

CHILD’S PLAY . . . OR IS IT?: WHY CHILD INFLUENCERS NEED FINANCIAL PROTECTION LAWS

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The influencer industry is extremely lucrative and not going anywhere. In today’s day and age, children as young as one month old have become influencers in their own right, raking in as much as \$20,000 per sponsored social media post, and some of the most successful child influencers earning almost \$22 million a year for filming themselves playing with toys. However, these child influencers do not have any legal right to any of these earnings, allowing for parents who enter into contracts on their behalf to pocket the money for themselves. State and federal law are hesitant to create any sort of legal right or enforcement mechanism for the fear of intruding on parental rights to raise their children the way they see fit.

This note explores the different ways the current system fails to incorporate child influencers in any labor, entertainment, or financial protection laws. Drawing from current efforts by advocates and from the history of child actor laws, this note proposes different ways states and private social media companies can ensure financial protections for child influencers while also addressing drawbacks to each suggestion. Child influencers, much like any other child entertainer, deserve to be rightfully compensated for their work and to avoid any financial exploitation by their parents. While there is still much work to be done to achieve this goal, this note is hopefully a step in the right direction.

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I. INTRODUCTION

“The best thing about being an influencer is that you get to do really really cool things,” says Instagram model Leah Clements.¹ She sits next to her twin sister Ava, who is also an Instagram model.² Photos of the Clements twins from high fashion photoshoots grace the screen with hashtags like #girlmodel, #girlfashion and #twinmodels.³ They sit in front of the camera wearing their Givenchy shoes and Balmain t-shirts as they tell the camera which high-end designer brands gifted the items they are wearing.⁴ The interview then cuts to the girls running around their house packing up and preparing for their photoshoot sponsored by the footwear company Crocs.⁵ When asked if they know what Crocs is, the girls are confused.⁶ The problem? The Clement twins are nine years old.⁷ Their mother and father run the photoshoot and manage their Instagram account and product endorsements.⁸

Although federal law and some states regulate child labor and earnings, these laws have not formally recognized influencer work as a form of labor at all, so there are no limitations on the hours worked or the amount of content created by child influencers.⁹ There is also nothing stopping their parents from keeping the profits from these activities for themselves since the Clement twins are not legally entitled to any of their earnings.

An “influencer” is “a person who is able to generate interest in something (such as a consumer product) by posting about it on social media”.¹⁰ Today, an influencer is the modern-day celebrity with the

¹ Ines Novacic, *Kid Influencers: Few Rules, Big Money*, CBS NEWS (Aug. 23, 2019, 8:08 AM), <https://www.cbsnews.com/news/kid-influencers-instagram-youtube-few-rules-big-money-cbsn-originals/> [<https://perma.cc/YFZ8-KD23>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* See generally Ava + Leah (@clementstwins), INSTAGRAM, <https://www.instagram.com/clementstwins/> [<https://perma.cc/H83U-M2NK>].

⁹ Marina A. Masterson, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”*, 169 U. PA. L. REV. 577, 579 (2021).

¹⁰ *Influencer*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/influencer> [<https://perma.cc/CM5U-VBEV>]; see Robert Klara, *Don’t Look Now, but ‘Influencer’ is Finally an Official Word in the English Language*, ADWEEK (May 6, 2019), <https://www.adweek.com/brand-marketing/dont-look-now-but-influencer-is-finally-an-official-word-in-the-english-language/>

industry reaching \$16.4 billion in 2022.¹¹ Child influencers, or more commonly known as “Kidfluencers,” are children with large followings on social media platforms such as YouTube, Instagram, and TikTok.¹² Like influencers generally, child influencers make money from companies—such as Walmart, Staples, and Mattel—who pay the child either with money or with free products to market their products or services on the child’s social media account, a practice commonly known as “sponsoring.”¹³ A single sponsored post on Instagram could make over \$20,000 depending on the number of followers the child has, and sponsored YouTube videos can generate more than double that.¹⁴

Child influencers have been compared to child entertainers, like actors, because they themselves also entertain through their social media posts. But child entertainment labor is regulated in many states—such as with California’s Coogan Law—to protect minors’ finances and well-being.¹⁵ Additionally, many states also regulate child entertainers’ working hours and conditions.

Child labor laws that apply to child entertainers do not nearly encompass child influencer work in definition or design. Not only do these laws not define entertainment broadly enough to include influencing as entertainment, but child entertainment laws revolve around specific working conditions and hours outside of the home.¹⁶ However, for child influencers it is extremely difficult to track these

[<https://perma.cc/ZE3Z-5ALJ>] (noting that the term “influencer” was officially added to the Merriam-Webster Dictionary in 2019 after years of being known within the marketing and branding industries).

¹¹ Fine F. Leung et al., *Does Influencer Marketing Really Pay Off?*, HARV. BUS. REV. (Nov. 24, 2022), <https://hbr.org/2022/11/does-influencer-marketing-really-pay-off> [<https://perma.cc/VUE9-8RU7>].

¹² Masterson, *supra* note 9, at 577.

¹³ Sapna Maheshwari, *Online and Earnings Thousands, at Age 4: Meet the Kidfluencer*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html> [<https://perma.cc/RE65-HHNN>]; see Sydney Bradley, *How Much Money Instagram Influencers Make*, BUS. INSIDER (Sept. 25, 2023, 1:27 PM), <https://www.businessinsider.com/how-do-instagram-influencers-make-money> [<https://perma.cc/9HEF-7CM2>] (highlighting the different ways that Instagram influencers can make money).

¹⁴ Maheshwari, *supra* note 13 (explaining that twin child influencers, Taytum and Oakley Fisher, are the biggest money rakers for their family’s YouTube channel, bringing in \$25,000 to \$50,000 for promotions).

¹⁵ See *Child Entertainment Laws as of January 1, 2023*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [<https://perma.cc/W8WQ-HQ6J>] [hereinafter *Child Entertainment Laws*].

