (discussing the production regulations that protect the physical and psychological exploitation and harms facing child influencers).

241. See *Stanley v. Illinois*, 405 U.S. 645, 652 (1972).

242. *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503 (1977).

243. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

244. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925).

245. McGinnis, *supra* note 1, at 260.

246. See *id.* at 261 (citing *Children’s Online Privacy Protection Rule*, FTC, <https://www.ftc>).

tain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.”²⁴⁷ Under COPPA, parents can control the type of information websites collect from their children younger than thirteen.²⁴⁸ COPPA gives great deference to the autonomy parents have regarding their children and the internet.²⁴⁹ Even though the Federal Trade Commission (FTC) has given guidelines for social media influencers (requiring “disclosure of paid advertisements and public relations gifts”), it provides no specific guidelines geared toward children.²⁵⁰

Nevertheless, in 1944, the United States Supreme Court in *Prince v. Massachusetts*, held that “the state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare.”²⁵¹ There, the child’s guardian allowed Prince to work in violation of the state’s child labor laws.²⁵² While the Court noted that there exists a realm of family life that the state cannot touch, it found that child labor must be regulated more than adult labor.²⁵³ In so holding, the Court carved out an exception to the idea that family autonomy is immune to any regulation.²⁵⁴

Parental authority seemingly limits, but does not outright prohibit potential legislation regarding child influencers.²⁵⁵ Arguably, because social media production primarily takes place within the home, legislating this type of activity would fall within the scope of the upbringing of the child.²⁵⁶ The Supreme Court “upheld parental rights in part because of the interests in self-expression and the heterogeneity of society” in *Meyer* and *Society of Sisters*, and social media does have the function of self-expression.²⁵⁷ Nevertheless, social media also has the function of acting as a source of income,²⁵⁸ which can seemingly be regulated according to *Prince*.²⁵⁹

Weighing in favor of legislation could be that the Court in *Prince* “established that states have the power to protect children from harm, even above

gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule) [https://perma.cc/9DSD-WL9Y] (last visited Dec. 24, 2023).

247. FTC Children’s Online Privacy Protection Rule, 16 C.F.R. § 312 (1999); FTC, *supra note* 246.

248. McGinnis, *supra note* 1, at 261 (citing FTC, *supra note* 246).

249. *See id.* at 261.

250. *Id.*

251. *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

252. *Id.* at 160.

253. *See id.* at 167–68.

254. *See Masterson, supra note* 15, at 598.

255. *See id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *See Prince*, 321 U.S. at 167–68.

the wishes of their parents, and specified child labor as an appropriate area of regulation.”²⁶⁰ There is arguably a substantial interest in protecting child influencers that, on balance, outweighs the right to parental autonomy in such instances.²⁶¹

While *Meyer*, *Pierce*, and *Prince* address the powers of the individual states to regulate parental authority, their holdings may be persuasive while applying similar justification for the federal government to regulate the labor of child influencers.²⁶² Namely, the FLSA already interferes with the family relationship by regulating hazardous child labor, indicating that the federal government can and has regulated parental authority.²⁶³

The harms faced by child influencers are vast; child influencers are entertainers like child actors, and some states afford legal protection to child actors. Thus, it is not hard to follow that child influencers should be afforded similar protection. With this possible exception in mind, Congress will ultimately have to determine how far the legislation must go to achieve the goal of protecting child influencers from the harms they face while simultaneously protecting parental authority. Accordingly, the proposed legislation balances parental oversight—by requiring the trustee to be the person legally responsible for the children—and the interests of the child—by the creation of a trust for the child’s income.²⁶⁴

IV. CONCLUSION

With the monetization of social media platforms and the fact that child influencers are at the center of paid content comes a new area of child labor. The risks of exploitation faced by children are not just financial, but also physical and psychological. Children spend a great amount of time featured in posts and stand to make millions. Because this newfound realm of child labor is largely unlegislated, the only thing seemingly stopping exploitation is the good will of parents and massive companies. To protect these children, federal legislation is not just necessary, but immediate.

Social media’s inherent effects on interstate commerce permit federal legislation by way of Congress’ Commerce Powers. Further permitting federal legislation is that legislating this type of child labor is within an exception to family autonomy as outlined above. Namely, Congress enacted the FLSA, which regulated parental authority specifically within the realm of child labor.

260. Masterson, *supra* note 15, at 598.

261. *Id.*

262. See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); see also *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *Prince*, 321 U.S. at 167–68.

263. See *supra* notes 29–46 and accompanying text (discussing Congress’ regulation of child labor through the FLSA).

264. See *supra* Part III.A.1, 2 (proposing legislation that, on balance, seeks to maintain family autonomy while simultaneously affording child influencers with legal protections).

Finally, the proposed legislation, on balance, protects the needs of the child with the right to family autonomy.

The proposed federal legislation helps to combat the financial exploitation of child influencers by specifically requiring 15 percent of the child's gross earnings from social media content be put into a trust account. The proposed federal legislation also seeks to overcome the physical and psychological exploitation to child influencers by setting out production regulations that provide strict guidelines, ensuring the child remains in school and is accompanied by a parent in every situation in which the child is not working within the home.

Federal legislation for child actors already seems to be on the radar of some in Congress. As such, imposing federal legislation protecting child influencers is a logical next step. Considering the mobility of social media production, federal legislation would ensure uniformity and assure that the protection would apply to every child influencer in every state, with no child influencer left behind. Further, child influencers need tailored legislation to support their unique needs beyond the mere addition to the FLSA, since the labor of child influencers is distinct from the hazardous labor protected under the FLSA and the work of other child entertainers. Merely including child influencers into the definitions of already created state laws protecting child actors would therefore prove inefficient. The proposed legislation protects child influencers from financial exploitation and from the physical and psychological harms made possible in the absence of such legislation, and as thus, should be enacted federally.

