

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 764 (Padilla) – As Amended January 11, 2024

SENATE VOTE: 34-0

SUBJECT: Minors: online platforms

SYNOPSIS

“Family vlogging”—the practice of posting videos documenting a family’s daily life, including their children, on social media—is undergoing a cultural and legal reckoning. A number of state legislatures have proposed to regulate this practice following a series of recent articles in the New York Times and Cosmopolitan that have exposed the murky ethics of monetizing a child’s intimate, formative moments—raising concerns over privacy, safety, and financial exploitation.

This bill takes aim at the latter. In the mold of California’s Coogan Law—named after child actor, Jackie Coogan, whose parents legally squandered his millions—the bill, like legislation that was recently adopted in Illinois, would require “vlogger” parents to hold in trust a proportionate percentage of their earnings derived from posting online content featuring their children.

The bill is supported by Children’s Advocacy Institute at the University of San Diego School of Law, Quit Clicking Kids, and TechNet. Committee amendments clarify the compensation scheme and make other technical changes. Should it pass this Committee, it will next be heard in the Judiciary Committee.

SUMMARY: This bill provides financial protections to children performing in “vlogs”—monetized content appearing on online platforms. Specifically, **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.
 - c) The vlogger received actual compensation for image or video content of at least \$15,000 in the prior 12-month period.
- 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 specified records and to provide them to the minor at least once per month.
- 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.
- 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.

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.)
- 4) Establishes various protections for child labor, including school attendance requirements, work permits, wages, hours of work, minimum ages, restrictions on certain occupations, and employer requirements. (*See e.g.* Lab. Code §§ 1197, 1286, 1299, 1391; Ed. Code §§ 49112, 49113, 49116.)
- 5) Prohibits a business from selling or sharing the personal information of a child that is 16 years of age or younger, if the business has actual knowledge of the child’s age, unless the child, or the child’s parent or guardian in the case of children less than 13 years old has affirmatively authorized the sharing or selling of the personal information. (Civ. Code § 1798.120(c).)

FISCAL EFFECT: As currently in print, the bill is keyed nonfiscal.

COMMENTS:

1) **The Coogan law.** After childhood star Jackie Coogan found out that his mother and stepfather had squandered his millions—legally—the Legislature, in 1938, enacted the Coogan law.¹ Courts must approve contracts in which a minor is employed or agrees to render artistic, creative, or athletic services, and the employer must set aside 15% of the minor’s gross earnings in a trust that is typically administered by one of the child’s parents or legal guardians.² “Inadequacies in the statutory scheme, however, resulted in additional abuses of the finances of such child actors as Shirley Temple, Macaulay Culkin, Lee Aaker, and Gary Coleman—all of whose parents left the minors with at best only a small percentage of what they earned during their careers.”³ Consequently, the Legislature has continued to refine the scheme, most recently in 2013.⁴ Because it governs contractual employment of a minor and imposes conditions on the employer to set aside a portion of the minor’s gross earnings, this law neither applies, nor readily extends, to a new form of child stardom that is itself ripe for abuse: child social media influencers.

2) **Vlogging.** “For some children, their online footprint starts before they are even born when parents post and create content about pregnancy. This content often includes doctors’ visits, photos of ultrasounds, and even vlogs at the hospital during childbirth. Indeed, some child influencers have their very first moments on earth posted on YouTube for millions of subscribers to view.”⁵ Some families with child influencers “have amassed millions of subscribers, chronicling their children’s morning routines, holiday traditions, and even visits to the emergency room.”⁶

This can be quite lucrative. According to a *New York Times* article: “The child influencers can earn six-figure incomes from monthly subscriptions and other interactions with followers, according to interviews. Some can demand \$3,000 from companies for a single post. Big followings look impressive to brands and bolster chances of getting discounts, products and other financial incentives, and the accounts themselves are rewarded by [the platform’s] algorithm with greater visibility on the platform.”⁷ A handful of vloggers have achieved international celebrity. Anastasia Radzinskaya, the 9-year-old star of the YouTube channel “Like Nastya,” generates over a 100 million views a day and tens of millions of dollars a year.⁸ In videos that beam out to 108 million subscribers, Anastasia plays with toys, cooks, travels, and engages in educational activities. 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.⁹

¹ Fam. Code § 6750 et seq.

² § 6752.