¹⁶ Masterson, *supra* note 9, at 605.

requirements since child influencing and family vlogging mostly takes place throughout daily life and at home, which could be considered an overstep if the state were to become involved.¹⁷ This means there is nothing set in place to protect children from being overworked at the hands of their parents, and with the line between influencing work and the real world blurred, it is difficult to determine what exactly is considered work and what is not. The lack of regulations for child influencers, therefore, opens the door for exploitation by parents.¹⁸

In order to protect child influencers, there needs to be both federal and state regulations set in place protecting child finances and well-being. While the current lack of legislative protection for child influencers opens the door for all types of exploitation, for the purposes of this note, I will only discuss the aspect of financial exploitation. This note will explore the need for financial protections for child influencers while also giving recommendations that both state governments and private groups can enact to protect this vulnerable group. Part II will discuss the meteoric rise of child and family influencers in the social media space while also exploring the downsides of family influencers and how parents are able to take control of their child's career. Part III explores the history of child labor laws in the United States and how child influencers do not fit into the limited protections of childhood earnings within the entertainment industry. Lastly, Part IV gives recommendations that state governments and social media companies can enact regarding child influencer protections for financial well-being while also discussing the possible downsides of each recommendation. There are many ways to ensure financial protections for child influencers, but there is not one simple solution. In order to create established protection, state legislatures can work in conjunction with social media platforms to create enforcement mechanisms enjoined with legislation.

¹⁷ *Id.*

¹⁸ See generally Lola Fadulu, *Former YouTube Parenting Host to Serve up to 30 Years in Prison for Child Abuse*, N.Y. TIMES, <https://www.nytimes.com/2024/02/20/us/ruby-franke-youtube-child-abuse.html> [<https://perma.cc/9LGC-2BBL>] (reporting that Ruby Franke, a famous family vlogger, was arrested for child abuse after four of her children were found to be malnourished and mistreated. Franke was known for her strict parenting style which involved refusing to feed her children or forcing them to stand on hot concrete during summer heat as punishment. She was arrested in August of 2023 and was sentenced up to 30 years in prison, which is the maximum permissible under Utah state law.).

II. THE RISE OF CHILD/FAMILY INFLUENCERS

Influencing as a whole is not a new concept, and it all comes back to the idea of “sharenting.” This shorthand term is defined as “when parents share information about themselves and their children online”¹⁹ A 2021 survey found that among U.S. parents, 77% of them “reported sharing stories, images, or videos of their children online.”²⁰ Many parents find that posting their child online is akin to a “modern day baby book” as a way to archive memories in a convenient place.²¹ Alessi Luyendyk’s parents began documenting her life since she was in the womb.²² Her birth,²³ first time eating solid foods,²⁴ first dance camp,²⁵ and more have all been documented by her parents. While some might find parents wanting to document and share their child’s milestones as endearing, one must question if these posts are genuinely just for documentation or for monetization.²⁶

A. *What It Means to Be a Kidfluencer*

In 2023, the influencer marketing industry was set to grow to approximately \$21.1 billion, which is almost \$5 billion more than in

¹⁹ Alicia Blum-Ross & Sonia Livingstone, “Sharenting,” *Parent Blogging, and the Boundaries of the Digital Self*, 15 *POPULAR COMM’N* 110, 110 (2017).

²⁰ *Research Brief: “Sharenting” and Child Influencers*, BOS. CHILD.’S: DIGIT. WELLNESS LAB (Mar. 2023), <https://digitalwellnesslab.org/research/research-brief-sharenting-and-child-influencers/> [<https://perma.cc/BJ45-LYDG>] [hereinafter *Research Brief*].

²¹ See Priya Kimar & Sarita Schoenebeck, *The Modern Day Baby Book: Enacting Good Mothering and Stewarding Privacy on Facebook*, CSCW ’15: PROC. OF THE 18TH ACM CONF. ON COMPUT. SUPPORTED COOP. WORK & SOC. COMPUTING 1302–12 (2015), <https://dl.acm.org/doi/pdf/10.1145/2675133.2675149>.

²² Alessi Ren Luyendyk (@alessiluyendyk), INSTAGRAM (Nov. 14, 2018), <https://www.instagram.com/p/BqLjVyuhcwU/> [<https://perma.cc/9TQM-RGJZ>].

²³ Alessi Ren Luyendyk (@alessiluyendyk), INSTAGRAM (June 4, 2019), <https://www.instagram.com/p/ByUEKyUhQzR/> [<https://perma.cc/WDH2-GRWY>].

²⁴ Alessi Ren Luyendyk (@alessiluyendyk), INSTAGRAM (Oct. 10, 2019), <https://www.instagram.com/p/B3dUwZhBL-E/> [<https://perma.cc/5KPA-ZELE>].

²⁵ Alessi Ren Luyendyk (@alessiluyendyk), INSTAGRAM (June 20, 2022), <https://www.instagram.com/p/CfCkIh1hwFM/> [<https://perma.cc/U2RK-48JR>].

²⁶ See Alessi Ren Luyendyk (@alessiluyendyk), INSTAGRAM (Nov. 26, 2022), <https://www.instagram.com/p/ClbrWTwp5oe/> [<https://perma.cc/7TY3-4EXB>] (featuring Alessi sharing a sponsorship with a photography company under the guise of safekeeping memories).

2022.²⁷ Companies are increasingly leaning into utilizing influencers to promote their products rather than celebrity endorsements because endorsements typically require the company to make a large investment in that person, and “it’s hard to specify the exact return on investment.”²⁸ Instead, with influencers, the “companies can closely monitor likes, shares[, and] online conversations,” making it easier to see the return on investment.²⁹

One of the highest-paid influencers was Ryan Kaji from Ryan ToysReview.³⁰ At the peak of his influencing career, Kaji was earning \$22 million just for filming himself unboxing and playing with toys.³¹ He was only seven years old at the time.³² Influencer marketing in combination with impressionable children comes with several monetary benefits. Because of the easy ability to make a large profit, “many parents see social media as a lucrative primary or secondary source of income”³³ The Pew Research Center found that videos featuring a child under the age of thirteen receive almost three times as many views than videos without children.³⁴ This alarming statistic shows that the social media marketing industry is increasingly relying on child influencers to rake in profits. However, this questionable use of child influencers for financial gains does not seem to deter other children from wanting to document themselves online. “Social Media and Gaming” was ranked the fourth most popular career aspiration among

²⁷ Werner Geysler, *The State of Influencer Marketing 2023: Benchmark Report*, INFLUENCER MKTG. HUB (Oct. 10, 2023), <https://influencermarketinghub.com/influencer-marketing-benchmark-report/> [https://perma.cc/435Q-4PCK].

