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Hollywood at Home: Applying Federal Child Labor Laws to Traditional and Modern Child Performers

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Hollywood at Home: Applying Federal Child Labor Laws to Traditional and Modern Child Performers

Shannon Kate McGrath*

Abstract

In the past few years there has been a rise in online influencers who gain money and fame from their online content, and in many cases these influencers are children. Although this can be seen as a “job,” federal child labor laws exempt all child performers from protections. This means traditional child actors and children who create online content must rely on state laws regarding child labor. While some states have protections for child performers, several states have no such laws in place. In addition, the current protections are not available to children who take part in online content. Without such protection, children could be exploited by the adults around them for monetary gain and face the psychological harms that can result from fame and prolonged access to social media. While parents have a right to raise their children, when they are effectively acting as their child’s employer there should be safeguards put in place to ensure the safety of the child. This Note examines the laws currently in place for child performers and the harms that can befall children in the entertainment industry. As a solution, this Note proposes a model of new federal legislation that could be enacted to protect all children in the entertainment

* J.D. Candidate, May 2023, Washington and Lee University School of Law. This Note was initially inspired by Casey Aonso’s YouTube video from August 16, 2021, called “the sick and twisted reality of mommy blogging.” I would like to sincerely thank everyone who helped me throughout the Note writing process. Specifically, I would like to extend appreciation to my faculty advisor Professor C. Elizabeth Belmont and Note Editor Keely Fresh for all of their guidance and recommendations. I would also like to thank my family and friends who offered me constant support as I worked on this Note.

industry, balancing the rights of parents with the state interest in the wellbeing of the children involved.

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I. Introduction

Children who are a part of the entertainment industry, acting in movies or television shows, have been exempt from federal child labor laws since the creation of the Fair Labor Standards Act (FLSA).¹ As the world has moved into the twenty first-century, the rise in online platforms like YouTube and Instagram has created a new type of child “performer.”² These are often managed directly by their parents, and have even less protection than children working in the better-established and more regulated entertainment industry.³ The increase in content like family vlogs illustrates that the previous legal understanding of children in the entertainment industry has evolved, as one no longer has to travel to New York or California to make it big.⁴ Now, children can be filmed from anywhere in the country and still reach a wide audience.⁵ This expansion highlights the need to not only protect children in monetized online content, but also to expand federal child labor laws to include all child “performers” who are currently exempt.⁶

In September 2021 YouTuber Jordan Cheyenne uploaded a video to her channel, documenting an incident where she and her

1. See 29 U.S.C. § 201 et seq. (establishing parties who are exempt from the protections afforded to workers under the Fair Labor Standards Act (FLSA)).

2. See Allie Volpe, *How Parents of Child Influencers Package Their Kids' Lives for Instagram*, THE ATL. (Feb. 28, 2019) (explaining how in recent years parents have turned their children into internet influencers) [perma.cc/3R3K-SZXC].

3. See *id.* (“While a 1939 bill called the Coogan Laws protects child actors by ensuring that their parents don’t spend their earnings, no such guidelines exist for kids who make money on the internet. The responsibility lies with the parents who manage their little influencers.”).

4. See Katie Razzal, *The Rise of the Vloggers*, 4 NEWS (Oct. 20, 2012), (illustrating that even in 2012 YouTube vloggers were gaining popularity which has only grown as more time has passed) [perma.cc/C86A-VREH].

5. See Volpe, *supra* note 2 (illustrating how various children, all from different locations, had content of them uploaded to be viewed by numerous people located around the United States).

6. See 29 U.S.C. § 213(c)(3) (relaying that FLSA exempts children who work as any type of performer from acquiring the benefits granted to other children in the workplace).

family experienced a scare about their dog's health.⁷ At the end of the video she left in footage of her pulling her son close and instructing him to “[a]ct like you’re crying.”⁸ The son argued that he was crying and was in fact very upset, but Cheyenne’s response was to tell him how to make himself look, supposedly so she could get an emotional thumbnail for the video.⁹ The video and her channel as a whole have since been deleted, as Cheyenne received a massive amount of backlash for coaching her son.¹⁰ However, prior to this act she made money off of these videos that featured her children.¹¹ She is not the only YouTuber who uses their children in videos, and she stated after the incident that other YouTubers coach their children for videos.¹² What protections are there in place to safeguard these children, who are constantly filmed by their parents for monetary gain?¹³ Unfortunately, almost none exist currently.¹⁴

This Note will focus on this lack of protection that the law provides to all child performers, from actors to influencers. This topic has become exceedingly prevalent in the past few years, as

7. See Danya Hajjaji, *YouTube Lets Parents Exploit Their Kids for Clicks*, NEWSWEEK (Oct. 4, 2021) (stating the background for the YouTube video that has received backlash recently) [perma.cc/5GL4-Z5ZE].

8. See *id.*

9. See Rachel Paula Abrahamson, *Family YouTuber Deletes Account After Criticism Over Video Coaching Son to Cry*, TODAY (Sept. 14, 2021) (“Cheyenne coached Christian to scrunch up his face, told him to wail in certain way and told him how to place his hand. ‘Let them see your mouth,’ the parenting and lifestyle vlogger said. ‘Look at the camera.’”) [perma.cc/QH2L-VFS4].

10. See Hajjaji, *supra* note 7 (noting the fact that the channel in question is no longer active due to the large amount of criticism the previously mentioned video garnered).

11. See Abrahamson, *supra* note 9 (describing how Cheyenne received enough money from her vlogs and social media posts that allowed her to quit her other job and pursue creating content as her main source of income).

12. See *id.* (“Of course. People will have their kids ham it up. Behind the scenes they’re like, ‘Do this, and I’ll give you a treat.’ . . . I think it opened a conversation for how a lot of people might be running their channels.”).

13. See *id.* (noting that parents who film their children are able to make a livable income off of them as little regulations exist regarding the filming of children).

14. See Hajjaji, *supra* note 7 (stating that current laws intended to protect child performers do not extend to protect children who are part of monetized online content, such as YouTube vlogs).

evidenced by recent publications in other law reviews and legal journals.¹⁵ This Note and those works go through similar histories and examination of harms, but the main way they differ is in their presentation of solutions for the problem that has been identified.¹⁶ Other pieces propose solutions of specialized State laws for child influencers or general ways current child performer laws can be applied and expanded to accommodate child influencers.¹⁷ Instead, this Note focuses primarily on an imposition of federal laws intended to protect both traditional child performers and children primarily in online content.¹⁸ In this vein, possible language for this federal legislation is set forth, establishing what effective regulations could and should look like in the near future.¹⁹

Part II will establish the history of the FLSA and the exemptions that bar child performers from these protections.²⁰ Part III will focus on the efforts state legislatures have made to protect children in the entertainment industry.²¹ Specifically, Part III will focus on the relevant laws in California and New York, two

15. See generally Amanda G. Riggio, *The Small-er Screen: YouTube Vlogging and the Unequipped Child Entertainment Labor Laws*, 44 SEATTLE U. L. REV. 493 (2021) (examining the relationship between child entertainment labor laws with the rise of children in online content); see also Marina A. Masterson, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”*, 169 U. PA. L. REV. 577, 580 (2021) (discussing the way child labor laws could be applicable to child influencers).

16. See Riggio, *supra* note 15, at 498 (beginning the discussion of the history of child performers, labor laws, and family vloggers); see also Masterson, *supra* note 15, at 582 (starting to set forth the history of child influencers, current relevant laws, harms, and constitutional rights).

17. See Riggio, *supra* note 15, at 516 (“Altering current state child-entertainment-labor laws and implementing federal child-entertainment-labor laws that would cover social media entertainment can remedy current privacy concerns stemming from family vlogs.”); see also Masterson, *supra* note 15, at 599 (“Because the substantial differences between social media influencing and child acting imbue the former with a distinct host of dangers and family-law considerations, states should not simply include kidfluencers under existing child acting laws . . .”).

18. See discussion *infra* Part VI.

19. See discussion *infra* Part VI.

20. See discussion *infra* Part II.

21. See discussion *infra* Part III.

states that afford child actors the most safeguards.²² The pertinent laws of other states will then be highlighted, all of which are different, as well as states that lack these protections.²³

Part IV will explore the rise of child influencers that have appeared in the last two decades.²⁴ It will examine the history of these influencers, as sites like YouTube and Instagram, which facilitate this wide outreach, have only been created in the 2000s.²⁵ Part IV will also look into the harm caused to children who are constantly filmed and photographed by their parents for profit. This section will also discuss how the changes that have occurred in the last twenty years illustrate how much the entertainment industry has changed since federal child labor laws were set forth in FLSA.

Part V will examine possible problems and arguments that could arise from the implementation of legislation intended to regulate the use of minors in monetized online content.²⁶ Specifically, it will focus on the fundamental rights of parents to raise their children, and how the line between parent and employer is difficult to determine.²⁷ Finally, Part VI will propose possible federal legislation that could be implemented to protect not only children in monetized online content, but all child performers previously exempt from federal protections.²⁸ This is done by looking to the language of a proposed bill meant to protect child actors, and altering the language to deal with both groups of child entertainers.²⁹

22. See Riggio, *supra* note 15, at 502 (noting that California and New York are the states with the largest number of actively working child performers).

