

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 764 (Padilla)
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Fiscal: Yes
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SUBJECT

Social media platforms: minor users: civil penalties

DIGEST

This bill provides protections to children performing in “vlogs,” monetized content appearing on online platforms, as specified. This includes the establishment of trust accounts for the benefit of those minors and specified accounting practices.

EXECUTIVE SUMMARY

California was a pioneer in enacting laws protecting child actors over 80 years ago. California’s “Coogan law” requires funds to be set aside in specified trusts for the benefit of minor actors. Similar protections have been created in other states. However, these protections do not extend to minors appearing in content posted on online platforms.

The dramatic rise of content created and monetized by social media influencers, and specifically content heavily featuring minors, has drawn attention to a gap in these laws. A series of infamous examples of family members exploiting minors appearing in their content has raised calls for legislation to protect the interests of these children. Mirroring a law recently enacted in Illinois, this bill places obligations on adult “vloggers,” creators of online content for compensation, whose online content features minors “engaging in vlogging” to set aside a certain amount of gross earnings in a trust account to be established in a California financial institution. A child is “engaged in vlogging” when a certain percentage of the content includes the minor and the related compensation reaches a certain threshold. Such vloggers are also required to maintain and share records related to the amount of relevant content produced and the compensation received therefrom.

This bill is author-sponsored. It is supported by the Children’s Advocacy Institute at the University of San Diego School of Law. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Regulates the following contracts entered into between an unemancipated minor and a third party:
 - a) A contract pursuant to which a minor is employed or agrees to render artistic or creative services, either directly or through a third party. “Artistic or creative services” includes services as an actor, actress, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.
 - b) A contract pursuant to which a minor agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person’s likeness, voice recording, performance, or story of or incidents in the person’s life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.
 - c) A contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport. (Fam. Code § 6750.)
- 2) Requires the court, in an order approving the above contracts, to require that 15 percent of the minor’s gross earnings pursuant to the contract be set aside by the minor’s employer, except as provided. These amounts shall be held in trust, in an account or other savings plan, and preserved for the benefit of the minor. The minor’s employer shall deposit or disburse the 15 percent of the minor’s gross earnings within 15 business days of receipt of specified documentation. However, pending receipt of these documents, the minor’s employer shall hold, for the benefit of the minor, the 15 percent of the minor’s gross earnings pursuant to the contract. (Fam. Code § 6752.)
- 3) Details the trustee’s responsibilities with regard to the above Coogan trust accounts, and requires that a trust account be established in designated California financial institutions. (Fam. Code § 6753.)

This bill:

- 1) Defines the following terms:
 - a) “Online platform” means any public-facing internet website, web application, or digital application, including a mobile application. “Online

- platform” includes a social network, advertising network, mobile operating system, search engine, email service, or internet access service.
- b) “Vlog” means content shared on an online platform in exchange for compensation.
 - c) “Vlogger” means a parent, legal guardian, or family residing in California that creates image or video content that is performed in California in exchange for compensation. “Vlogger” does not include any person under 18 years of age who produces their own content.
 - d) “Vlogging” means the act of sharing content on an online platform in exchange for compensation.
- 2) Provides that a minor is considered “engaged in the work of vlogging” when both of the following are met at any time during the previous 12-month period:
 - a) At least 30 percent of the vlogger’s compensated video content or the vlogger’s compensated image content that is produced within a 30-day period in the last 12 months, includes the likeness, name, or photograph of the minor. The percentage is measured by the amount of time the likeness, name, or photograph of the minor visually appears or is the subject of an oral narrative in a video segment, as compared to the total length of the segment; and
 - b) The number of views received per image or video segment on any online platform met the online platform’s threshold for the generation of compensation or the vlogger received actual compensation for image or video content equal to or greater than ten cents per view.
 - 3) Requires vloggers whose content features a minor under 18 years of age engaged in the work of vlogging to compensate the minor. The vlogger is required to set aside gross earnings on the relevant content in a trust account preserved for the benefit of the minor as follows:
 - a) When only one minor meets the content threshold, the minor shall receive a percentage of total gross earnings on any image or video segment, meeting the requirements, that is in proportion to the minor’s appearance.
 - b) When more than one minor meets the content threshold and an image or video segment includes more than one of those minors, the percentage for all minors in any segment shall be equally divided between the minors, as provided.
 - 4) Requires the vlogger to establish the trust in specified financial institutions within California within seven business days after the minor first meets the relevant criteria. The bill details obligations and restrictions with regard to the trust account and the funds therein, including that the funds be made available only to the beneficiary of the trust.