²⁸ *What Is Influencer Marketing?*, MCKINSEY & CO. (Apr. 10, 2023), <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-influencer-marketing#/> [https://perma.cc/9Z6J-QMFZ].

²⁹ *Id.*

³⁰ *Research Brief*, *supra* note 20; see Ryan’s World (@RyansWorld), YOUTUBE, https://www.youtube.com/channel/UChGJGhZ9SOOHvBB0Y4DOO_w [https://perma.cc/UKV3-KD8B] (showing that as of November 2023, Ryan has 35.8 million subscribers).

³¹ *Research Brief*, *supra* note 20.

³² *Id.*

³³ Rachel Caitlin Abrams, *Family Influencing in the Best Interests of the Child*, UNIV. CHI. J. INT’L L. (2023), <https://cjil.uchicago.edu/online-archive/family-influencing-best-interests-child> [https://perma.cc/BN4X-DULC].

³⁴ 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/DA9Y-DFT5].

children ages seven to eleven in a 2018 survey.³⁵ Even further, 86% of surveyed young Americans are interested in becoming a social media influencer, and in another survey, “social media star” was the fourth-most popular career aspiration for kids.³⁶ Companies have even started noticing that children are aspiring to become influencers and are commercializing on that aspiration.³⁷ However, most of these social media platforms come with age restrictions. TikTok and Instagram both require account owners to be at least thirteen years old.³⁸ This means that most child influencer accounts are opened and managed by the child’s parents.³⁹

B. *Legal Status of Minors*

Despite the social media marketing industry’s reliance on child influencers, under both common law and the Uniform Commercial Code, minors lack the capacity to enter into contracts.⁴⁰ In most states, if a minor enters into a contract, they have the ability to void the contract without repercussions as a defense, but other parties may not.⁴¹ Because

³⁵ NICK CHAMBERS ET AL., DRAWING THE FUTURE: EXPLORING THE CAREER ASPIRATIONS OF PRIMARY SCHOOL CHILDREN FROM AROUND THE WORLD 18 (2018) (noting that gaming is included because gamers will livestream themselves playing video games on social media platforms such as Twitch).

³⁶ Sarah Min, *86% of Young Americans Want to Become a Social Media Influencer*, CBS NEWS (Nov. 8, 2019, 4:49 PM), <https://www.cbsnews.com/news/social-media-influencers-86-of-young-americans-want-to-become-one/> [<https://perma.cc/M6YV-MAHR>].

³⁷ See generally Alexandra Ruiz-Gomez, Tama Leaver & Crystal Abidin, *Playing YouTube: How the Nancy YouTuber Doll and App Position Children as Aspiring YouTube Influencers*, 25 INT’L J. CULTURAL STUD. 121, 122 (2022) (exploring the effects of Nancy YouTuber doll, a popular doll inspired by social media influencers).

³⁸ *Terms of Use*, INSTAGRAM (July 26, 2022), <https://help.instagram.com/581066165581870> [<https://perma.cc/5X3D-ZV8G>]; *Youth Safety and Well-Being*, TIKTOK (Mar. 2023), <https://www.tiktok.com/community-guidelines/en/youth-safety/> [<https://perma.cc/JH7L-4P78>].

³⁹ Valeriya Safronova, *Child Influencers Make Big Money. Who Gets It?*, N.Y. TIMES (Oct. 10, 2023), <https://www.nytimes.com/2023/10/10/style/children-influencers-money.html> [<https://perma.cc/34JJ-EP8H>]; see Alessi Ren Luyendyk (@alessiluyendyk), INSTAGRAM, <https://www.instagram.com/alessiluyendyk> [<https://perma.cc/83PE-B5YN>].

⁴⁰ U.C.C. § 3-305(A)(1) (AM. L. INST. & UNIF. L. COMM’N 1977); *Infancy*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/infancy> [<https://perma.cc/P6LG-ABZL>].

⁴¹ *Common Law and Uniform Commercial Code Contracts*, LUMEN LEARNING, <https://courses.lumenlearning.com/montgomerycollege-masterybusinesslaw2/chapter/common-law-and-uniform-commercial-code-contracts> [<https://perma.cc/Z6N8-T5CL>]; *Infancy*, *supra* note 40.

a large part of income from influencer content comes from company sponsorships, it is most likely the parents are entering into these contracts on behalf of the child, exerting more control over the child's influencing career. In the entertainment industry, some courts have even bound children to contracts that were signed by parents on behalf of the child. Famed actress Brooke Shields was bound to the terms of a valid contract signed by her mother and a photographer who took nude photos of Shields when she was a minor, and according to the contract, the photographer had the right to print and sell those explicit photos even if Shields herself objected.⁴² Parents also have control over their children's bank accounts because in most states, children cannot open an account until they are at least seventeen, meaning parents could potentially pocket the profits from their child's social media content for themselves.⁴³

C. *Familial Autonomy on Child Finances*

Only a small number of states have passed some sort of child entertainer protection law due in part to the government's hesitation to tell parents how to raise their own children. Both the federal and state governments are reluctant to make these decisions and want to allow parents to raise their children as they see fit.⁴⁴

The Supreme Court has time and time again expressed the belief that parents have the right to raise and control their child without any governmental interference. In *Meyer v. Nebraska*, the Supreme Court ruled that parents can "control the education of their own" children, and the government was not to interfere.⁴⁵ This decision was reaffirmed in *Pierce v. Society of Sisters*, stating that a liberty of parents existed "to direct the upbringing and education of [their] children under their control."⁴⁶ Consistent with both opinions, it can be argued that parents have the right to raise their child how they want to which includes allowing them to gain and earn profits through Internet content. If the Supreme Court ruled that parents can control the education of their

⁴² *Gross v. Shields*, 496 N.Y.S.2d 894, 895 (N.Y. Sup. Ct. 1985).

⁴³ Safronova, *supra* note 39.

⁴⁴ Haley Dominique, *Why "Kidfluencers" Deserve Monetary Protections Like Child Actors*, CIN. L. REV. BLOG (Nov. 10, 2022), <https://uclawreview.org/2022/11/10/why-kidfluencers-deserve-monetary-protections-like-child-actors/> [<https://perma.cc/NJ46-9HRR>].

⁴⁵ *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

⁴⁶ *Pierce v. Soc'y of the Sisters*, 268 U.S. 510, 534–35 (1925).

children, why would they be unable to control their child's finances through content creation?