23. See *Child Entertainment Laws as of Jan. 1, 2022*, DEP'T OF LAB. (Jan. 2022) (listing the status of all states with regards to laws meant to protect child performers) [perma.cc/3BPF-KV5U].

24. See discussion *infra* Part IV.

25. See Volpe, *supra* note 2 (stating that each “child influencer” highlighted in the article started posting or gained relevance in the 2000s, illustrating how social media has recently created these opportunities).

26. See discussion *infra* Part V.

27. See discussion *infra* Part V.

28. See discussion *infra* Part VI.

29. See discussion *infra* Part VI.

II. Federal Child Labor Laws

In 1938 Congress created the FLSA to protect employees by implementing things like minimum wage and overtime hours.³⁰ The Act also includes provisions intended to protect child workers from “oppressive child labor.”³¹ This means employment where an employee under the age of sixteen is employed in any occupation, or “any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children’s Bureau in the Department of Labor [Secretary]” finds to be hazardous for employment of individuals in such an age range.³² The Act also restricts the shipment of goods produced by oppressive child labor and implements investigations and inspections for the employment of minors.³³

However, there are limitations placed on these protections, even those that focus on child employees.³⁴ Section 213(c)(3) of the Act states that the provisions “relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”³⁵ The Code of Federal Regulations (CFR) defines performer as:

a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively

30. See 29 U.S.C. § 201 et seq. (granting laborers in the United States protections that would assist them in the workplace).

31. 29 U.S.C. § 212.

32. 29 U.S.C. § 203(l).

33. See 29 U.S.C. § 212 (creating protections for children who work as laborers in most kinds of jobs that are harmful to them).

34. See 29 U.S.C. § 213 (laying out exemptions to the protections granted in FLSA).

35. 29 U.S.C. § 213(c)(3).

participates in such capacity in the actual presentation of a radio or television program.³⁶

This definition encompasses all types of child actors, and ensures that the federal regulations afforded to other child employees do not extend to children in the entertainment industry.³⁷ This was not because children were not a prominent part of the entertainment industry at the time, as by the time FLSA was passed stars like Mickey Rooney and Judy Garland were already prominent, with Garland starring in *The Wizard of Oz* only a year later.³⁸ Although it is not explicitly stated, this exception could be because the entertainment industry, as it existed in the 1930s, was only located in a few specific locations with unions like the Screen Actors Guild (SAG) already working to protect the rights of performers.³⁹ Regardless, the lack of federal protections afforded to these child workers means they must rely on the legislation of the states for workplace protections.⁴⁰

III. State Protections for Child Performers

The lack of federal protection for children in the entertainment industry has prompted states to pass their own legislation to combat issues that arise.⁴¹ States with well-established ties to the entertainment community, such as California and New York, have the most comprehensive

36. 29 C.F.R. § 550.2(b).

37. *See id.* (establishing that the language of this regulation means that all minors working in the entertainment industry are exempt from the established federal child labor laws).

38. *See* Thomas Schatz, *Hollywood: The Triumph of the Studio System*, in *THE CLASSICAL HOLLYWOOD READER* 167, 173 (Steve Neale ed., 2012) (stating that Mickey Rooney and Judy Garland were Hollywood stars in the late 1930s).

39. Adam P. Greenberg, *Reality's Kid: Are Children Who Participate on Reality Television Shows Covered Under the Fair Labor Standards Act?*, 82 S. CAL. L. REV. 595, 623 (2009).

40. *See* DEPT OF LAB., *supra* note 23 (establishing state laws that protect minors in the entertainment industry due to the exemption in federal laws).

41. *See id.* (revealing which states have laws that focus on the protection of child performers, and what kind of protections they offer).

protections in place.⁴² Over the years more states have created various degrees of protections for child performers.⁴³ However, some of these protections are not as comprehensive as they could be, and there are still a handful of states with no protections in place at all.⁴⁴

A. California Child Labor Laws

In California, laws that protect child actors can be found in the California Family Code and the California Labor Code.⁴⁵ One of the most well-known protections granted to child actors comes from California Family Code and are known as Coogan Accounts.⁴⁶ Jackie Coogan began his acting career as a child, starring in films like Charlie Chaplin's *The Kid*.⁴⁷ Despite all the work he did while young, however, when he turned eighteen he discovered that all the money he earned had been spent by his mother and stepfather.⁴⁸ He subsequently sued for these lost earnings, which eventually led to the creation 1939 Coogan Laws in California.⁴⁹

42. See Riggio, *supra* note 15, at 502 (“[T]he state provisions with the most thorough protections come from California and New York because most employment transactions involving child performers occur in those states.”).

43. See DEPT OF LAB., *supra* note 23 (establishing the legal protections for child performers available in each state).

44. See *id.* (highlighting the various levels of laws put in place by different states intended to protect children in the entertainment industry).

45. CAL. FAM. CODE § 6750 (Deering 2021) et seq.; CAL. LAB. CODE § 1308.7 (Deering 2021) et seq.

46. See CAL. FAM. CODE §§ 6750–6753 (Deering 2021) (setting forth provisions to protect the earnings of child performers in California).

47. See Ryan Gilbey, *The Not so Cursed Child: Did Harry Potter Mark the End of Troubled Young Actors?*, THE GUARDIAN (Oct. 22, 2021) (examining the fraught history of child actors in Hollywood and the plights many had to go through, such as Jackie Coogan) [perma.cc/MFZ4-2JPR].

48. See *id.* (describing how Jackie Coogan's money was spent by his guardians without his consent when he was underage).

49. See *id.* (“Though he did poorly out of the case, it resulted in the implementation in 1939 of the California child actors bill, commonly known as the Coogan law.”); see also CAL. FAM. CODE §§ 6750–6753 (Deering 2021) (providing protections for the income earned by child performers in California).

These laws are located in Sections 6750 through 6753 of the California Family Code, and they seek to ensure that the income child performers make goes to the children themselves and not their parent or guardian.⁵⁰ Section 6750 articulates how child performers should be contracted to work by their employers, and the following section establishes what the court's approval of such a contract means.⁵¹ The laws goes on to discuss how a child performers gross earnings should be placed in the relevant trust account, stating that in order to work child actors must have a trust where "[fifteen] percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer."⁵² Finally, Section 6753 discusses the establishment of Coogan Accounts and states how the trust shall be managed and how funds can be with withdrawn by approved individuals.⁵³ This helps ensure that child performers working in California who do not yet have autonomy over their finance are not exploited by any adults in their lives like Charlie Coogan was in in the 1930s.⁵⁴

Along with this, Section 1308 of the California Labor Code regulates how long child performers can work, stating that they cannot be employed for "more than eight hours in one day of 24 hours, or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a school day" with a few other stipulations.⁵⁵ The section also states the penalties for violating these limits, including fining violators or putting them in county jail.⁵⁶

50. See SAG-AFTRA, *Coogan Law* (clarifying the intent of the Coogan Laws as put forth in California) [perma.cc/A8KC-DKW8]; see also CAL. FAM. CODE §§ 6750–6753 (Deering 2021) (seeking to ensure minors in the entertainment industry have control over the earnings they accumulate).

51. See CAL. FAM. CODE §§ 6750–51 (Deering 2021) (establishing the types of contracts this law deals with and what it means when they get the approval of the court).

52. CAL. FAM. CODE § 6752 (Deering 2021).

53. See CAL. FAM. CODE § 6753 (Deering 2021) (discussing how to set up Coogan Trust Accounts and how they should be managed).

54. See Gilbey, *supra* note 47 (sharing the story of Charlie Coogan's legal battles with his parents over his finances that lead to the creation of the Coogan Law in California).

55. CAL. LAB. CODE § 1308.7(a) (Deering 2021).

56. See CAL. LAB. CODE § 1308.7(c) (Deering 2021).

Section 1308.5 of California Labor Code also requires the Labor Commissioner give a written permit to allow minors to be employed in the entertainment industry.⁵⁷ This consent is necessary for the following actions involving minors:

- (1) The employment of any minor, in the presentation of any drama, legitimate play, or in any radio broadcasting or television studio.
- (2) The employment of any minor 12 years of age or over in any other performance, concert, or entertainment.
- (3) The appearance of any minor over the age of eight years in any performance, concert, or entertainment during the public school vacation.
- (4) Allowing any minor between the ages of 8 and 18 years, who is by any law of this state permitted to be employed as an actor, actress, or performer in a theater, motion picture studio, radio broadcasting studio, or television studio, before 10 p.m., in the presentation of a performance, play, or drama continuing from an earlier hour until after 10 p.m., to continue his or her part in such presentation between the hours of 10 p.m. and midnight.
- (5) The appearance of any minor in any entertainment which is noncommercial in nature.
- (6) The employment of any minor artist in the making of phonograph recordings.
- (7) The employment of any minor as an advertising or photographic model.

Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section, is guilty of a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or imprisonment in the county jail for not more than 60 days, or both.

57. See CAL. LAB. CODE § 1308.5 (Deering 2021) (“The written consent of the Labor Commissioner in the form of a permit to employ a minor in the entertainment industry is required for any minor, not otherwise exempted by this chapter.”).

