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:

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

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

10. "Online platform" shall mean any public-facing 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.

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

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

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

§ 155. Minors featured in influencer-generated content. 1. A minor 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.

LBD01323-02-4

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

(a) at least thirty percent of an influencer's compensated video content produced within a thirty-day period included the likeness, name, or photograph of the minor. Content percentage is measured by the percentage 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 video segment on any online platform met the online platform's threshold for the generation of compensation or the influencer received actual compensation for video content equal to or greater than ten cents per view.

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

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

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

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

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

(c) the total number of minutes of the influencer-generated content that the influencer received compensation for during the reporting period;

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

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

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

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

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

§ 7-7.2 Minor influencer trust account

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

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

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

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

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

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

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

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

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

(d) that the account meets the requirements of part six of this article.

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

(a) actual damages;

(b) punitive damages; and

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

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

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

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

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

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

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

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

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

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