However, these rulings do not give parents an absolute right of control. There are limitations on how they can raise their child. *Prince v. Massachusetts* questioned this parental right.⁴⁷ According to the Supreme Court, “the family itself is not beyond regulation in the public interest”⁴⁸ Specifically, the state is allowed to impinge on parental control in order to protect the child against “clear and present danger.”⁴⁹ Going past religious freedom, the Supreme Court agreed that this ability extends into regulating child labor in order to protect the child.⁵⁰ While this sort of argument might have been clear when children were working in factories during the Industrial Era, it is much harder to extend this argument to child influencers. Child content creation on social media makes it difficult to determine whether a clear and present danger to the child actually exists.

Parents are likely to disagree that their child is in any sort of danger while creating content under their supervision. Social media content is merely sharing the child's everyday life in a positive manner that showcases how they are actually playing and having fun.⁵¹ If we were to accept this argument for child influencers, it would defeat the whole purpose surrounding child actor protection laws. Parents of child actors would also be able to argue that child actors are enjoying themselves since they are just “playing pretend” when they are in their acting roles. Or an even more drastic argument could be that Industrial-Era child laborers who worked with machinery were having fun because they were playing with large metal toys. Refusing state intervention merely because the child is “having fun” in a profession is a dangerous argument that could uproot the reasoning behind having child labor laws enacted in the first place. As former child star Sheila James Kuehl says, “[i]t is not play if you're making money off of it.”⁵² In this case, however, the parents are the ones who are pocketing that money.

⁴⁷ See *Prince v. Massachusetts*, 321 U.S. 159 (1944).

⁴⁸ *Id.* at 166.

⁴⁹ *Id.* at 167.

⁵⁰ *Id.* at 166.

⁵¹ Masterson, *supra* note 9, at 592.

⁵² Julia Carrie Wong, ‘It’s Not Play if You’re Making Money’: How Instagram and YouTube Disrupted Child Labor Laws, *GUARDIAN* (Apr. 24, 2019), <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> [<https://perma.cc/T29H-F9VW>].

Therefore, it is in the child's best interest to create some sort of protection for these child influencers.

III. HISTORY OF CHILD LABOR LAWS

A. *Beginnings of the Fair Labor Standards Act (FLSA)*

Congress began to view child labor laws with growing concern at the turn of the twentieth century.⁵³ At that time, “an estimated 400,000 children were employed in New York alone.”⁵⁴ Children were mostly employed during the Industrial Revolution because they could be paid less and because they were physically smaller, allowing them to conduct tasks in tight spaces, and they were less likely to organize and strike against employers.⁵⁵ The sudden rise in child employment coincided with national urbanization, so most child employees worked in industrial cities.⁵⁶ Most of these children would endure hazardous factory work environments, working with dangerous chemicals, large machinery, and near open fires.⁵⁷ Due to these dangerous working environments, it was noted that boys under sixteen had “twice as many accidents as adult workers,” and young girls “had three times as many accidents as adult women.”⁵⁸

Reform efforts dramatically grew in the late-nineteenth and early-twentieth century, exemplified by the formation of the National Child Labor Committee in 1904.⁵⁹ By 1906, forty-two states had adopted child labor legislation due to the growing movement and public concern about child labor dangers.⁶⁰ On the federal level, the Fair Labor Standards Act of 1938 was the first time Congress limited child labor, prohibiting the employment of minors in “oppressive child labor.”⁶¹ While the FLSA was a step in the right direction, its language was

⁵³ Amanda G. Riggio, *The Small-er Screen: YouTube Vlogging and the Unequipped Child Entertainment Labor Laws*, 44 SEATTLE U. L. REV. 493, 498 (2021).

⁵⁴ Masterson, *supra* note 9, at 585.

⁵⁵ *Child Labor*, HIST. CHANNEL (Aug. 24, 2022), <https://www.history.com/topics/industrial-revolution/child-labor> [<https://perma.cc/4SBM-2BR4>].

⁵⁶ Seymour Moskowitz, *Dickens Redux: How American Child Labor Law Became a Con Game*, 10 WHITTIER J. CHILD & FAM. ADVOC. 89, 102 (2010).

⁵⁷ Masterson, *supra* note 9, at 585.

⁵⁸ Moskowitz, *supra* note 56, at 104.

⁵⁹ *Id.* at 105, 107.

⁶⁰ Masterson, *supra* note 9, at 586.

⁶¹ 29 U.S.C. § 212(c) (1938); see Madyson Edwards, *Children Are Making It Big (for Everyone Else): The Need for Child Labor Laws Protecting Child Influencers*, UCLA ENT. L. REV. (forthcoming).

exclusive as “only 6% of children working in 1938 were covered under the FLSA given the limited types of labor that were regulated.”⁶² As Congress was mostly focused on the hazardous environments child workers were placed in, many industries, such as the entertainment industry, were overlooked.⁶³

B. *Child Actors and the Shirley Temple Act*

The FLSA specifically excludes child entertainers, stating that the Act “shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”⁶⁴ At the time of enactment, Congress did not consider child acting as oppressive compared to factory work.⁶⁵ Additionally, while Congress was constructing the FLSA, child actress Shirley Temple was becoming increasingly popular throughout the country.⁶⁶ Shirley Temple was a morale boost during the Great Depression because “the public desperately needed entertainment to distract them from the era’s harsh realities.”⁶⁷ Including child actors in the FLSA would have jeopardized Shirley Temple’s acting career; thus, the child actor exception was dubbed the Shirley Temple Act.⁶⁸

Child acting and entertainment, in general, were also seen as a way to promote children’s best interests as child actors were able to develop their talent in a way that was believed to be nonharmful, all while promoting the country’s economy.⁶⁹ However, while this optimism for the child actor exception helped boost the country’s economy and morale, child actors were still at the mercy of exploitive parents because of the lack of regulations.⁷⁰ Likewise, without federal regulations, states began experimenting with a variety of protective child-actor laws.⁷¹ Along with regulating the educational, supervision,

⁶² Riggio, *supra* note 53, at 499.

⁶³ *Id.*

⁶⁴ 29 U.S.C. § 213(c)(3) (1938).

⁶⁵ Edwards, *supra* note 61, at 5.

⁶⁶ V. Nathaniel Ang, *Teenage Employment Emancipation and the Law*, 9 U. PA. J. LAB. & EMP. L. 389, 404–05 (2007).