(8) The employment or appearance of any minor pursuant to a contract approved by the superior court under Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of the Family Code.⁵⁸

While there are still exemptions from these protections, these California laws help to bridge the gap left by the exemptions in FLSA.⁵⁹ California is the state with the most comprehensive legal safeguards put in place for minors in the entertainment industry and has the longest history of implementing such protections.⁶⁰

B. New York Child Labor Laws

New York also has fairly comprehensive laws in place to protect child actors.⁶¹ The purpose of this part of New York Codes, Rules and Regulations is to “ensure that child performers who work or reside in the state of New York are provided with adequate education, and to ensure that a portion of the child performer’s earnings are kept in trust” for their benefit until they reach legal age.⁶² This part lays out the responsibilities of parents and employers, requirements for education and work conditions, and penalties among other things.⁶³ According to these provisions, “[n]o employer shall employ a child performer in any activity that may be hazardous or detrimental to the physical or mental health, morals, education, or general welfare of the child performer.”⁶⁴ In

58. *Id.*

59. *See* CAL. LAB. CODE § 1308(b) (Deering 2021) (stating exceptions to the prohibited uses of minors in California); *see also* 29 U.S.C. § 213(c)(3) (highlighting that child performers are exempt from federal child labor laws).

60. *See* DEP’T OF LAB., *supra* note 23 (comparing California laws regarding child performers with similar laws in other states).

61. *See* N.Y. COMP. CODES R. & REGS. tit. 12, § 186 (laying out protections for child performers located and working in New York).

62. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-1.1.

63. *See* N.Y. COMP. CODES R. & REGS. tit. 12, § 186 (clarifying who must comply with the rules established in this section and how they must do so when dealing with children in the entertainment industry).

64. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-6.1.

New York it is also required that parents or guardians get a Child Performer Permit if a child is going to work as a performer.⁶⁵

There are also safeguards in place to ensure that the Child Performer Permits and the Employer Certificates can be revoked if there is any wrongdoing. The performer permits can be suspended or revoked depending on the actions of the child's parent or guardian, including if the guardian commits "a violation of this Part that may be hazardous or detrimental to the physical or mental health, education, morals, or general welfare of a child performer;" or if they make the child "engage in an activity that may be hazardous or detrimental to the physical or mental health, education, morals, or general welfare of a child performer."⁶⁶ The employer permits can be suspended or revoked for similar actions on the part of the employer, with the addition that the employer can also be penalized for not transferring the child's money to the correct account, and employing a child performer without the consent of their parents.⁶⁷ These safeguards help ensure that both employers and parents dealing with child performers are held accountable, protecting the children at both ends of the process.⁶⁸

However, there are exemptions from these protections.⁶⁹ These exemptions include children who perform in the privacy of

65. See N.Y. COMP CODES R & REGS. tit. 12, § 186-3.1 ("No parent or guardian of a child shall allow the child to be employed as a child performer unless the parent or guardian has a current and valid Temporary Child Performer Permit or a Child Performer Permit."); see also N.Y. COMP CODES R & REGS. tit. 12, § 186-3.2 (laying out how parents and guardians need to apply for a permit for a child to work as a performer).

66. N.Y. COMP. CODES R. & REGS. tit. 12, § 186-9.2(b), (d).

67. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-9.1(c)–(e) (noting that employers can lose their eligibility certificate if they engage in certain actions, including failing to transfer a child performer's income to the correct account and employing child performers without getting written consent from their parent or guardian).

68. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-9.1 (ensuring that employers who work with child performers focus on the performer's safety); see also N.Y. Comp. Codes R. & Regs. tit. 12, § 186-9.2 (naming the actions that a child performer's parent or guardian cannot engage in to ensure the children are protected).

69. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-1.3 (setting forth the circumstances where individuals and groups are exempt from the rules of this overall section).

their home unless they are making a movie, television show, or radio program.⁷⁰ With this exemption it is not clear whether or not children who are filmed for YouTube vlogs in their own home would be exempt from these protections in New York.⁷¹ Even if they are not exempt, it is unclear how the regulations in place function with regards to children who are primarily part of online content, especially those whose parents are also their “employers.”⁷²

C. Other States

Apart from California and New York, there are now numerous other states that have some form of law in place that protects child actors.⁷³ Many of these states have used the existing laws in places like California to shape their own state laws.⁷⁴ The clearest example of this are Coogan Funds, which originated in California but have been implemented by other states over the years.⁷⁵ This includes states like Georgia, where many projects are filmed nowadays.⁷⁶ Georgia’s current statute states, with regards to the text of the chapter of the code focusing on the regulation of the

70. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-1.3(a)(3) (blocking certain child performers from the state law, calling into question who would fit under this exemption).

71. See *id.* (exempting certain children from the protections of the law, which could include children filmed for purely online content).

72. See N.Y. COMP. CODES R. & REGS. tit. 12, § 186-9.1 (e) (establishing that employers can be penalized for not getting consent from a performer’s parent, but if the parent is the employer the lines become blurred).

73. See DEP’T OF LAB., *supra* note 23 (setting forth all the states that have some form of law meant to protect the rights of minors working in the entertainment industry).

74. See SAG-AFTRA, *supra* note 50 (noting other states that have something like the Coogan Funds that originated in California).

75. See *id.* (“At present, Coogan Accounts (a.k.a Blocked Trust Accounts and Trust Accounts) are required by the State of California, New York, Illinois, Louisiana and New Mexico.”).

76. See *id.* (establishing the state laws enacted to protect children in the entertainment industry); see also Eliana Dockterman, *How Georgia Became the Hollywood of the South: TIME Goes Behind the Scenes*, TIME MAG. (July 26, 2018) (examining how Georgia became the primary southern state for movies and television shows to be filmed) [perma.cc/C8HQ-BSXB].

employment of minors, that permits from the Commissioner of Labor are required for child performers.⁷⁷ The statute goes on to highlight what the Commissioner of Labor must investigate when determining whether or not to grant written consent.⁷⁸ While these provisions are helpful to protect children in the entertainment industry, the statute lacks protections available in states like New York and California despite the fact that a lot of filming takes place in Georgia now.⁷⁹

However, there are still sixteen states that have little to no regulations in place for child entertainers.⁸⁰ Despite this lack of regulation for child performers, film productions have taken place in these states.⁸¹ For example, Nevada has almost no regulations in place for child performers.⁸² The Nevada statute states that children under sixteen can be employed, but it creates an exception

77. See GA. CODE ANN. § 39-2-18 (a) (2022).

Notwithstanding any other provisions of this chapter to the contrary, nothing in this chapter shall apply to any minor employed as an actor or performer in motion pictures or theatrical productions, in radio or television productions, in any other performance, concert, or entertainment, or to any minor employed in the making of phonographic records or as an advertising or photographic model, provided that the written consent of the Commissioner of Labor must be first obtained.

78. See GA. CODE ANN. § 39-2-18(b) (2022) (stating that the Commissioner of Labor in Georgia must determine four different factors before granting a permit for a child performer to work).

79. See Dockterman, *supra* note 76 (highlighting the increase in filming that is taking place in Georgia); see generally N.Y. COMP. CODES R. & REGS. tit. 12, § 186; CAL. FAM. CODE §§ 6750–6753.

80. See DEP'T OF LAB., *supra* note 23 (naming Arizona, Kansas, Kentucky, Mississippi, Montana, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, West Virginia, and Wisconsin as the states that have no laws in place that address the rights of child performers).

81. See Nick Cannata-Bowman, *The Most Famous Movie Filmed in Each State*, SHOWBIZ CHEAT SHEET (Oct. 3, 2018) (highlighting a famous movie that was filmed in each of the 50 states, showing that filming can take place in any state) [perma.cc/EYE7-JP8N].

82. See DEP'T OF LAB., *supra* note 23 (establishing that Nevada has no regulations or requirements for work permits for minors in the entertainment industry and stating the minimal discussion in state law about this issue).

for children who work as performers in the making of a movie.⁸³ While these laws are in place, Nevada has been a filming location for movies, television shows, and commercials.⁸⁴ This, along with the many differences between regulations applied by each state, results in child entertainers having less protections.⁸⁵

IV. Child Influencers

A. History and Overview

Child influencer, or “kidfluencers,” is a phrase that refers to children with a large media following on platforms such as YouTube or one of the various social media apps.⁸⁶ YouTube was started in April of 2005, with the goal of making “video sharing easy and [allowing] anyone to upload a video and share it with the world.”⁸⁷ Even that first year the site grew a considerable amount, with over 65,000 videos shared daily on the site in 2006.⁸⁸ Today, the site has grown exponentially larger, housing close to 197

83. See NEV. REV. STAT. ANN. § 609.240 (LexisNexis 2021) (“No child under the age of 16 years may be employed, permitted or suffered to work at any gainful occupation, other than employment as a performer in the production of a motion picture.”); see also NEV. REV. STAT. ANN. § 609.185 (LexisNexis 2021) (“For the purposes of this chapter, ‘motion picture’ includes a film to be shown in theater or on television, a film to be placed on a videodisc or videotape, an industrial, training or educational film and a commercial for television.”).

84. See *Nevada Productions* NEVADA FILM OFF. (creating noncomprehensive lists of various entertainment productions that have taken place in Nevada) [perma.cc/T9HU-DMAJ].

85. See DEP’T OF LAB., *supra* note 23 (highlighting the discrepancies between the laws in each state that deal with the rights of children in the entertainment industry).

86. See Vanessa Cezarita Cordeiro, “Kidfluencers” and Social Media: The Evolution of Child Exploitation in the Digital Age, HUMANIAM (Feb. 23, 2021) (establishing what child influencers are and the work that they do) [perma.cc/BV8E-MTKV].

