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SB-764 Minors: online platforms. (2023-2024)

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Senate Bill No. 764

CHAPTER 611

An act to add Part 2.5 (commencing with Section 6650) to Division 11 of the Family Code, relating to minors.

[Approved by Governor September 26, 2024. Filed with Secretary of State September 26, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 764, Padilla. Minors: online platforms.

Existing law regulates certain contracts for artistic employment between an unemancipated minor and third parties, including employment as an actor, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or sports participant. Existing law provides for the establishment of a trust for the purpose of preserving for the benefit of the minor 15% of the minor's gross earnings.

This bill would require a vlogger, as defined, to compensate a minor under 18 years of age if the minor is engaged in the work of vlogging, as specified. The bill would require the vlogger to set aside gross earnings on the content in a trust account to be preserved for the benefit of the minor, as specified. The bill would also require the vlogger to prepare a written statement, under penalty of perjury, that includes specified information relating to the trust account. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

This bill would require the vlogger to maintain records, including, among others, the number of vlogs that generated compensation and the amount deposited into the trust account, and to provide them to the minor upon request. The bill would authorize the minor to enforce these provisions in court.

The bill would require that these provisions do not apply to a contract for vlogging services between a minor and their parent or guardian only if a court approves the contract, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 2.5 (commencing with Section 6650) is added to Division 11 of the Family Code, to read:

PART 2.5. ONLINE PLATFORMS

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

- (a) "Age of majority" means 18 years of age or older.
- (b) "Content" has the same meaning as defined in subdivision (b) of 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.
- (d) "Minor" means an individual who is under 18 years of age.
- (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 month for which a parent, legal guardian, or family must set aside compensation for a minor pursuant to subdivision (a) of Section 6651.
- (g) "Vlog" means content shared on an online platform in exchange for compensation.
- (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.
- (i) "Vlogging" means the act of sharing content on an online platform in exchange for compensation.

6651. A minor is considered engaged in the work of vlogging when the following are met at any time during a given month:

- (a) (1) At least 30 percent of the vlogger's compensated video content or the vlogger's compensated image content includes 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 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 one thousand two hundred fifty dollars (\$1,250) in the month.

6652. All vloggers whose content features a minor 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:

- (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 each reporting period.
- (c) The total number of minutes of the vlogs that the vlogger received compensation for during 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 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) multiplied by .65.

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

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 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.

6654. If a vlogger knowingly violates this part or should have known they were in violation of this part, a minor satisfying the criteria described in subdivision (a) of Section 6651 may commence an action to enforce the provisions of this part. The court

may award, to a minor who prevails in any action brought in accordance with this part, any of the following damages:

- (a) Actual damages.
- (b) Punitive damages.
- (c) Cost of the action, including attorney's fees and litigation costs.

6655. (a) This part does not affect a right or remedy available under any other law of the state.

(b) This part does not have any effect on a minor who produces their own content.

6656. This part shall not apply to a contract for vlogging services between a minor and their parent or guardian only if a court approves the contract pursuant to subdivision (a) of Section 6751. In determining whether to approve such a contract, the court shall consider whether the terms of the contract are at least as beneficial to the minor as the compensation the minor would otherwise receive under this part.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.