⁶⁷ *Id.* at 405.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Edwards, *supra* note 61, at 5.

⁷¹ See generally Jessica Krieg, *There’s No Business Like Show Business: Child Entertainers and the Law*, 6 U. PA. J. LAB. & EMP. L. 429 (2004).

health, and welfare of child actor work, these state laws also addressed child actors' financial well-being.⁷²

C. *Coogan Laws*

One of the first instances of state law resolving exploitive child actor practices happened in California with child actor Jackie Coogan. Coogan was a famous child actor who was cast in Charlie Chaplin's film, *The Kid*.⁷³ This film catapulted Coogan into immense fame during the 1920s with merchandise dedicated to his image.⁷⁴ However, when Coogan turned twenty-one, he found that his parents had drained all of his earnings.⁷⁵ At the time, California law dictated that earnings by a minor belonged solely to the parents of that minor.⁷⁶ Coogan sued his mother and former manager for his earnings, which resulted in California enacting the Coogan Law in 1939.⁷⁷

State Coogan Laws require a child actor's parent or guardian to create a blocked trust account for the child into which a certain percentage of the child's acting earnings are deposited, and the child actor can access the account when they turn eighteen.⁷⁸ California's original Coogan Law was extremely flawed, mandating that contracts for Coogan trusts must obtain court approval to be created.⁷⁹ Because of this requirement, in 1991, about 95% of "contracts involving child entertainers were not receiving court protection" because families did not seek court approval.⁸⁰ However, California's Coogan Law is much more expansive today. The Law requires the child's employer to set aside 15% of the child's gross earnings into a blocked trust and to "receive the written consent of the state Labor Commissioner to employ a minor under" the age of sixteen.⁸¹ If a Coogan account is not made, the employer must send the earnings to California's Coogan Fund, and the child may access those earnings after turning eighteen.⁸²

⁷² *Id.*

⁷³ *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/NC8D-ESTR>].

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ CAL. FAM. CODE § 6752 (West 2020).

⁷⁹ Masterson, *supra* note 9, at 589.

⁸⁰ Peter M. Christiano, *Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers*, 31 MCGEORGE L. REV. 201, 204 (2000).

⁸¹ § 6752; Masterson, *supra* note 9, at 589.

⁸² § 6752.

Today only a handful of states require Coogan trust accounts for child actors.⁸³ Currently, Coogan trusts are required by only California, New York, Illinois, Louisiana, Pennsylvania, and New Mexico.⁸⁴ Like California, most of these states require 15% of the child actor's gross wages be placed in a Coogan trust within fifteen days of employment.⁸⁵ Additionally, parents are required to supply the Coogan trust account number to the employer for proof of a trust account before receiving a work permit.⁸⁶ Notably, in 2012, Pennsylvania became the first state to expressly define "reality programs" as part of child entertainment laws and to protect reality show earnings with Coogan accounts.⁸⁷ However, state laws mostly exclude child influencers within their definitions and financial protections.

D. *States Applying Coogan Laws to Influencers*

There have been attempts by state legislatures to protect child influencers from their parents financially exploiting them.⁸⁸ California is one of the few states that has attempted to expand its own Coogan Law to child influencers by adding "social media advertising" to the definition of "employment."⁸⁹ The bill as proposed was designed to regulate influencer compensation, including free products from sponsoring companies, and required child influencers to obtain a work permit.⁹⁰ The bill also expanded compensation regulation to "tickets and toys and clothes and other little things".⁹¹ Although it was signed into law,⁹² the legislation is different from the bill as originally proposed.⁹³ The signed law "exempt[ed] young digital creators from obtaining work

⁸³ See *Child Entertainment Laws*, supra note 15.

⁸⁴ *Coogan Law*, supra note 73; see Linda Stein, *New Pennsylvania Law Affects Child Actors*, REPORTER (Oct. 23, 2012, 3:52 PM), <https://www.thereporteronline.com/2012/10/23/new-pennsylvania-law-affects-child-actors/> [<https://perma.cc/9AYT-TPED>].

⁸⁵ *Coogan Law*, supra note 73.

⁸⁶ *Id.*

⁸⁷ Stein, supra note 84.

⁸⁸ See generally QUIT CLICKING KIDS, <https://quitclickingkids.com/> [<https://perma.cc/9Z7R-E799>].

⁸⁹ Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them from Parents*, HOLLYWOOD REP. (Aug. 20, 2019, 6:00 AM), <https://www.hollywoodreporter.com/business/digital/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968/> [<https://perma.cc/B2VL-WPZW>].

⁹⁰ *Id.*; Masterson, supra note 9, at 580.

⁹¹ Wong, supra note 52.

⁹² CAL. LABOR CODE § 1310 (West 2018).

⁹³ Lambert, supra note 89.

permits if their performance is unpaid and shorter than an hour.”⁹⁴ While a child influencer may be paid for their work, the social media platforms being used for content do not allow for content longer than an hour.⁹⁵ California is just one example of the several attempts being made to create financial protections.

Most recently, Illinois passed its own Coogan Law *specifically* for child influencers.⁹⁶ Effective July 1, 2024, vloggers who use the name, image, and likeness of a minor under the age of sixteen must set aside a certain percentage of earnings into a trust account that the minor can access once they turn eighteen years old.⁹⁷ The percentage is proportionately based on how involved the minor is featured in the content.⁹⁸ While Illinois is laying the groundwork for other states to follow, the new law is not without its flaws.

Not all minors under the age of sixteen who are featured in vlogs are covered under the new Illinois law. The law only affords financial protections to minors who meet two requirements within a 12-month period: (1) at least 30% of the content produced within a 30-day period includes the minor’s name, image and likeness; and (2) the number of views per video satisfies the online platform’s monetization requirements or the vlogger received actual compensation for a video equal to or greater than \$0.10 per view.⁹⁹ There are multiple issues with these requirements.

First, parent vloggers can circumvent the primary requirement by including the child in less than 30% of the content.¹⁰⁰ By lowering the allotted time the child is featured, an Illinois parent can avoid the law. Second, the monetization requirement does not seem to cover content that is not monetarily compensated. If the video is sponsored by a company and the company only compensates by giving the family free

⁹⁴ *Id.*

⁹⁵ TikTok, which most influencers have started using, only allows content for a maximum of three minutes. *Camera Tools*, TIKTOK, <https://support.tiktok.com/en/using-tiktok/creating-videos/camera-tools> [<https://perma.cc/YWP5-FAHP>].