87. JASON MILES, *YOUTUBE MARKETING POWER: HOW TO USE VIDEO TO FIND MORE PROSPECTS, LAUNCH YOUR PRODUCTS, AND REACH A MASSIVE AUDIENCE* 3 (McGraw-Hill 2014).

88. See *id.* (showing how many YouTube videos were being uploaded even a year after the video platform launched).

million users in the United States alone.⁸⁹ As the site has grown, it has begun to allow larger creators to monetize their videos.⁹⁰

The highest paid creator in 2020 was Ryan Kaji, a nine year old toy reviewer who earned 29.5 million dollars and had 12.2 billion views by the end of the year.⁹¹ The fact that a child's channel makes the most money makes more sense when examining how the majority of YouTubers' income is earned "from ad revenue generated from their YouTube videos, a number that is boosted when videos are family friendly" among other things.⁹² With this incentive to make family friendly content, and the fact that children are popular on the platform, many channels have been started in the past few years by parents to document their children.⁹³ The channels contain videos that parents take of their children as they grow, and can range from day in the life vlogs to elaborate prank videos.⁹⁴ Several family channels have amassed a large number of followers over the past few years, gaining an increase in monetary compensation for this popularity.⁹⁵ An

89. See *YouTube by the Numbers: Stats, Demographics & Fun Facts*, OMNICORE (Jan. 4, 2022), (providing statistics and facts regarding YouTube, including the number of users in different countries) [perma.cc/E74G-V5EE].

90. See *How to Make Money on YouTube*, YOUTUBE (establishing the ability for creators to earn revenue and other benefits on the site if they are eligible) [perma.cc/BGY5-SXD6].

91. See Madeline Berg & Abram Brown, *The Highest-Paid YouTube Stars of 2020*, FORBES (Dec. 18, 2020) (discussing the YouTube creators who got the most money from their channel during 2020, and explaining more about the way creators make money on the site) [perma.cc/W7WA-BSNT].

92. *Id.*

93. See Hajjaji, *supra* note 7 ("Sharenting' has now become an increasingly professionalized business in which influencer parents and kids across a host of platforms can amass millions of online followers and land lucrative sponsorships.").

94. See Earls Family Vlogs, *Pay Back!!! Prank Wars Have Begun!*, YOUTUBE (Sept. 23, 2021) (showing the family who runs the channel pulling various pranks on one another) [perma.cc/3V72-UVAK]; see also The ACE Family, *Elle Rides a Jet Ski for the First Time!!! (Only Two-Years Old)*, YOUTUBE (July 14, 2018) (capturing the family's two-year-old daughters first time riding a jet ski, along with other events that occurred around the same time for the family) [perma.cc/9FU8-A3QR].

95. See Belinda Luscombe, *The YouTube Parents Who are Turning Moments into Big Bucks*, TIME (May 18, 2017, 6:00 AM) [perma.cc/5MU8-KQDB].

example of a channel like this is the LaBrant Family, whose YouTube channel heavily features their two daughters and currently has 13.1 million subscribers.⁹⁶

B. Harm Children in the Entertainment Industry Face

Along with this influx of children being filmed and used for online content, it is important to recognize the harms these children can experience.⁹⁷ This can range from psychological issues created by the filming by their parents and the fame that can come from it, as well as the monetary harm caused by the lack of protection of the money generated by the appearance of the child in various content.⁹⁸ The ease with which content can be filmed and uploaded from anywhere in the United States means many children who are a part of monetized vlogs or posts could be in states with no regulations in place on child entertainment.⁹⁹ Further, there is no indication that the state laws that are currently in place would apply to children who are primarily “performers” on online platforms instead of traditional mediums like motion picture, television, and radio.¹⁰⁰ The harms child

Brands seeking a PG-rated YouTube outlet have flocked to family vloggers like the Mormon-raised Butlers, who now live on a huge property, complete with a studio and horses, in Idaho. YouTube metrics firms estimate that the Shaytards channel brings in anything from \$2,000 to \$38,000 every month just in ad revenue.

96. See *The LaBrant Fam*, YOUTUBE (establishing the number of subscribers and views the channel has) [perma.cc/82XM-TEYD].

97. See Hajjaji, *supra* note 7 (“The pursuit of internet fame and dollars may pose serious potential dangers to the kids who appear in popular parenting vlogs and other family social media.”).

98. See discussion *infra* Part IV.B.1; see also discussion *infra* Part IV.B.2.

99. See DEP’T OF LAB., *supra* note 23 (noting the states that lack some or all forms of protection geared towards child performers).

100. See *id.* (stating the state laws that currently exist to protect child actors, none of which seem to deal with children who are part of strictly online content); see also Hajjaji, *supra* note 7 (“[T]he U.S. lacks comprehensive legal protections explicitly geared towards children featured in their parents’ monetized social media content.”).

influencers experience must be understood in order to create protections that would actually work to solve these issues.¹⁰¹

1. Psychological Harm

Family vloggers have had numerous scandals in the past few years, ranging from rehoming adopted children to child abuse.¹⁰² However, even seemingly harmless family channels can still pose a problem for the children, who are often the focus of the YouTube videos.¹⁰³ For years child actors who become famous have had highly publicized meltdowns caused by dealing with fame at such a young age.¹⁰⁴ With the introduction of social media, many people in recent years have pointed out the harmful effects such sites can have on the mental health of individuals, including adolescents.¹⁰⁵ The growing role of children on popular YouTube channels and social media sites mixes the harms of both scenarios, putting child influencers' mental health at risk.¹⁰⁶

While the age of the child internet star is a fairly recent development, there have been various discussions over the years

101. See Hajjaji, *supra* note 7 (highlighting how parents use of social media to share images and videos of their children can harm the children).

102. See Alex Hern, *FamilyOfFive: YouTube Bans 'Pranksters' After Child Abuse Conviction*, THE GUARDIAN (July 19 2018) (articulating the history of a family channel on YouTube that caused the parents to be convicted of child neglect and for the channel to be banned by the site) [perma.cc/3Y4L-8PDY]; see also Ruth Graham, *Myka Stauffer and the Aggressively Inspirational World of "Adoption Influencers"*, SLATE (June 4, 2020, 4:48 PM) (focusing on a family YouTuber's choice to place her adopted child in a different home after using him for content for her channel) [perma.cc/WG99-YFN8].

103. See Hajjaji, *supra* note 7 (focusing on the dangers presented by YouTuber's basing their content around their children).

104. See Al Shipley, *9 Shocking Teen Star Meltdowns*, ROLLING STONE (Mar. 10, 2014), (highlighting examples of young celebrities having meltdowns in the public eye) [perma.cc/7F8M-6PEX].

105. See generally Michelle O'Reilly et al., *Is Social Media Bad for Mental Health and Wellbeing? Exploring the Perspectives of Adolescents*, 23 CLINICAL CHILD PSYCH. & PSYCHIATRY 601 (2018) (seeing what adolescents thought about the effects social media has on mental health).

106. See Hajjaji, *supra* note 7 (describing the phenomenon of "sharenting," where parents share content of their children online to gain followers and money).

about child actors and the psychological issues that they face.¹⁰⁷ Through the years, the public has watched as prominent child stars have “melt downs” after gaining a large amount of fame at such a young age.¹⁰⁸ Popular examples of this phenomena include figures like child actor Lindsay Lohan, who started her career in movies like *The Parent Trap* but then faced DUI’s, rehab, and jail among other things.¹⁰⁹ Even in cases where child actors are not publicly struggling, some reveal years later the problems they faced while working in the industry at a young age.¹¹⁰ Jennette McCurdy, a child actress who rose to fame when she starred in the Nickelodeon show *iCarly* at age 15, is a prime example of this.¹¹¹ In August 2022 she released a memoir titled *I’m Glad My Mom Died*, in which she revealed the struggles she faced growing up as a child star.¹¹² Along with relaying the abuse she endured at the hands of her mother, McCurdy also describes uncomfortable experiences with an individual who worked on her show called “The Creator.”¹¹³ This individual “encouraged [McCurdy] to drink alcohol, yelled at [her] while filming her first kiss, [gave] borderline-appropriate massages” and pitted the child stars he

107. See Olga Khazan, *Why Child Stars Melt Down: Bieber’s Character Split*, THE ATL. (Jan. 24, 2014) (discussing why many child performers who became famous when they were young experienced public melt downs as they grew up) [perma.cc/MGL8-RRPB].

108. See *id.* (“The child-star meltdown is a trope: Lindsay Lohan went from portraying a set of precocious campers in 1998 to becoming synonymous with the word ‘tantrum.’ Amanda Bynes has had her own share of psychological turmoil.”).

109. See Shipley, *supra* note 104 (noting the legal issues faced by actress Lindsay Lohan after becoming famous at a young age).

110. See Constance Grady, *With I’m Glad My Mom Died, Jennette McCurdy Lays Bare the Horrors of Child Acting*, VOX (Aug. 17, 2022) (showing the troubles Jennette McCurdy had to face during her time as a child actor) [https://perma.cc/PQ2L-B92X].