- 5) Requires vloggers whose content features a minor under 18 years of age engaged in the work of vlogging to maintain all of the following records and to provide them to the minor at least once per month:
 - a) Documentary proof of the minor's age when they started vlogging.
 - b) The number of vlogs that generated compensation.
 - c) The total number of minutes of the vlogs that the vlogger received compensation for.
 - d) The total number of minutes each minor was included in the vlogs;
 - e) The total compensation generated from vlogs featuring the minor during the reporting period.
 - f) The amount deposited into the trust account for the benefit of the minor engaged in vlogging.

- 6) Provides that if a vlogger knowingly violates the above provisions, or should have known they were in violation, a minor satisfying the criteria above may commence an action to enforce those provisions. A court may award a prevailing minor any of the following damages:
 - a) Actual damages.
 - b) Punitive damages.
 - c) Costs of the action, including attorney's fees and litigation costs.

- 7) Clarifies that it does not affect a right or remedy available under any other law of the state or have any effect on a minor who produces their own content.

COMMENTS

1. Coogan Law

California's Coogan Law was passed in 1938 in response to Jackie Coogan's plight:

The Coogan Law is named for famous child actor Jackie Coogan. Coogan was discovered in 1919 by Charlie Chaplin and soon after cast in the comedian's famous film, *The Kid*. Jackie-mania was in full force during the 1920s, spawning a wave of merchandise dedicated to his image. It wasn't until his 21st birthday after the death of his father and the dwindling of his film career that Jackie realized he was left with none of the earnings he had [worked] so hard for as a child. Under California law at the time, the earnings of the minor belonged solely to the parent.¹

¹ *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law>. All internet citations are current as of December 28, 2023.

The Coogan law was enacted to preserve a portion of a minor's earnings under an employment contract for creative or artistic services, for the minor's use when the minor reaches the age of majority.

Despite its ambitious reach, the original law was riddled with loopholes. SB 1162 (Burton, Ch. 940, Stats. 1999) overhauled the Coogan Law. Applicable to both court-approved and non court-approved minors' contracts for creative or artistic employment, SB 1162 required 15 percent of a minor's earnings to be set aside and deposited into a "Coogan trust" account, invested in low-risk financial vehicles, and blocked from use until the minor is emancipated or reaches age 18. To enforce the set-aside, SB 1162 imposed a duty on the employer to make the deposit directly into the minor's Coogan trust account, which a parent or guardian is required to open at an insured financial institution and to invest in a manner consistent with that of a trustee. Annual accounting is required, and court supervision of trust accounts for minors with court-approved contracts continues until the minor turns 18. SB 210 (Burton, Ch. 667, Stats. 2003) further bolstered the Coogan Law by, among other things, requiring the establishment of a default trust account into which employers can deposit the minors' set-aside earnings, if there is no Coogan trust established for the minor, and by tying approval of minor's work permits to the establishment of a trust account.

2. The rise of children social media influencers

Eerily similar to the plight of Jackie Coogan and other child actors, a number of examples of child performers being exploited have arisen, this time involving performances on online platforms.

The rapid rise of social media influencers has brought in a number of legal issues. Relevant here is the involvement of child influencers, often referred to as "kidfluencers." A Harris Poll found that influencing has become an aspirational path for many children, revealing that children ages 8 to 12 are three times as interested in being a "YouTuber" as they are in being an astronaut.²

Massive success has been found by a handful of kidfluencers with some, like Anastasia Radzinskaya, the 9-year-old star of the YouTube channel *Like Nastya*, making millions of dollars.³ In videos shared with 108 million subscribers, Anastasia spends time with her parents and friends, and demonstrates the risks of overeating sugar as well as the

² LEGO Group Kicks Off Global Program To Inspire The Next Generation Of Space Explorers As NASA Celebrates 50 Years Of Moon Landing (July 16, 2019) The Harris Poll, <https://theharrispoll.com/briefs/lego-group-kicks-off-global-program-to-inspire-the-next-generation-of-space-explorers-as-nasa-celebrates-50-years-of-moon-landing/>.