⁹⁶ Angela Yang, *Illinois Passed a Law to Protect Child Influencers. Advocates Are Cautiously Optimistic More States Will Follow.*, NBC NEWS (Aug. 15, 2023, 5:48 PM), <https://www.nbcnews.com/news/child-influencers-law-illinois-reaction-rcna99831> [<https://perma.cc/7X7R-E66D>].

⁹⁷ S. 1782, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) [hereinafter Illinois Child Influencer Act].

⁹⁸ *Id.*; Yang, *supra* note 96 (explaining that the minor does not have to physically be featured in the video and that stories about the minor are sufficient enough).

⁹⁹ Illinois Child Influencer Act, *supra* note 97.

¹⁰⁰ *Id.*

products, the law will not apply to that said content. This was an issue that the originally proposed California bill attempted to resolve.¹⁰¹

Furthermore, children can become influencers overnight with just one viral¹⁰² video. Because the attention span of social media users has become increasingly smaller, if the family does not capitalize on this popularity, they may miss the opportunity to monetize the child's content or get sponsorships.¹⁰³ Without the ability to monetize or gain sponsorships, these overnight child influencers fall short of the Illinois law.

The law also as a whole does not contain substantial enforcement mechanisms other than allowing minors to bring action against their own parents.¹⁰⁴ Specifically, the law does not require parents to report the child influencer's earning information to the State, essentially barring any type of recourse.¹⁰⁵ If a parent vlogger knowingly or recklessly violates the law, the child is allowed to bring an action against that parent in order to seek damages.¹⁰⁶ However, given the power dynamics between parent and child, it is extremely unlikely that the child would be able to bring forward any action. Furthermore, a young child has no knowledge of state law and would not be able to bring an action against their parents, let alone know that they are supposed to have a trust account. Because of their vulnerability, child influencers need some sort of financial protection and enforcement mechanism created by states or private parties.

IV. RECOMMENDATIONS

Child influencers deserve financial protections on varying levels. Many groups have experimented with different and expanded protections,¹⁰⁷ but new Illinois law is a concrete example of these

¹⁰¹ Wong, *supra* note 52.

¹⁰² *Viral*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/viral> [<https://perma.cc/XM6T-7MJZ>] (“[Q]uickly and widely spread or popularized especially by means of social media”).

¹⁰³ Masterson, *supra* note 9, at 604.

¹⁰⁴ Mallory Yu, Sarah Handel & Alisa Chang, *Illinois Influencers Under 16 Will Now Be Entitled to a Portion of Their Earnings*, NPR (Aug. 21, 2023, 5:32 PM), <https://www.npr.org/2023/08/21/1195095952/illinois-influencers-under-16-will-now-be-entitled-to-a-portion-of-their-earning> [<https://perma.cc/ZC7T-WFTM>].

¹⁰⁵ Safronova, *supra* note 39.

¹⁰⁶ Illinois Child Influencer Act, *supra* note 97.

¹⁰⁷ See *State-by-State Progress*, QUIT CLICKING KIDS, <https://quitclickingkids.com/state-by-state-progress/> [<https://perma.cc/3JRZ-FWFG>].

protections set in stone.¹⁰⁸ Coogan Laws on the state level can create some sort of enforcement mechanism through social media platforms, which can help afford child influencers financial protections. However, while there are many possible ways to financially protect child influencers, there can still be downsides and difficulties in enacting them.

A. *Expanding Child Entertainer Laws*

States should consider expanding child entertainer laws to child influencers. Success in Illinois, and California's attempt, shows that there is an interest in Coogan Law expansion to child influencers. Expanding the Coogan Laws themselves may not be feasible to afford protection, but states might be able to learn and attempt to create a separate Coogan Law specifically for child influencers, much like Illinois did.

Other states can learn from the drawbacks of the new Illinois law, discussed earlier, in order to create their own influencer Coogan Laws. And many states have already started following suit.¹⁰⁹ The state of Washington has been working on a bill since 2021 that is similar to the Illinois Law.¹¹⁰ This bill, like the Illinois Law, requires parents to set aside a percentage of the featured content's total gross earnings equal to the percentage of the child's name, image, and likeness that is featured in the video.¹¹¹ In addition to providing financial protections for child influencers, Washington's bill goes one step further by allowing the child "to request deletion of content 'from any internet platform or network that provided compensation to the individual's parent or parents in exchange for that video content.'"¹¹² However, much like Illinois law, Washington's bill does not create any enforcement mechanism to ensure that child influencers are being rightfully compensated. Unless the child is willing to bring legal action against their parents, there is not much the child influencer can do. The bill was

¹⁰⁸ See Illinois Child Influencer Act, *supra* note 97.

¹⁰⁹ *Id.*

¹¹⁰ Safronova, *supra* note 39.

¹¹¹ H.B. 1627, 68 Leg., Reg. Sess. (Wash. 2023).

¹¹² Fortesa Latifi, *What's Next in the Lucrative World for Parent Influencers? Earnings for the Kids.*, WASH. POST (Sept. 6, 2023, 8:07 AM), <https://www.washingtonpost.com/parenting/2023/09/06/parenting-influencers-child-earnings/> [<https://perma.cc/8DV4-4DNR>].

re-introduced to the Washington House in January 2024.¹¹³ Other states such as Texas, Nebraska, Maryland, and Pennsylvania, are set to follow, introducing similar bills.¹¹⁴

However, in addition to the lack of enforcement mechanisms and the obvious loopholes discussed earlier, Coogan Laws do have downsides that might not work in the context of child influencers. Both the Illinois Law and Washington bill require parents to set up trusts for their children, which would require the parents to open bank accounts. While this might seem like a simple action for some, the Federal Deposit Insurance Corporation (FDIC) has shown that this might not be the case.