111. See *id.* (explaining how Jennette McCurdy’s acting career started at age six).

112. See *id.* (describing the contents of Jennette McCurdy’s book regarding her childhood).

113. See *id.* (highlighting the stories Jennette McCurdy wrote about a person who she worked with on *iCarly*).

worked with against each other.¹¹⁴ Once the Creator got in trouble for accusations of emotional abuse, Nickelodeon offered McCurdy \$300,000 if she would agree not to speak about her experience.¹¹⁵

Some psychologists who have examined the effects of childhood fame have stated that parental limits are key to help prevent the spinout many child actors experience.¹¹⁶ Ginger Clark, a psychologist and professor at the University of Southern California stated, “If you don’t have a really stable parental unit that’s setting limits ahead of time, then the roles get flipped easily and the child becomes the parent. They’re not ready for the responsibility. And you see kids spin out a little bit.”¹¹⁷ Another psychologist, Eileen Kennedy-Moore, pointed out that famous child stars face a large amount of public scrutiny during the time in their lives when they are meant to find themselves, making them form a more self-assured identity quickly.¹¹⁸ Yet another psychologist, Donna Rockwell, examined how “many stars feel a sudden crush of ‘isolation, mistrust, and lack of personal privacy . . . the person develops a kind of character splitting between the ‘celebrity self’ and the ‘authentic self.’”¹¹⁹

If a stable parent is a way to mitigate the problems child stars face, how can that be applied to child influencers whose work primarily takes place at home with their parents?¹²⁰ The

114. Edward Helmore, *Trauma Memoir Puts Spotlight on Mums Turning Daughters into Child Stars*, THE GUARDIAN (Aug. 21, 2022) [perma.cc/2GTD-ES67].

115. See Jon Blistein, *Jennette McCurdy Says Nickelodeon Offered \$300,000 in ‘Hush Money’ after ‘Sam and Cat’*, ROLLING STONE (Aug. 5, 2022) (“Nickelodeon is offering me three hundred thousand dollars in hush money to not talk publicly about . . . [m]y personal experience of The Creator’s abuse? This is a network with shows made for children. Shouldn’t they have some sort of moral compass?”) [perma.cc/9EJP-R6SD].

116. See Khazan, *supra* note 107 (“There aren’t that many studies of child stars . . . but psychologists who have studied the effects of young stardom say strict parental limits are key to preventing post-adolescent disasters.”).

117. *Id.*

118. See *id.* (examining how the fame that many child performers are thrust in to effects their sense of identity and ability to relate to those around them).

119. *Id.*

120. See *id.* (highlighting the importance of stable parents on ensuring famous child performers do not experience more problems as they grow up); see

popularity of YouTube and social media has led to an increase in child influencers who have garnered a large amount of fame and fortune.¹²¹ In fact, a study done by Morning Consult in 2019 found that eighty-six percent of those between the ages of thirteen and thirty-eight wanted to become social media influencers.¹²² This recent rise of internet influencers, and their extreme popularity with adolescents, has created new problems that child influencers could face.¹²³

There have been studies done regarding the psychological impact of social media on various groups of people.¹²⁴ For example, professors Mary Sherlock and Danielle L. Wagstaff analyzed the psychological impact social media, specifically Instagram, can have on young women.¹²⁵ While the study focused on young women because they “make up the majority of Instagram’s user base” and because they “make more social comparisons than men,” these findings are likely applicable to most social media users because

also Luscombe, *supra* note 95 (“With a camera and an Internet connection, any parents can put their home life on YouTube.”).

121. See Jay Caspian Kang, *The Boy King of YouTube*, N.Y. TIMES (Jan. 5, 2022), (illustrating how famous child YouTuber Ryan Kaji has become, including having YouTube channels and television shows) [perma.cc/3X7Y-2KSP].

122. See Jason Duaine Hahn, *86 Percent of Young Americans Aspire to Become a Social Media Influencer, Study Says*, PEOPLE (Nov. 5, 2019, 5:03 PM), (noting how becoming an influencer is a popular career aspiration among young people) [perma.cc/G36D-5FCS].

123. See Rachel E. Greenspan, *TikTok Is Breeding a New Batch of Child Stars. Psychologists Say What Comes Next Won’t Be Pretty*, INSIDER (July 9, 2020, 1:42 PM) (“Experts warn that these young influencers will face the typical hurdles of child fame, but with the additional complication of real-time social media surveillance by millions and an algorithmically programmed addiction to the instant gratification of a never-ending barrage of notifications.”) [perma.cc/Y6N5-5PJ6].

124. See PATTI M. VALKENBURG & JESSICA TAYLOR PITROWSKI, *PLUGGED IN: HOW MEDIA ATTRACT AND AFFECT YOUTH* 218 (2017) (“In this chapter, we present the latest scientific research on the role of social media in teens’ lives.”); *see also* Mary Sherlock & Danielle L. Wagstaff, *Exploring the Relationship Between Frequency of Instagram Use, Exposure to Idealized Images, and Psychological Well-Being in Women*, 8 PSYCH. POPULAR MEDIA IMPACT 482, 483 (2019) (examining the relationship between Instagram and the mental health of young women).

125. See Sherlock & Wagstaff, *supra* note 124, at 483 (“[T]his study explores the link between Instagram use and various measures of psychological well-being in women.”).

social comparison is not exclusive to women.¹²⁶ The study ultimately found that “excessive exposure to Instagram can be damaging to users, especially when they engage in negative social comparisons.”¹²⁷ The authors point out that exposure to the idealistic standards portrayed on Instagram could be harmful, which “may be of particular importance in adolescents, who are heavy users of social media and engage in ore social comparisons than do older adults.”¹²⁸

Other studies have focused on the relationship between adolescents and social media.¹²⁹ For instance, in 2018 professors at different schools in the United Kingdom conducted a study the effects social media can have on adolescent mental health.¹³⁰ To achieve this goal, groups of young students between eleven and eighteen and were asked questions about their understanding of mental health, their use of social media, and the relationship between social media and mental wellbeing.¹³¹ The focus groups expressed three ways they considered social media to be dangerous: “social media use directly causes stress, depression, low self-esteem and suicidal ideation;” . . . “social media exposes people to bullying and trolling;” . . . and “social media was constructed as addictive.”¹³² The study illustrates how young people can recognize the harm social media can cause to their mental health, something

126. *Id.* (citing *Mobile Messaging and Social Media*, PEW RSCH. CTR. (Aug. 17, 2015)) (citing Frederick X. Gibbons & Bram P. Buunk, *Individual Differences in Social Comparison: Development of a Scale of Social Comparison Orientation*, 76 J. PERSONALITY & SOC. PSYCH. 129 (1999)).

127. *Id.* at 489.

128. *Id.*

129. *See* VALKENBURG & PITROWSKI, *supra* note 124, at 227–37 (describing studies conducted examining the relationship between young people and social media use).

130. *See* O'Reilly, *supra* note 105, at 603 (establishing the basis for the study conducted regarding the relationship between social media and adolescent mental wellbeing).

131. *See id.* (stating the age range of the six focus groups and the types of questions they were asked for the study).

132. *Id.* at 605.

that is relevant to adolescents who spend a majority of time on these sites because of their role as influencers.¹³³

Influencers become famous primarily for their actions on YouTube and various social media sites, meaning they often spend even longer on these sites than the average person.¹³⁴ There is also an increase pressure on these influencers to maintain the content people want to see, as “[f]ame’s ephemeral nature is heightened on social media, where new videos and teens go viral every minute.”¹³⁵ Child influencers could face the pressure of fame mixed with the negative impact social media has on mental health, causing them to be even more susceptible to these harms.¹³⁶ While it is not feasible or helpful to completely regulate all internet activity for minors, there should be limits in place for how long child influencers can be filmed for monetized content.¹³⁷ Without some sort of regulation in place, adolescents are likely to spend a majority of their time working on content in order to maintain their fame and source of income.¹³⁸

133. See *id.* at 609 (“The findings demonstrated that participants felt that social media directly causes ill-mental health such as depression and suicidal ideation, was addictive and exposed people to behaviors that impacted negatively on their emotional wellbeing.”).

134. See Natalie Jarvey, *Social Media Influencers Struggle with Anxiety amid Pressure to Create Perfectly Curated Feed*, HOLLYWOOD REP. (Jan. 15, 2020, 11:00 AM) (“Smith often works with talent to help them approach their careers more like a traditional business, such as planning vacations, while Morton advises creators to take at least one full day off a week and avoid overanalyzing metrics.”) [perma.cc/WFT8-UF3J].

135. Greenspan, *supra* note 123; see also Jarvey, *supra* note 134 (providing an example of a social media influencer who took a small hiatus and how it was a big decision because her career relies on constant online activity).

136. See Khazan, *supra* note 107 (discussing how child actors often have meltdowns and what contributes to them); see also O’Reilly, *supra* note 105, at 610 (“[T]his study shows that adolescents themselves have concerns about the risks the Internet poses to mental health directly by leading to mood and anxiety disorders and indirectly through cyberbullying.”).

137. See O’Reilly, *supra* note 105, at 610 (concluding that there should be work done to determine how adolescents can use social media without negative mental health effects, as it is not true that completely quitting social media will be beneficial).