³ *Phillips v. Bank of America, N.A.* (2015) 236 Cal.App.4th 217, 225, citations omitted.

⁴ Stats. 2013, ch. 102, § 1.

⁵ Dana D. Joss “Notes: Likes, Camera, Action: Safeguarding ‘Child Influencers’ through Expanded Coogan Protections and Increased Regulation of Social Media (2024) 15 Wm. & Mary Bus. L. Rev. 441, 450.

⁶ Ellen Walker, “Nothing Is Protecting Child Influencers From Exploitation” (Aug. 25, 2022) *Wired*, <https://www.wired.com/story/child-influencers-exploitation-legal-protection/>.

⁷ Jennifer Valentino-DeVries and Michael H. Keller “Five Takeaways From The Times’s Investigation Into Child Influencers” (Feb. 22, 2024) *New York Times*, <https://www.nytimes.com/2024/02/22/us/takeaways-instagram-child-influencers.html>.

⁸ 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>.

⁹ Emma Grey Ellis, “Child Stars Don’t Need Hollywood. They Have YouTube” (Feb. 6, 2019) *Wired* <https://www.wired.com/story/age-of-kidfluencers/>.

In a series of articles on “Sharenting,” *Cosmopolitan* detailed how children are legally unprotected from exploitation in an industry valued at \$21 billion in 2023. One girl interviewed “filmed videos, edited social media posts, and participated in brand deals with companies like Disney-plus, she wrote and starred in content for the blog that became her mother’s—and subsequently, her family’s—livelihood. When she turned 18, it turned out that not a single dollar from these efforts had been put aside for her.” Creating content was “a full-time job—and then some.” As a toddler, she created content for Huggies and Hasbro. “When she reached puberty and began menstruating, her mother had her do sponsored posts for sanitary pads.”¹⁰

Vlogging also has substantial implications for privacy, as parental or guardian consent for children under age 13 overrides many of the protections enshrined in the California Consumer Privacy Act.¹¹ “[T]hose of us who were introduced to social media during adulthood were still able to carve out our online presence from scratch, whether it be as an anonymous lurker on Reddit or a brazen oversharer on Instagram. The next generation are not afforded this freedom of choice; they simply have to lie in utero and pray that the first thing they see upon exiting isn’t the glare of a smartphone camera lens, set to an ear-splitting shriek of, ‘Don’t forget to like and subscribe!’”¹²

A *New York Times* investigation found that the online parental commodification of children poses particular risks for young girls. In addition to the already toxic dynamic that drives negative feelings of self-worth in young girls, kidfluencer accounts expose young girls to sexual predators. “What often starts as a parent’s effort to jump-start a child’s modeling career, or win favors from clothing brands, can quickly descend into a dark underworld dominated by adult men, many of whom openly admit on other platforms to being sexually attracted to children.” The investigation found, among other things that some parents “offer the sale of photos, exclusive chat sessions and even the girls’ worn leotards to mostly unknown male followers.”¹³

State legislatures have responded in kind. In the last two years, 10 states have considered legislation to protect influencer kids. Some bills have sought to protect the privacy of these kids by giving them a “right to be forgotten” by enabling them to require platforms to permanently delete posts in which they are featured.¹⁴ In August 2023, Illinois became the first state to adopt legislation ensuring that children in vlogging have financial protections—the model for this bill.

3) **Author’s statement.** The author writes:

Social media has provided people with tremendous opportunities to create content and connect with others at an immense scale. However, with this advent includes the same forms of exploitation of minors and financial abuse that we have seen in our past. Over 100 years

¹⁰ Fortesta Latifi, “What’s the Price of a Childhood Turned Into Content?” (Mar 12, 2024) *Cosmopolitan*, <https://www.cosmopolitan.com/lifestyle/a60125272/sharenting-parenting-influencer-cost-children/>

¹¹ Civ. Code § 1798.120(c).

¹² Ellen Walker, “Nothing Is Protecting Child Influencers From Exploitation” (Aug. 25, 2022) *Wired*, <https://www.wired.com/story/child-influencers-exploitation-legal-protection/>.

¹³ Jennifer Valentino-DeVries and Michael H. Keller “Five Takeaways From The Times’s Investigation Into Child Influencers” (Feb. 22, 2024) *New York Times*, <https://www.nytimes.com/2024/02/22/us/takeaways-instagram-child-influencers.html>.