According to the FDIC, about 4.5% of households (5.9 million households) in the United States were “unbanked” in 2021.¹¹⁵ This means that in these households, no one has “a checking or savings account at a bank or credit union.”¹¹⁶ Unbanked households typically share characteristics, such as having lower family income and education.¹¹⁷ Minority households are also more likely to be unbanked compared to White households.¹¹⁸ Many parents view family vlogging as a way to earn money. If income from the influencing content is their primary source of income, it is likely these families generate all of their income from their children’s social media content, allowing them to keep their income within their household. Additionally, immigrants or those without identification are more likely to be in unbanked households.¹¹⁹ Lastly, unbanked households are more likely to receive income through prepaid cards and nonbank money orders, which makes documenting these influencer Coogan accounts harder to enforce.¹²⁰

¹¹³ *HB 1672 – 2023–24*, WASH. STATE LEGIS., <https://app.leg.wa.gov/bills/summary?BillNumber=1627&Year=2023&Initiative=false> [<https://perma.cc/45FV-Y9PJ>] (stating that the bill was reintroduced to the Wash. House by resolution on Jan. 8, 2024).

¹¹⁴ See *State-by-State Progress*, *supra* note 107.

¹¹⁵ FED. DEPOSIT. INS. CORP., 2021 FDIC NAT’L SURV. OF UNBANKED AND UNDERBANKED HOUSEHOLDS 13 (2021), <https://www.fdic.gov/analysis/household-survey/2021execsum.pdf>.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 14.

¹¹⁸ *Id.* (noting about 20% of Black and Hispanic households were unbanked in 2021 compared to only 2.1% of White households).

¹¹⁹ Masterson, *supra* note 9, at 603.

¹²⁰ FED. DEPOSIT. INS. CORP., *supra* note 115, at 57; see Masterson, *supra* note 9, at 603.

Furthermore, as stated earlier, some influencers are not paid monetarily but are paid with free products instead.¹²¹ The Illinois law and Washington bill both only apply to monetary compensation; therefore, many child influencers would fall below the requirements of the Coogan accounts. However, this situation might only apply to child influencers with small followings rather than large ones who rake in millions in compensation. Smaller influencers are likely to start off with receiving compensation through free products while larger influencers are more likely to receive monetary compensation from both social media platforms and sponsoring companies.¹²² Even if there are influencer Coogan Laws set in place, there is no enforcement mechanism to ensure those accounts are enforced.

B. *Work Permits*

Work permits—in addition to state influencer Coogan Laws—might help create some sort of documentation and enforcement mechanisms to give financial protections. Because the FLSA does not include child actors within its definition, it is up to individual states to decide whether to enact some sort of child entertainment regulation. Currently, thirty states regulate the child entertainment industry while twenty-six states require some sort of work permit for entertainment work.¹²³ And among those states that require child entertainment work permits, the requirements for those permits vary.¹²⁴ New York requires performers ages sixteen to seventeen to receive a work permit, and performers under sixteen must obtain a permit from a “mayor or chief executive” in order to participate in any sort of entertainment work such as acting.¹²⁵ The State also requires a permit for New York residents conducting work outside the state and for non-residents conducting work within the state.¹²⁶ Oregon requires employers to register with the Bureau of Labor for jobs that are five days or fewer; for longer durations, minors under fourteen must obtain special permits with the Bureau of Labor and Industries while minors between fourteen and seventeen must obtain a regular work permit.¹²⁷

¹²¹ Sapna Maheshwari, *Are You Ready for the Nanoinfluencers?*, N.Y. TIMES (Nov. 11, 2018), <https://www.nytimes.com/2018/11/11/business/media/nanoinfluencers-instagram-influencers.html> [<https://perma.cc/8DG5-V3C6>].

¹²² *Id.*

¹²³ *Child Entertainment Laws*, *supra* note 15.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ N.Y. COMP. CODES R. & REGS. tit. 12, § 186-2.1(b) (2020).

¹²⁷ *Child Entertainment Laws*, *supra* note 15.

While work permits are set in place to ensure the physical well-being of child laborers, work permit requirements for child influencers could also create some sort of documentation system that could help states with influencer Coogan Laws to make sure those child influencers are being properly compensated for their work.¹²⁸ Permits also have to be renewed periodically, meaning that parents would have to report their children as employees to the state, thus keeping the records system updated.

However, there are a few downsides to requiring permits for child influencers. Influencer work can spread out across multiple states because it is mostly done through the Internet. Therefore, it is almost impossible to determine which states require child influencers to apply for a work permit since state work permit applications vary.¹²⁹ Child influencers and their parents might be able to apply for work permits in the state in which they reside, but they could also apply for work permits in “every state where the child films sponsored content.”¹³⁰ Without a solid determination of where child influencers should apply for work permits, this system becomes increasingly difficult.

Additionally, some states require fees to obtain a work permit. For child performers in California, applicants must pay an initial \$198 application fee and \$166 for a renewal fee.¹³¹ On the other hand, New York does not require a fee for a child performer permit.¹³² Requiring fees for child performers creates a barrier to entry for some. Families who genuinely want to join the influencer space and would rightfully pay the child influencer could be deterred from applying and registering with the state because of the associated work permit fees.¹³³ On the other hand, requiring a renewal fee could force parents of child influencers to force the child to continue creating content in order to keep up with the permit fees, which defeats the whole purpose of requiring work permits to document instances of financial exploitation.

¹²⁸ Masterson, *supra* note 9, at 603 (explaining that work permits can help preempt physical harm for child influencers).

¹²⁹ *Child Entertainment Laws*, *supra* note 15.

¹³⁰ Masterson, *supra* note 9, at 604.

¹³¹ *Child Performer Services Permit—Frequently Asked Questions*, CAL. DEP’T OF INDUS. RELS., https://www.dir.ca.gov/dlse/Child_performer_services_permit_FAQs.htm#fe16 [https://perma.cc/U8C4-D48B].

¹³² *Child Performer Frequently Asked Questions*, N.Y. STATE DEP’T OF LAB., <https://dol.ny.gov/child-performer-frequently-asked-questions> [https://perma.cc/3RYJ-FXQ2].

¹³³ Masterson, *supra* note 9, at 605.