138. See Jarvey, *supra* note 134 (discussing the work influencers put into their content in order to remain relevant).

2. Financial Harm

The lack of regulation on the child entertainment industry can also cause monetary harm to the minors involved.¹³⁹ Beyond the famous case of Jackie Coogan, whose legal battle with his parents brought about the California Coogan laws, other high profile child actors have faced off against their parents over the use of their money.¹⁴⁰ Macaulay Culkin was a prominent child actor in the 1990s who rose to fame starring as Kevin McCallister in the first two *Home Alone* films.¹⁴¹ When his parents separated in 1995 Macaulay was worth about \$50 million, and his parents subsequently fought for custody of him seemingly so they could continue managing his career and finances.¹⁴² In response to this Macaulay got both his parents removed from his trust, eventually nullifying the situation.¹⁴³ Another example is Jena Malone, a child actress in works like *Contact*, who was emancipated¹⁴⁴ from her mother when she was fifteen.¹⁴⁵ Malone took this step because her mother was accused of misusing the money that she had

139. See Gilbey, *supra* note 47 (providing an example of monetary harm that has occurred in the past with the case of Jackie Coogan and his family squandering the money he made as a child performer).

140. See SAG-AFTRA, *supra* note 50 (describing the Coogan Laws in California and how they came to be).

141. See Kevin E. G. Perry, *Home Again: Macaulay Culkin Is Enjoying the Comeback He's Always Deserved*, INDEP. (Nov. 10, 2021) (discussing how Macaulay Culkin got his start in the entertainment industry during the 1990s) [perma.cc/54NG-BLCX].

142. See Susie Linfield, *Trouble in the House That Mac Built*, L.A. TIMES (Nov. 5, 1995) (“[I]n this case, it is a matter not of who will pay but of who, potentially, will profit. Brentrup and Culkin, as Macaulay’s co-managers, split a 15% commission on their son’s earnings (the remainder is put into a trust).”) [perma.cc/QSW7-GFK5].

143. See Perry, *supra* note 141 (“In the ensuing battle for control of Macaulay’s fortune, it was widely reported that the young actor ‘divorced’ his parents. In fact, he later clarified, he simply took both their names off his trust fund simultaneously.”).

144. See *Emancipate*, MERRIAM-WEBSTER (“[T]o release from parental care and responsibility and make sui juris.”) [perma.cc/JX3B-ESL6].

145. See *Actress Malone Breaks with Mother*, AP NEWS (Jan. 16, 2000) (stating that Jena Malone was able to legally emancipate herself from her mother because California law allows those aged 14 and up to seek parental emancipation) [perma.cc/X5DT-YQZZ].

earned through her acting career.¹⁴⁶ These examples of stars from the 1990s and Coogan’s struggles in the 1930s illustrates how these problems have continued to exist in the entertainment industry from its inception to the present.¹⁴⁷

Although YouTube is a different platform from Hollywood movies and television shows, there is still the ability for influencers on YouTube and social media sites to make a significant amount of money.¹⁴⁸ As stated previously, this includes influencers whose content consists of mainly their children, with many of these “family channels” relying on their videos and posts as a primary source of income.¹⁴⁹ For example, influencer Katie Stauffer was able to quit her job in 2017 because of the money her two year old twins were earning from social media posts.¹⁵⁰ The twins, toddlers Mila and Emma Stauffer, feature in short videos that show them satirically making complaints that are common for adults.¹⁵¹ The popularity of these videos lead to them attending events with famous celebrities and allowed their mother to quit her job as an

146. See *id.* (“Ms. Malone contended that her mother, Debbie Malone, ‘squandered’ her earnings through ‘excessive spending and mismanagement,’ according to court papers.”).

147. See SAG-AFTRA, *supra* note 50 (establishing this history of Jackie Coogan’s struggles with his parents that led to the creation of Coogan Funds); see also Perry, *supra* note 141 (discussing how Macaulay Culkin’s career began and the financial problems that arose during his parents’ divorce).

148. See Berg & Brown, *supra* note 91 (“Donaldson and the other highest-paid YouTubers secured an estimated \$211 million in total earnings from June 1, 2019 to June 1, 2020, a 30% jump from the previous year.”).

149. See Hajjaji, *supra* note 7 (noting that the presence of children in YouTube videos causes more views, leading to higher profits for those who monetize these videos).

150. See Katherine Rosman, *Why Isn’t Your Toddler Paying the Mortgage?*, N.Y. TIMES (Sept. 27, 2017) (“She wouldn’t detail exactly how much money the children are bringing in, but she said she was recently able to leave her position as an escrow officer after 12 years.”) [perma.cc/Y5VJ-TQNV].

151. See Sonja Haller, *Toddler Internet Sensations Mila and Emma Stauffer Nab Kris Jenner for Halloween Video*, USA TODAY (Oct. 19, 2018, 9:35 A.M.) (“With their ultra-cute toddler voices, the girls satirize common adult gripes — like not wanting to go to the gym, rude people in movie theaters and chatty strangers on airplanes.”) [perma.cc/WB7E-7NNF].

escrow officer.¹⁵² However, there are no guarantees that the children in videos like these will get this money in the future, despite the fact that often times they are a major reason the content is popular enough to become monetized.¹⁵³ While some of these content creators have stated that a portion of the money is put aside for their children to use in the future, there are currently no safeguards put in place to ensure that this is actually the case, or that this will be mandated for all parents who have children on such platforms.¹⁵⁴

C. Impact on the Entertainment Industry

To understand how the entertainment industry has changed in recent years, it is important to understand how it existed at the time the FLSA was enacted.¹⁵⁵ Since early in the creation of films in the United States, California had solidified itself as a central point for the growing industry.¹⁵⁶ For instance, in “1922 Hollywood’s share of American production stood at 84 percent, with 12 percent remaining in New York and 4 percent filming elsewhere.”¹⁵⁷ This was the case in 1938 when Congress passed the

152. See *id.* (highlighting how the popularity of the Stauffer sisters’ videos allowed them to get Hollywood offers, invitations to events with celebrities, and enough money for their mom to quit her job).

153. See Rachel Dunphy, *The Dark Side of YouTube Family Vlogging*, N.Y. MAG. (Apr. 17, 2017) (noting how a child’s channel became very popular with young kids, leading to so many viewers that her mother encouraged her to monetize the channel) [perma.cc/B39A-NKD].

154. See Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents*, HOLLYWOOD REP. (Aug. 20, 2019) (“Noting that ‘all other sources of revenue are beyond Coogan Law’s requirements,’ Ryan’s father, Shion, says that digital earnings are distributed into ‘college savings, Coogan accounts, minor accounts and trust accounts’ for Ryan and his sisters.”) [perma.cc/M5BF-C9ZD].

155. See generally THE CLASSICAL HOLLYWOOD READER (Steve Neale ed. 2012); see generally 29 U.S.C. §§ 201–219.

156. See Richard Koszarski, *Making Movies, 1915–28*, in THE CLASSICAL HOLLYWOOD READER 44, 45 (Steve Neale ed., 2012) (“Southern California was clearly recognized as the major American production center by 1915, although the generic use of the term ‘Hollywood’ to describe nearly all such activity had yet to develop.”).

157. *Id.*

FLSA, exempting children in the entertainment industry from the protections afforded to other working minors.¹⁵⁸ However, as time passed film and television production was able to be done on location in various other states.¹⁵⁹ The creation of modern technology and sites like YouTube illustrates how much the entertainment industry has changed since that time.¹⁶⁰ Beyond film production being able to take place in any state, YouTube and social media sites allow for anyone to film and upload their own content with minimal equipment in comparison to bigger productions.¹⁶¹ This means that there is a higher chance for child performers to be part of a production that takes place in a state where adequate regulations are not currently in place.¹⁶² The expanded ability to create monetized content throughout the country highlights the need for legislation that protects children in all areas of the entertainment industry.

V. Balancing Constitutional Rights of Parents

Despite the prevalent issue of child actors and influencers, there could be legitimate legal arguments against the creation of relevant federal laws.¹⁶³ One such critique might be that the proposed federal legislation would infringe on parents' rights to

158. See 29 U.S.C. § 213(c)(3) (stating that minors who work as performers are exempt from the labor laws available to other minors in the workplace).

159. See Cannata-Bowman, *supra* note 81 (noting that films have been shot and created in all fifty states, not just places like California and New York).

160. See MILES, *supra* note 87, at 3 (discussing the creation of YouTube as a site meant for people to post their own videos, and its large growth even one year after its inception).

161. See Cannata-Bowman, *supra* note 81 (establishing that film production can and has occurred in all fifty states in the United States); see also Dave Johnson, *How to Upload a Video to YouTube and Customize its settings on Desktop and Mobile* (July 29, 2019, 5:03 PM) (showing how easy it is for people to create and upload content on YouTube from both their computers and their phones) [perma.cc/84VL-PSZD].

162. See DEP'T OF LAB., *supra* note 23 (noting the states that have regulations in place for minors in the entertainment industry); see also *supra* note 80 (listing the states that lack regulations intended to protect child performers).