³ Valeriya Safronova, *Child Influencers Make Big Money. Who Gets It?* (October 10, 2023) The New York Times, <https://www.nytimes.com/2023/10/10/style/children-influencers-money.html#:~:text=How%20much%20parents%20should%20set,earnings%20must%20be%20set%20aside>.

benefits of washing hands. Ryan Kaji is a 13-year-old that earns millions of dollars playing with toys, conducting science experiments, and making crafts on his YouTube channel, Ryan's World. He has a line of toys sold at Target and Walmart. Many more children earn hefty profits on social media sites, such as Instagram, where "nano-influencers" with smaller followings still pull in about \$600 per post, while large accounts can earn \$10,000 or \$20,000. However, many other children are featured in content created by their parents or other family members.

The relevant concern here is how are these children protected from exploitation when the money being earned is in the hands of their family members:

A few other states have their own versions of California's [Coogan] law, but barring one exception, these laws do not extend to children who are making their names on Instagram, TikTok, YouTube or any of the other major social media platforms.

"They're working," Karen North, a professor of digital social media at the University of Southern California Annenberg School for Communication and Journalism, said of child influencers. "They're being told how to act and told what to say and do for their parents' pay and profit, but there are no restrictions the way there would be for a movie or a TV show."

Even if child influencers produce their own content and are not managed by their parents, they are at risk of being exploited by adults in their lives. On popular social media websites, children under 13 cannot run their own accounts; parents have to open and manage them. And in most states children cannot open a bank account independently until they are 17.

Now, politicians are starting to catch up, motivated in part by civic-minded teenagers who have watched as popular family vloggers like Mabelle Hobson and Ruby Franke have been exposed for abusing and exploiting their children, mostly behind the scenes, but sometimes on camera.⁴

3. Extending similar protections to children performing in "vlogs"

According to the author:

In 1939, California led the nation protecting the financial interests of children in the film industry with the Coogan Act, which would go on to form the foundation of national legislation. Over 80 years later, these safeguards have secured the financial future of countless child performers,

⁴ *Ibid.*

but the fast paced nature of entertainment leaves children in new forms of media unprotected.

SB 764 establishes similar financial protections in the Coogan Act to help children who are filmed by their parents. By requiring parents or guardians who make money from featuring their children in their content set aside money for the minor to access when they reach adulthood, California can continue to protect children from financial abuse.

It is long past time we put protections in place for child influencers and prevent them from being exploited.

The bill is modeled off a bill passed in August 2023 in Illinois. SB 1782 (2023 Ill. Laws 556) responded to the above concerns and is the first of its kind in the United States. The law applies to “vlogs,” content shared on an online platform in exchange for compensation, and “vloggers,” individuals or families that create video content, performed in Illinois, in exchange for compensation. It requires adults who use “the likeness, name or photograph” of a minor in paid online content to set aside a portion of the earnings in a trust. How much parents should set aside is based on how much the child appears in the content. Child influencers have the right to pursue legal action under the law.⁵

Using similar definitions to those in the Illinois law, this bill regulates vlogging involving minors, when certain thresholds are met. It requires vloggers whose content features a minor “engaged in the work of vlogging,” as defined, to maintain specified records regarding that content and to provide those records to the minor on a monthly basis. This includes records of the number of vlogs generating compensation, the number of minutes the minor was included, and the total compensation generated.

Vloggers are also required to set aside specified portions of their gross earnings for content including minors according to a distribution rubric laid out in the bill. The monies are to be deposited in a trust account to be preserved for the benefit of the minor upon reaching the age of majority. The bill establishes the threshold at which these obligations attach, specifies the timeline for establishing the accounts, and mandates that the accounts must be established in specified financial institutions within California.

A qualifying minor is authorized to bring an action against a vlogger that knowingly violates these provisions, or that should have known they were in violation. The minor may seek actual or punitive damages, as well as the costs of the action, including attorneys’ fees.

⁵ A similar, but broader, law was introduced in Washington State, but has not been passed by their Legislature.

In response to concerns raised, the author has agreed to hone the definitions in the bill to track with definitions in existing California law, namely the definition of “social media platform.” In addition, the author has agreed to place a minimum gross earnings threshold to ensure the bill does not apply to extremely small vloggers with minimal qualifying content. Due to timing constraints, these amendments will be processed in the Senate Appropriations Committee.

The Children’s Advocacy Institute at the University of San Diego School of Law writes in support:

SB 764 is critical to extending longstanding – and now, uncontroversial -- protection to children who are performing in traditional media to social media. Without the protection offered by this bill, children will be exploited for profit. This bill is part of a broader and much-needed effort to ensure that current laws that protect children apply with at least equal force to the challenges posed by social media.

SUPPORT

Children’s Advocacy Institute at the University of San Diego School of Law
Quit Clicking Kids

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.