Lastly, requiring work permits for child influencers can cause difficulty for states. Just as influencer work can apply across state lines, it is equally difficult to regulate the hours that are needed to be specified by the permit. Influencer work can be done at any time during any day because the family can document their normal everyday lives for content, especially when most of the vlogging takes place in their home.¹³⁴ Therefore, when vlogging, it is difficult to determine what is considered influencer work and what is not when trying to track work hours. If parents are required to document exactly what hours are dedicated to working and what happens during those hours, many argue that this could be an intrusion of the state.¹³⁵

Therefore, although there are several flaws in creating work permits for child influencers, states can learn from these loopholes when creating their own regulations. When creating requirements for work permits, states must consider in which state the child must apply for a permit. Influencer work is very mobile because the child influencer is showing their everyday life, which can include time in numerous states. Regardless, it is in states' and the child influencers' best interest to require a single work permit in the state the child resides in rather than any number of work permits from the different states in which the child could potentially be recording themselves. Additionally, states should consider the fees required by work permits as this could be a barrier to entry for most children and families. Lastly, in terms of regulating hours and work specifics for permits, it is most likely the best option to create a general work permit that encompasses all influencing work because of how difficult it is to draw the line between influencing work and real life. Once these issues are resolved, work permits can prove to be helpful documentation tools in conjunction with Coogan Trusts for child influencers.

C. *Social Media Oversight Boards*

While state legislatures can work to create Coogan Laws to ensure financial protections, the social media platforms themselves can work to ensure child influencers are properly compensated. Social media platforms are already beginning to regulate content that is posted on their own sites, and if this continues, there might be a chance this regulation could expand to protect influencers.

¹³⁴ *Id.*

¹³⁵ *Id.*

While the United States traditionally does not like to regulate social media platforms, there has been a slight shift towards platforms regulating themselves.¹³⁶ Meta's Oversight Board is one example of this shift. The board is made up of forty members who come from a diverse set of backgrounds and are independent from Meta itself.¹³⁷ The Oversight Board is made to review a select number of highly contentious content deletion decisions and determine if those decisions were made in accordance with Meta's policies.¹³⁸ Facebook, owned by Meta, has a strict policy against posting child sexual exploitation and endangerment.¹³⁹ Parents who do not follow these standards will have their content removed, and if the child is exploited, Meta will report it to the National Center for Missing & Exploited Children (NCMEC).¹⁴⁰

All of this is to say that social media platforms already have regulations set in place to protect children. If these platforms are already on the lookout for child physical and sexual exploitation, the companies could also use their resources to ensure that children being posted are not being financially exploited. However, the main reason why Meta is able to look out for physical and sexual child exploitation is because the company is working in conjunction with NCMEC.¹⁴¹ NCMEC is a private nonprofit with the goal to "help find missing children, reduce child sexual exploitation, and prevent child victimization."¹⁴² The organization achieves this goal through multiple strategies, such as working with law enforcement to provide resources to fight child sexual exploitation.¹⁴³ Much like NCMEC, there are many organizations that are advocating for child influencer financial protections with which social media companies could partner.

If social media companies were to work with an organization like NCMEC that fights for the financial rights of child influencers,

¹³⁶ See David Morar, *The Digital Service Act's Lesson for U.S. Policymakers: Co-Regulatory Mechanisms*, BROOKINGS (Aug. 23, 2022), <https://www.brookings.edu/articles/the-digital-services-acts-lesson-for-u-s-policymakers-co-regulatory-mechanisms/> [https://perma.cc/TQF9-8XZ8].

¹³⁷ OVERSIGHT BOARD, <https://www.oversightboard.com/> [https://perma.cc/X26Z-6ARG].

¹³⁸ *Id.*

¹³⁹ *Child Sexual Exploitation, Abuse and Nudity*, META, <https://transparency.fb.com/policies/community-standards/child-sexual-exploitation-abuse-nudity/> [https://perma.cc/9B7K-VZHJ].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *About Us*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/footer/about> [https://perma.cc/N63A-KFBC].

¹⁴³ *Id.*

those companies could also start ensuring the child influencers on their sites are not being financially exploited. Quit Clicking Kids is one of those organizations fighting for child influencer financial rights because it understands that “the kids are the ones generating interest and revenue . . . and deserve to be compensated as such.”¹⁴⁴ By working with organizations such as Quit Clicking Kids and adding to their policies and guidelines against financial exploitation, social media companies can help make sure that child influencers are rightfully compensated for their work. However, this most likely would not come to fruition unless the social media companies themselves enact their own policies.

The world of child influencing can be frightening and dangerous for many who view it from the outside. It is important that child influencers are protected in all aspects of the industry. However, this is a difficult task to achieve overnight. Much like child actor protections, it will take time to make sure child influencers also gain the protections they deserve. Therefore, even just focusing on affording child influencers financial protections is a step in the right direction. While the author hopes that one day physical and emotional protections are provided for this vulnerable group, financial protections might be the right first step today.

V. CONCLUSION

Child influencing has seen a meteoric rise in the past few years. Much like the beginnings of child actor laws, child influencers have yet to be recognized as actual employees. With the number of hours and work that child influencers spend on content creation these children deserve to be rightfully compensated. As a growing industry, some of the highest-paid child influencers stand to make thousands of dollars for content in which they star.¹⁴⁵ However, there is nothing that stops the parents managing the child from pocketing the money for themselves.

State legislators can learn from the history of child actors and the legal journey they had to endure. By creating Coogan Laws for child influencers, state legislatures can ensure that child influencers are afforded some sort of financial protection. However, legislatures must also learn from Illinois’s child influencer law. While the new law is a step in the right direction, the lack of enforcement mechanisms allow many child influencer parents to still take advantage of the child’s earnings and pocket it for themselves.

¹⁴⁴ *Our Mission*, QUIT CLICKING KIDS, <https://quitclickingkids.com/about/> [<https://perma.cc/W9ST-HGHB>].

¹⁴⁵ Maheshwari, *supra* note 13.

One way to create and enforce Coogan laws is to create a documentation system requiring child influencers to obtain a work permit in order to create content. While creating documentation and regularly requiring and updating work permits may help states keep track of the influencers to ensure financial protection, work permits could create difficulty for states. If states can create work permit requirements that clarify which states child influencers should apply to and uniformize fee requirements, work permits may be a helpful documentation mechanism.

Social media companies can also aid in creating financial protections for child influencers. Much like the Facebook Oversight Board, social media companies can expand their policies to financial protections in addition to the sexual exploitation procedures already in place. By working with organizations like Quit Clicking Kids, these companies can help usher in financial protections.

Until child influencers receive financial protections, there is nothing stopping parents from keeping the profits for themselves. However, with the steps made by Illinois, Washington, and other states, child influencers are on their way to rightfully being paid. By learning from previous state's Coogan Laws, and with the help of organizations like Quit Clicking Kids, hopefully, child influencers will receive the financial protection they deserve.