

# STATE OF NEW YORK

8735--A

## IN SENATE

March 5, 2024

Introduced by Sen. LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- 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. The article heading of article 4-A of the labor law, as  
2 added by chapter 630 of the laws of 2003, is amended to read as follows:

3 EMPLOYMENT AND EDUCATION OF CHILD PERFORMERS

4 AND MINORS ENGAGED IN WORK AS INFLUENCERS

5 § 2. Section 150 of the labor law is amended by adding five new subdivi-  
6 sions 9, 10, 11, 12, and 13 to read as follows:

7 9. "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 10. "Family" shall mean a group of persons related by blood or  
12 marriage, including civil partnerships, or whose close relationship with  
13 each other is considered equivalent to a family relationship by the  
14 individuals.

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

22 á12. "Influencer-generated content" shall mean content shared on an  
23 online platform in exchange for compensation.

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

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1 13. (a) "Minor featured in influencer-generated content" shall mean a  
2 minor under the age of eighteen who is considered engaged in work as an  
3 influencer when the following criteria are met at any time during the  
4 previous twelve-month period:

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

11 (ii) the number of views received per video segment on any online  
12 platform met the online platform's threshold for the generation of  
13 compensation or the influencer received actual compensation for video  
14 content equal to or greater than ten cents per view.

15 (b) A minor engaged in work as an influencer shall not be deemed a  
16 child performer for the purposes of this article in regards to such work  
17 as an influencer.

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

20 § 155. Minors featured in influencer-generated content. 1. Every  
21 influencer whose influencer-generated content features minors under the  
22 age of eighteen engaged in work as influencers as provided in subdivi-  
23 sion thirteen of section one hundred fifty of the labor law shall estab-  
24 lish a minor influencer trust account pursuant to the provisions of  
25 section 7-7.2 of the estates, powers and trusts law for each such minor.

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

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

31 (b) the number of pieces of influencer-generated content that gener-  
32 ated compensation as described in subdivision thirteen of section one  
33 hundred fifty of this article during the reporting period;

34 (c) the total number of minutes of the influencer-generated content  
35 that the influencer received compensation for during the reporting peri-  
36 od;

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

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

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

44 3. If an influencer whose influencer-generated content features minors  
45 under the age of eighteen engaged in work as influencers fails to main-  
46 tain the records as provided in subdivision two of this section, the  
47 minor may commence a civil action to enforce the provisions of this  
48 section.

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

51 § 7-7.2 Minor influencer trust account

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

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

7 (a) where only one minor meets the content threshold described in  
8 subdivision thirteen of section one hundred fifty of the labor law, the  
9 percentage of total gross earnings on any video segment including the  
10 likeness, name, or photograph of the minor that is equal to or greater  
11 than half of the content percentage that includes the minor as described  
12 in subdivision thirteen of section one hundred fifty of the labor law;  
13 or

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

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

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

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

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

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

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

37 (a) actual damages;

38 (b) punitive damages; and

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

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

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

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

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

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

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

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

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

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