163. See *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (articulating the right of parents to oversee and determine the education of their children).

raise their children.¹⁶⁴ The United States Supreme Court has recognized this right in cases like *Pierce v. Society of Sisters*,¹⁶⁵ stating that the Act in question in the case “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”¹⁶⁶ This fundamental right of parents to raise their children has been reiterated in further Supreme Court cases.¹⁶⁷ However, cases like *Prince v. Massachusetts*¹⁶⁸ show how this fundamental right is not absolute and can be restricted for the state’s interest in a child’s welfare.¹⁶⁹

In *Prince*, the mother and guardian of three children allowed the children to distribute magazines while preaching on the streets.¹⁷⁰ One of the children was only nine years old, and the guardian was found to be in violation of child labor laws because the distribution of the literature was seen as work.¹⁷¹ Although the guardian’s main argument was based on religious freedom, she also asserted a “claim of parental rights as secured by the due

164. *See id.* (“[I]t is the natural duty of the parent to give his children education suitable to their station in life; and nearly all States . . . enforce this obligation by compulsory laws.”).

165. *See generally* *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925) (establishing the fundamental right of parents to raise their children by holding that legislation dealing with children’s education infringed on this parental right).

166. *Id.* at 534–35.

167. *See* *Parham v. J.R.*, 442 U.S. 584, 604 (1979) (“[W]e conclude that our precedents permit the parents to retain a substantial, if not the dominant, role in the decision . . . and that the traditional presumption that the parents act in the best interests of their child should apply.”); *see also* *Moore v. City of E. Cleveland*, 431 U.S. 494, 499–500 (1977) (stating that the government interest advanced in the ordinance in question improperly intrudes on the living arrangements of families).

168. *See generally* *Prince v. Massachusetts*, 321 U.S. 158 (1943) (holding that a parent’s right to determine how to raise their child can be restricted when a child’s well-being is put in danger).

169. *See id.* at 166 (“[T]he family itself is not beyond regulation in the public interest.”) (citing *Reynolds v. United States*, 98 U.S. 145 (1878)).

170. *See id.* at 162 (explaining the facts surrounding how the child’s guardian was found in violation of the Massachusetts child labor laws).

171. *See id.* at 159–60 (asserting the complaints against the guardian of the child for her actions regarding her allowing a child to distribute religious literature).

process clause of the [Fourteenth] Amendment.”¹⁷² However, the Supreme Court upheld the conviction of the guardian’s violation of the state child labor laws despite her constitutional defenses.¹⁷³ For the issue of parental fundamental rights, the Court stated that “the state as *parens patriae* may restrict the parent’s control by requiring school attendance, regulating or prohibiting the child’s labor and in many other ways.”¹⁷⁴ While the courts have continued to uphold this fundamental right of parents, considerations like the one in *Prince* illustrate that there are instances where a relevant state action does not infringe on a parent’s fundamental rights.¹⁷⁵

While it is true the parents of child influencers have the right to raise their children as they see fit, the act of constantly filming and uploading videos of their children for monetary gain can cause harm to the kids.¹⁷⁶ How can the actions of these parents be separated from generally documenting children’s lives in home videos and childhood pictures?¹⁷⁷ The main question here is when a parent could step over the line so as to create a government interest.¹⁷⁸ The main difference between parents who generally film or photograph their children and those discussed in this Note is the monetization available to the parents of child influencers.¹⁷⁹ Comparing this to the actions in *Prince*, the income that comes

172. *Id.* at 164.

173. *See id.* at 170 (“[T]he power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . . and the rightful boundary of its power has not been crossed in this case.”).

174. *Id.* at 166.

175. *See id.* (establishing the fact that despite the protections afforded to families, they can still be subject to regulation based on certain state interests).

176. *See* Hajjaji, *supra* note 7 (highlighting the harm that can be caused by YouTubers exploitation of their children for content).

177. *See id.* (describing how influencer parents constantly film their children at all times for content purposes).

178. *See Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (establishing the parental right to educate and raise one’s child as they see fit).

179. *See Lambert*, *supra* note 154 (“Kaji is part of a growing generation of young social media superstars who self-publish content on platforms like YouTube and Instagram, where their millions of followers generate lucrative ad revenue, brand partnerships and paid product endorsements.”).

from children filming content is a form of child labor.¹⁸⁰ If this proposed federal legislation or something similar were to be enacted, parents and children who create monetized content would be subject to federal action despite the established rights of parents.¹⁸¹

VI. Proposing Federal Legislation

Examining all of these issues created by the lack of protection offered to child influencers, it is important to find a remedy for the harms caused.¹⁸² There have been attempts made in the past to fix these problems, both on a state and federal level.¹⁸³ For instance, in 2018 there was a bill introduced in California that was meant to change the Coogan Act to include protections for child stars on YouTube and social media platforms.¹⁸⁴ While the bill ultimately passed, it was significantly altered so that it did not offer the protections that were initially envisioned.¹⁸⁵ The language

180. See *Prince v. Massachusetts*, 321 U.S. 158, 168 (1943) (“The state’s authority over children’s activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment.”).

181. See *id.* at 166 (articulating the idea that despite the rights of parents, the state has the right in some circumstances to restrict the parent or guardian’s control).

182. See Lambert, *supra* note 154 (“[N]o law outlines protections for minors earning income in social media. It’s a cause for concern since, without protections, they stand to lose millions to their own parents.”).

183. See *AB-2388 Employment: Minors*, CAL. LEGIS. INFO. (establishing that there have been attempts in California to enact legislation intended to protect child influencers) [perma.cc/X375-BJQB]; see also *Advanced Search for Legislation*, GOVTRACK (illustrating that there have been two recent introductions of federal legislation intended to apply child labor laws to child performers) [perma.cc/P7NC-KGFX].

184. See Julia Carrie Wong, *It’s Not Play if You’re Making Money’: How Instagram and YouTube Disrupted Child Labor Laws* (Apr. 24, 2019) (“At least one lawmaker has attempted to step in. In 2018, the Democratic California assembly member Kansen Chu introduced a bill that would have amended the Coogan Act to cover the ‘employment of a minor in social media advertising.’”) [perma.cc/3NA3-YXJY]; see also *AB-2388 Employment: Minors*, *supra* note 183 (showing the language of the bill as it was introduced in 2018).

185. See *AB-2388 Employment: Minors*, *supra* note 183 (highlighting the parts of the proposed legislation that were actually enacted) [perma.cc/X375-BJQB].

specifically discussing social media was removed before the bill was enacted, minimalizing the effect that was intended for child influencers.¹⁸⁶ While the bill as it exists now does provide some protection, it is not as robust as what was introduced and what is needed.¹⁸⁷ Further, this was in California, a state that already has a legal structure in place with child performers in mind.¹⁸⁸ While it is true that YouTube's headquarters are in California, it would be difficult to enforce the application of Coogan Funds to all family YouTubers, as they are located in various states throughout the country.¹⁸⁹ Ultimately, it would be more beneficial to enact federal legislation that would be explicitly applicable to all child performers and influencers regardless of what state they are from.¹⁹⁰

On the federal side, politicians have previously introduced propositions for children in the entertainment industry to be protected under federal child labor laws.¹⁹¹ In 2015 and 2017 a bill was proposed in the House of Representatives that intended to protect child performers.¹⁹² The two proposed bills are virtually identical, amending the FLSA to include language addressing

186. See *id.* (establishing that the language of the bill as initially introduced included explicit references to children in social media advertising).

187. See *id.* (stating the new protections that resulted from this introduction of legislation).

188. See DEP'T OF LAB., *supra* note 23 (illustrating laws regarding child performers that California has in place in comparison to other states).

189. See *YouTube by the Numbers: Stats, Demographics & Fun Facts*, *supra* note 89 (establishing that around 197 million people in the United States use the platform, and that the largest percentage of users are between 15 and 35 years old).

190. See DEP'T OF LAB., *supra* note 23 (highlighting the wide array of protections available to child performers in each state, which does not even begin to cover children who are influencers and not traditional "actors").

191. See *Advanced Search for Legislation*, *supra* note 183 (showing the search results for bills introduced that deal with the phrase "child performer").

192. See Child Performers Protection Act, H.R. 3383, 114th Cong. (2015) (as introduced by Rep. Meng, July 29, 2015) (establishing the text of the bill that was intended to expand child labor laws to include child performers but ultimately was not enacted); see also Child Performers Protection Act, H.R. 3691, 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (laying out the text of Representative Meng's second attempt to us federal law to protect child performers).

child performers.¹⁹³ However, the bill was ultimately not enacted into law either time it was introduced, leaving child performers in the condition they are today.¹⁹⁴ Despite the failure of this bill to pass, examining the current state of this issue shows that a federal law establishing protections for minors in the entertainment industry would be the best option.¹⁹⁵ While many states do have some sort of law in place meant to deal with these problems, these laws are not coherent between states, and there are still a number of states with no protections put in place.¹⁹⁶ Further, these state protections currently in place are not necessarily all applicable to children in less traditional forms of media, such as social media posts and YouTube videos.¹⁹⁷

First, it is important to note that this proposed legislation was intended to address child performers as normally defined.¹⁹⁸ Here, the term “child performer” is defined as “a child under the age of 18 employed or contracted as an actor or performer in a motion picture or live theatrical production, or in a radio or television production, or as a model for a fashion show, showroom, or similar production or for commercial media.”¹⁹⁹ While this is slightly different from the definition seen in the Code of Federal

193. See Child Performers Protection Act, H.R. 3383, 114th Cong. (2015) (as introduced by Rep. Meng, July 29, 2015) (laying out how FLSA can be amended to better protect children who work in the entertainment industry); see also Child Performers Protection Act, H.R. 3691, 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (illustrating how the bill was introduced again in an attempt to implement more protections for child performers).