¹⁴ Fortesta Latifi, “What’s the Price of a Childhood Turned Into Content?” (Mar 12, 2024) *Cosmopolitan*, <https://www.cosmopolitan.com/lifestyle/a60125272/sharenting-parenting-influencer-cost-children/>.

ago, the Coogan Act was created to protect minors exploited in the film industry. Children today deserve these same protections with the new social media influencer industry.

4) **What this bill does.** 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.

So long as they earn over \$15,000 annually, vloggers are also required to set aside specified portions of their gross earnings for content including minors based on the percentage of compensated content in which they are featured. Funds must be deposited in a trust account 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.

Under the bill, a qualifying minor can 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) **Committee amendments.** To clarify the compensation scheme under the bill, the author has agreed to amendments to align the timeframes that trigger the bill’s requirements. For every calendar month in which the minor is featured in 30 percent or more of compensated content, the parent or guardian must deposit into a trust an amount that is proportionate to the percentage of content in which the minor was featured. The amendments also clarify that siblings in a vlogging family must have separate trusts and require that deposits be made into the trust quarterly. Finally, the amendments make a number of clarifying and technical changes.

The amendments are as follows:

6650. For the purposes of this part, all of the following definitions apply:

(a) “Age of majority” ~~has the same meaning as defined in Section 6502.~~ *means 18 years of age or older.*

(b) “Content” *has the same meaning as laid out in Section 22675 of the Business and Professions Code.*

(c) “Family” means 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.

~~(e)~~

(d) “Minor” ~~has the same meaning as defined in Section 6500.~~ *means 17 years of age or younger.*

~~(d)~~

(e) “Online platform” means any public-facing internet website, web application, or digital application, including a mobile application. “Online platform” includes a social media platform, as defined in Section 22675 of the Business and Professions Code, advertising network, mobile operating system, search engine, email service, or internet access service.

(f) **“Reporting period” means a given calendar month for which a parent, legal guardian, or family must set aside compensation for a minor pursuant to subdivision (a) of Section 6651.**

~~(e)~~

(g) “Vlog” means content shared on an online platform in exchange for compensation.

~~(f)~~

(h) “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.

~~(g)~~

(i) “Vlogging” means the act of sharing content on an online platform in exchange for compensation.

~~(h)~~

~~“Content” has the same meaning as laid out in Section 22675 of the Business and Professions Code.~~

6651. A minor under 18 years of age is considered engaged in the work of vlogging when the following are met at any time during ~~the previous 12-month period:~~ ***a given month:***

(a) (1) 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,~~ ***during the month,*** including the likeness, name, or photograph of the minor.

(2) The percentage pursuant to paragraph (1) 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.

(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 (\$0.10) per view.

(c) The vlogger received actual compensation for image or video content of at least ~~fifteen thousand dollars (\$15,000) in the prior 12-month period.~~ ***one thousand two hundred and fifty dollars (\$1,250) in the month.***

6652. All vloggers whose content features a minor ~~under 18 years of age~~ engaged in the work of vlogging, as described in subdivision (a) of Section 6651, shall maintain, ***and make***

available to the minor upon request, all of the following records and shall provide them to the minor ~~once per month~~: *records*:

(a) Documentary proof of the minor's age when they started vlogging, as described in subdivision (a) of Section 6651.

(b) The number of vlogs that generated compensation, as described in Section 6651 during the *each* reporting period.

(c) The total number of minutes of the vlogs that the vlogger received compensation for during the *each* reporting period.

(d) The total number of minutes each minor was included in, as described in paragraph (1) of subdivision (a) of Section 6651, vlogs during the *each* reporting period.

(e) The total compensation generated from vlogs featuring the minor during the reporting period.

(f) The amount deposited *for the reporting period* into the trust account for the benefit of the minor engaged in vlogging pursuant to Section 6653. *This amount shall be calculated by multiplying the percentage of total minutes in subdivision (c) in which the minor is featured in subdivision (d) by the total compensation in subdivision (e).*

6653. (a) A minor satisfying the requirements of subdivision (a) of Section 6651 shall be compensated by the vlogger, pursuant to the terms of this section. The vlogger shall set aside gross earnings on the image or video content meeting the requirements of Section 6651 in a trust account to be preserved for the benefit of the minor upon reaching the age of majority according to the following distribution:

(1) When only one minor meets the content threshold described in Section 6651, the minor shall receive a percentage of total gross earnings on any image or video segment, meeting the requirements of Section 6651, that is in proportion to the minor's ~~appearance~~: *appearances in vlogging content during an applicable reporting period.*

(2) When more than one minor meets the content threshold described in Section 6651 and an image or video segment includes more than one of those minors, the percentage described in paragraph (1) for all minors in any segment shall be equally divided between the minors, regardless of the differences in percentage of content provided by the individual minors. *Each minor shall have their own trust account.*

(b) (1) The vlogger shall establish the trust within ~~seven~~ **60** business days after the minor first meets the criteria in subdivision (a) of Section 6651. *The vlogger shall establish a trust for each qualifying minor.*

(2) The vlogger shall establish the trust in California either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or the National Credit Union Share Insurance Fund or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to ensure that the funds

remain in trust, in an account or other savings plan insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.

(3) The vlogger shall, within 10 business days of establishing the trust, prepare a written statement, under penalty of perjury, that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional information needed by the vlogger to deposit into the account the portion of the minor's gross earnings prescribed by subdivision (a). The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.

(4) The funds in the account shall be available only to the beneficiary of the trust. ***The vlogger shall deposit the funds into the account no less than once every three months.***

(5) Except as otherwise provided in this section, prior to the date on which the beneficiary of the trust attains the age of majority or the issuance of a declaration of emancipation of the minor pursuant to Section 7122, a withdrawal by the beneficiary or any other individual, individuals, entity, or entities shall not be made for the funds deposited in trust. Upon reaching the age of majority, the beneficiary may withdraw the funds on deposit in the trust only after providing a certified copy of the beneficiary's birth certificate to the financial institution where the trust is located.

(c) Upon application by the trustee or trustees, the trust funds shall be handled by the financial institution or company in which the trust is held in one or more of the following methods:

(1) The financial institution or company may transfer funds to another account or other savings plan at the same financial institution or company, provided that the funds transferred shall continue to be held in trust, and subject to this part.

(2) The financial institution or company may transfer funds to another financial institution or company, provided that the funds transferred shall continue to be held in trust, and subject to this part and that the transferring financial institution or company has provided written notice to the financial institution or company to which the funds will be transferred that the funds are subject to this section and written notice of the requirements of this part.

(3) The financial institution or company may use all or a part of the funds to purchase, in the name of and for the benefit of the minor, either of the following:

(A) Investment funds offered by a company registered under the Investment Company Act of 1940, provided that if the underlying investments are equity securities, the investment fund is a broad-based index fund or invests broadly across the domestic or a foreign regional economy, is not a sector fund, and has assets under management of at least two hundred fifty million dollars (\$250,000,000).

(B) Government securities and bonds, certificates of deposit, money market instruments, money market accounts, or mutual funds investing solely in those government securities and

bonds, certificates, instruments, and accounts that are available at the financial institution where the trust fund or other savings plan is held, provided that the funds shall continue to be held in trust and subject to this part, those purchases shall have a maturity date on or before the date upon which the minor will attain the age of majority, and any proceeds accruing from those purchases shall be redeposited into that account or accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

[. . .]

ARGUMENTS IN SUPPORT:

Quit Clicking Kids writes:

Social media has paved the way for a new, unregulated form of child entertainment. As the state that created Coogan protections for child actors, California needs to step up and be a leader for the next generation of child performers. Most parents will act in their child's best interests without legal prompting. However, as Jackie Coogan's story illustrates, not all parents have their child's best interests at heart. Legislative protections could ensure that children everywhere in California have access to the revenue that they help generate on their family's social media account.

The Children's Advocacy Institute at the University of San Diego School of Law writes:

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.

So-called “family vloggers” have exploded in popularity, many earning views and therefore ad profit by filming their daily lives, including their children. This is a form of exploiting children for “reality show”-like money.

SB 764 would acknowledge the obvious: that children, whose likeness is used by their parents on social media for profit, deserve similar kinds of financial protection and compensation as if the identical video featuring them had been shown on (for example) television. This bill will require parents or guardians who are compensated for featuring minors in at least 30% of their content to set aside a proportionate percentage of total gross earnings in a trust account the minor can access when they reach adulthood.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Public Interest Law/children's Advocacy Institute/university of San Diego
Quit Clicking Kids

Opposition

None on file.

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