

# STATE OF NEW YORK

312--A

2023-2024 Regular Sessions

## IN ASSEMBLY

January 4, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the estates, powers and trusts law, in relation to establishing protections for minors who are featured in influencer-generated content

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 150 of the labor law is amended by adding four new  
2 subdivisions 9, 10, 11 and 12 to read as follows:

3 9. "Family" shall mean a group of persons related by blood or  
4 marriage, including civil partnerships, or whose close relationship with  
5 each other is considered equivalent to a family relationship by the  
6 individuals.

7 10. "Online platform" shall mean any public-facing website, web appli-  
8 cation, or digital application, including a mobile application. "Online  
9 platform" includes a social network, advertising network, mobile operat-  
10 ing system, search engine, email service, or Internet access service.

11 11. "Influencer-generated content" shall mean content shared on an  
12 online platform in exchange for compensation.

13 12. "Influencer" shall mean an individual or family that creates video  
14 content, performed in the state, in exchange for compensation, and  
15 includes any sole proprietorship, partnership, company, or other corpo-  
16 rate entity assuming the name or identity of a particular individual or  
17 family for the purposes of that content creation. "Influencer" does not  
18 include any person under the age of eighteen who produces his or her own  
19 pieces of influencer-generated content.

20 § 2. Section 154-a of the labor law is renumbered section 156 and a  
21 new section 155 is added to read as follows:

22 § 155. Minors featured in influencer-generated content. 1. A minor  
23 under the age of eighteen is considered engaged in work as an influencer

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 when the following criteria are met at any time during the previous  
2 twelve-month period:

3 (a) at least thirty percent of an influencer's compensated video  
4 content produced within a thirty-day period included the likeness, name,  
5 or photograph of the minor. Content percentage is measured by the  
6 percentage of time the likeness, name, or photograph of the minor visu-  
7 ally appears or is the subject of an oral narrative in a video segment,  
8 as compared to the total length of the segment; and

9 (b) the number of views received per video segment on any online plat-  
10 form met the online platform's threshold for the generation of compen-  
11 sation or the influencer received actual compensation for video content  
12 equal to or greater than ten cents per view.

13 2. A minor engaged in work as an influencer shall not be deemed a  
14 child performer for the purposes of this article in regards to such work  
15 as an influencer.

16 3. Every influencer whose influencer-generated content features minors  
17 under the age of eighteen engaged in work as influencers shall establish  
18 a minor influencer trust account pursuant to the provisions of section  
19 7-7.2 of the estates, powers and trusts law for each such minor.

20 4. All influencers whose content features a minor under the age of  
21 eighteen engaged in work as an influencer shall maintain the following  
22 records and shall provide them to the minor on an ongoing basis:

23 (a) the name and documentary proof of the age of the minor engaged in  
24 work as an influencer;

25 (b) the number of pieces of influencer-generated content that gener-  
26 ated compensation as described in subdivision one of this section during  
27 the reporting period;

28 (c) the total number of minutes of the influencer-generated content  
29 that the influencer received compensation for during the reporting peri-  
30 od;

31 (d) the total number of minutes each minor was featured in influenc-  
32 er-generated content during the reporting period;

33 (e) the total compensation generated from influencer-generated content  
34 featuring a minor during the reporting period; and

35 (f) the amount deposited into the trust account for the benefit of the  
36 minor engaged in working as an influencer, as required by section 7-7.2  
37 of the estates, powers and trusts law.

38 5. If a influencer whose influencer-generated content features minors  
39 under the age of eighteen engaged in work as influencers fails to main-  
40 tain the records as provided in subdivision four of this section, the  
41 minor may commence a civil action to enforce the provisions of this  
42 section.

43 § 3. The estates, powers and trusts law is amended by adding a new  
44 section 7-7.2 to read as follows:

45 § 7-7.2 Minor influencer trust account

46 1. As used in this section, the terms "influencer" and "influencer-  
47 generated content" shall have the same meanings as such terms are  
48 defined in section one hundred fifty of the labor law.

49 2. A minor satisfying the criteria described in subdivision one of  
50 section one hundred fifty-five of the labor law must be compensated by  
51 the influencer. The influencer shall set aside gross earnings on the  
52 video content including the likeness, name, or photograph of the minor  
53 in a trust account to be preserved for the benefit of the minor upon  
54 reaching the age of majority, according to the following distribution:

55 (a) where only one minor meets the content threshold described in  
56 section one hundred fifty-five of the labor law, the percentage of total

1 gross earnings on any video segment including the likeness, name, or  
2 photograph of the minor that is equal to or greater than half of the  
3 content percentage that includes the minor as described in section one  
4 hundred fifty-five of the labor law; or

5 (b) where more than one minor meets the content threshold described in  
6 section one hundred fifty-five of the labor law and a video segment  
7 includes more than one of those minors, the percentage described in  
8 paragraph (a) of this subdivision for all minors in any segment shall be  
9 equally divided between the minors, regardless of differences in  
10 percentage of content provided by the individual minors.

11 3. A trust account required under this section shall provide, at a  
12 minimum, the following:

13 (a) that the funds in the account shall be available only to the minor  
14 engaged in work as an influencer;

15 (b) that the account shall be held by a bank or trust company, as  
16 those terms are defined in section two of the banking law;

17 (c) that the funds in the account shall become available to the minor  
18 engaged in work as an influencer upon the minor attaining the age of  
19 eighteen years or until the minor is declared emancipated; and

20 (d) that the account meets the requirements of part six of this arti-  
21 cle.

22 4. If a influencer knowingly or recklessly violates this section, a  
23 minor satisfying the criteria described in subdivision one of section  
24 one hundred fifty-five of the labor law may commence an action to  
25 enforce the provisions of this section regarding the trust account. The  
26 court may award, to a minor who prevails in any action brought in  
27 accordance with this section, the following damages:

28 (a) actual damages;

29 (b) punitive damages; and

30 (c) the costs of the action, including attorney's fees and litigation  
31 costs.

32 5. This section shall not affect any right or remedy available under  
33 any other law of the state.

34 6. Nothing contained in this section shall be interpreted to have any  
35 effect on a party that is neither the influencer nor the minor engaged  
36 in work as an influencer.

37 § 4. Subdivision 2 of section 130 of the labor law is amended by  
38 adding a new paragraph i to read as follows:

39 i. A minor under fourteen years of age engaged in work as an influenc-  
40 er in compliance with section one hundred fifty-five of this chapter.

41 § 5. Subdivision 3 of section 131 of the labor law is amended by  
42 adding a new paragraph h to read as follows:

43 h. Nothing in this section shall be construed to prohibit a minor  
44 fourteen or fifteen years of age from being engaged in work as an influ-  
45 encer in compliance with section one hundred fifty-five of this chapter.

46 § 6. Subdivision 3 of section 132 of the labor law is amended by  
47 adding a new paragraph g to read as follows:

48 g. Nothing in this section shall be construed to prohibit a minor  
49 sixteen or seventeen years of age from being engaged in work as an  
50 influencer in compliance with section one hundred fifty-five of this  
51 chapter.

52 § 7. This act shall take effect on the ninetieth day after it shall  
53 have become a law. Effective immediately, the addition, amendment  
54 and/or repeal of any rule or regulation necessary for the implementation  
55 of this act on its effective date are authorized to be made and  
56 completed on or before such effective date.