194. See Child Performers Protection Act, H.R. 3691, 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (showing that the more recent attempt to enact this legislation was not enacted by Congress).

195. See DEP'T OF LAB., *supra* note 23 (illustrating how varied state protections for child performers are, despite the ability to create content in any state).

196. See *id.* (noting the variety of state laws enacted with child performers in mind); see also *supra* note 80 (listing the states with little to no protections currently in place).

197. See DEP'T OF LAB., *supra* note 23 (noting that the laws discussed in the list deal with child performers and not necessarily child influencers).

198. See Child Performers Protection Act, H.R. 3691 § 2(b)(2), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (defining child performers to include the roles traditionally protected by current state laws).

199. *Id.*

Regulations, this would likely still exclude children who take part in online content like YouTube videos.²⁰⁰ Therefore, in order to remedy this problem the definition of child performer would need to be expanded to include minors who perform in these other forms of media that were not conceived of when the FLSA was enacted.²⁰¹ The definition seen in this proposed legislation should be changed to include the phrase “or in the production of monetized online content.”²⁰² This would cover children in monetized content on YouTube, TikTok, Instagram, or any other similar social media site.²⁰³ In addition, this would ensure that any children performing on other online sites that may be created in the future would be protected as well.

It is also important to ensure that the definition of employer is relevant to all those who employ various types of child performers.²⁰⁴ The proposed legislation currently states that the word “‘employer’ includes any person who contracts with a child performer who is an independent contractor.”²⁰⁵ Difficulty arises here when attempting to place parents and children who film monetized online content into these meanings of employer and employee.²⁰⁶ The relationship between parent and child is more complex than one between employers and employees, so the language of the proposed legislation would need to be adjusted to in order to reflect this.²⁰⁷ Following the subsection defining employer, a new subsection should be added that states: “This includes parents or legal guardians who film, photograph, or

200. See 29 C.F.R. § 550.2 (stating the definition of child performer as applied to relevant legislation like the FLSA).

201. See Child Performers Protection Act, H.R. 3691 § 2(b)(2), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017 (showing how the proposed legislation intended to define the term child performer)).

202. See *id.* (noting the location where the new language would be added to the bill).

203. See Cordeiro, *supra* note 86 (describing the role of child influencers, how their parents often manage their accounts, and how they are often compensated).

204. See Child Performers Protection Act, H.R. 3691 § 2(b)(1), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (defining employer for the purposes of the relevant sections of the FLSA).

205. *Id.*

206. See *id.* (showing the meaning of employer in the proposed legislation).

207. See discussion *supra* Part V.

manage their children to create monetized content online.”²⁰⁸ This definition would only apply to the relevant subsection related to child performers, and the requirement that the filmed content be monetized narrows the regulation placed on the parent child relationship to include only those who could face the harms discussed earlier.²⁰⁹

In crafting language of possible federal legislation, the previously failed bill could be a useful starting point.²¹⁰ The bill begins with amending Section 13(c)(3) of the FLSA, stating that child performers are exempt from Section 12 of the Act “if employment or contracting of the child performer is in accordance” with the criteria set forth.²¹¹ These criteria focus on how long children can stay at their place of employment, correlating how long the child performer can stay with how old they are.²¹² This would allow children to remain in these types of content while setting agreed upon times for them to be away from their work.²¹³ However, the language currently in place is not immediately applicable to children who take part in online content.²¹⁴ The proposed bill states how long adolescents can stay at their “place of employment,” which would pose a problem for children who film and create their content in their own home.²¹⁵

In order to avoid confusion more language needs to be added to clarify how this legislation could be applied to those whose place

208. See Child Performers Protection Act, H.R. 3691 § 2(b)(1), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (showing where the additional language should be added in the bill).

209. See discussion *supra* Part IV.B.

210. See Child Performers Protection Act, H.R. 3691 § 2(a), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (stating how federal child labor laws could be added to in order to protect minors working in the entertainment industry).

211. *Id.*

212. See *id.* (setting forth criteria for how long children can stay at their place of employment or be contracted for depending on the age of the child).

213. See *id.* (protecting child performers by setting boundaries for the amount of time they can work).

214. See *id.* (setting forth the language currently in place in the proposed bill).

215. See *id.* (stating that the proposed legislation deals with the “place of employment” without expanding this meaning to cover those who work from home).

of employment is their home.²¹⁶ Following these rules regarding how long children of various ages can spend at work, there should be an additional point that reads “If a child performer’s place of employment is their home, they can only work on the content they are employed to create during the amount of time as related to their age stated above.”²¹⁷ This would ensure that the relevant adolescents would have a set time they can work on the content that is paid for regardless of where their place of work is.²¹⁸ It also allows them to film or create things for fun, as the goal of this legislation is not to stifle the creativity of young people. It is only focused on things created by or with children that are intended to make profit.²¹⁹ As a whole, this provision would help regulate how long child entertainers can work, ensuring that they have time away from the stress of creating content so they still have time to be children.²²⁰

The proposed legislation goes on to establish that child performers cannot be employed unless the child has a trust account established in their name.²²¹ Requirements for these trust funds are subsequently set forth, stating that “not less than [fifteen] percent of the earning of the child performer shall be deposited,” that “the child performer has not access to the funds in the account” until they reach eighteen, and “the parents or legal guardians of the child performer shall have no access to the trust account except in circumstances of financial hardship stipulated in the agreement with the financial institution providing the trust

216. See Luscombe, *supra* note 95 (“With a camera and an Internet connection, any parents can put their home life on YouTube.”).

217. See Child Performers Protection Act, H.R. 3691 § 2(a), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (showing where this language should be added for new legislation).

218. See *id.* (stating the protections intended for child performers that would be expanded for child influencers).

219. See Luscombe, *supra* note 95 (discussing the income received by child influencers like Ryan Kaji, and how this income is currently not protected by law).

220. See Jarvey, *supra* note 134 (discussing the anxiety that influencers of any age can face when creating content and trying to maintain their fame).

221. See Child Performers Protection Act, H.R. 3691 § 2(a), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (“An employer or contractor may not employ any child performer unless a trust account has been established on behalf of the child performer.”).

account” all in accordance with the Secretary’s regulations.²²² While this language is sufficient to protect the financial interests of child performers, there is more that can be done.²²³ While the Coogan Laws require parents to set aside fifteen percent of a child actor’s income into their trust fund, some parents of viral child stars have set aside more money.²²⁴ The current language says there cannot be less than fifteen percent, this minimum amount could be increased to fifty percent, providing more secure funds while not drastically moving to require all income go to the trust fund.²²⁵

While there are other sections of this proposed legislation that are important for the protection of children in the entertainment industry,²²⁶ Section two is most pertinent to address the problems that affect both traditional child performers and new age child influencers.²²⁷ This legislation has already died in Congress twice, but it was never introduced in another bill, which would have given it another shot at being enacted.²²⁸ Therefore, there is a chance for this legislation to be passed in the future despite it not receiving a

222. *Id.*

223. *See id.* (establishing guidelines parents and employers of child actors must follow in order to ensure no financial exploitation takes place).

224. *See* CAL. FAM. CODE § 6752 (Deering 2021) (laying out the requirement that fifteen percent of a child performer’s income be set aside in a trust fund set up for them); *see also* Lambert, *supra* note 154 (“[T]he parents of toy unboxer Ryan also use the 100 percent policy for his Nickelodeon series *Ryan’s Mystery Playdate* — even though the law only demands that they set aside [fifteen] percent.”).

225. *See* Child Performers Protection Act, H.R. 3691 § 2(a), 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (establishing how much of a child performer’s earnings must be set aside for the child to access when they grow up).

226. *See* Child Performers Protection Act, H.R. 3691 § 3, 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (setting forth provisions to deal with the sexual harassment of child performers).

227. *See* Child Performers Protection Act, H.R. 3691 § 2, 115th Cong. (2017) (as introduced by Rep. Meng, Sept. 6, 2017) (setting forth protections for child performers regarding how long they can work and how their finances are handled); *see also* discussion *supra* Part IV.B.

228. *See Overview: H.R. 3691 (115th)*, GOVTRACK (relaying the status of the proposed legislation and how it could have been included in other bills) [perma.cc/EGE2-NE8P].

vote previously.²²⁹ It is important that this bill, or one similar to it, is enacted in the near future to ensure that all variations of child performers are protected in all fifty states.

VII. Conclusion

As the law stands today, children who are a part of monetized online content, whether it be YouTube videos or social media posts, do not have the same protections afforded to child actors. However, child actors also lack protections that are granted more broadly to other minors who work.²³⁰ The existence of sites like YouTube illustrate how the entertainment industry has changed so much since the thirties that it no longer makes sense for child performers to be exempted from federal child labor laws.²³¹ To ensure the protection of children working in these fields, along with children in the future who may work in new forms of media, new federal legislation needs to be created. While this may be seen as infringing on the rights of parents, as much of the content the legislation is intended to regulate is done in the privacy of the home, it is important to put the safety of the children at the forefront of the conversation. As more children are used in content every day, these protections need to come sooner rather than later.

229. *See id.* (noting that the bill did not receive any votes when it was introduced in Congress).

230. *See* 29 U.S.C. § 213(c)(3) (exempting child performers from the child labor laws established in other parts of the law).

231. *See id.* (stating that children in the entertainment industry are exempt from the child labor protections in the FLSA).