

# Family Time Is Money: Modernizing Iowa’s Child Labor Laws

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*ABSTRACT: In recent years, actions taken by the executive and legislative branches of Iowa’s government have reinvigorated the conversation around Iowa’s child labor regulations because these branches have continued to loosen the state’s labor laws. Yet, the legislature has acknowledged the need to modernize the Iowa Code in the face of remote work and a changing labor landscape. This Note argues that sections of Iowa’s child labor laws are outdated and ambiguous. The past decade has seen a sharp rise in social media advertising, and children—either of their own volition or of their parents’—are engaging in this new market. Therefore, this Note proposes solutions to modernize Iowa’s child labor regulations by reducing ambiguities and preparing for a novel child labor landscape.*

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## INTRODUCTION

This Note argues that Iowa’s current child labor laws, housed in Iowa Code chapter 92, are outdated, ambiguous, and must be amended to reflect the modern landscape of child labor in the state. Although the Iowa Legislature has changed the state’s child labor laws in recent years, these changes have left child laborers with less protections. The existing laws contain ambiguities that create questions over what work activities are prohibited and which are permitted. The newest laws passed by the Iowa Legislature and the Governor even go so far as to violate federal law,<sup>1</sup> creating further ambiguities as to what the child labor laws of Iowa actually are. Likewise, the existing laws do not cover the growing market of social media advertising. However, this is not an issue unique to Iowa; even states with far greater entertainment job regulations fail to capture this new market in their laws. Meanwhile, the federal government has historically refused to regulate these entertainment jobs. Although most states’ child labor laws are ill-equipped for the modern issue of children on social media, Iowa’s agrarian history has left it especially unprepared for the coming deluge of children using the internet for income. This Note proposes a fourfold solution to these issues: Iowa lawmakers should amend lists of prohibited and permitted work activities to be nonexhaustive; redefine the term “prohibit,” as used in chapter 92; reintroduce a work permit system directed at children working in social media; and mandate Coogan accounts for children engaging in social media advertising.

### I. THE HISTORY OF CHILD LABOR

This Part covers the historical treatment and station of children in society, the history of child labor in the State of Iowa, the history of federal child labor laws and their effect in Iowa, and the changing face of labor in the

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1. Robin Opsahl, *Iowa Child Labor Law Conflicts with National Restrictions on Dangerous Workplaces, Feds Say*, DES MOINES REG. (Sept. 2, 2023, 6:16 AM), <https://www.desmoinesregister.com/story/news/politics/2023/09/02/iowa-child-labor-law-conflicts-with-national-restriction-s-feds-say/70742859007> [<https://perma.cc/5W4K-87DB>].

twenty-first century. This background is integral to understanding the motivations behind regulating child labor, the arguments against it, and Iowa's history regulating child labor. It also serves as a baseline for refuting common arguments against regulating child labor, expanded further in the subsequent Parts below, and serves to elucidate the deficiencies, and their causes, in Iowa's current child labor laws.

A. "CHILDREN SHOULD BE SEEN AND NOT HEARD"

Throughout history, children have been treated as second-class citizens. In ancient history, children could be considered more akin to property.<sup>2</sup> The perceived duties that children owe automatically to their parents appear throughout cultures across history. These ideas are not restricted to ancient history. Indeed, the title of this Section—"Children Should Be Seen and Not Heard"—is a proverb of the English language, dating back to at least the fifteenth century in reference to the proper place of young women in society,<sup>3</sup> promoting the idea that children should be quiet in the company of adults. All together, these concepts demonstrate the limited agency of children and their subservience to those who have reached the age of majority.

These cultural views toward children have also been expressed through law. For example, in the case of *Tinker v. Des Moines Independent Community School District*, arising out of violations of free speech in Iowa public schools, the U.S. Supreme Court held that children and adults are equally protected by the First Amendment.<sup>4</sup> However, the Supreme Court changed its stance in *Bethel School District No. 403 v. Fraser*, holding that children in public schools do not automatically have coextensive First Amendment rights with adults.<sup>5</sup> This snapshot of lasting Supreme Court jurisprudence provides a baseline for understanding how the law reinforces the position of children in society.

2. An example from history serves to illustrate this point. According to the third-century historian Eusebius, writing about societies more ancient than those contemporary with his time, "[i]t was a custom of the ancients in great crises of danger for the rulers of a city or nation, in order to avert the common ruin, to give up the most beloved of their children for sacrifice. . . ." EUSEBIUS, 1 PREPARATION FOR THE GOSPEL 45 (Edwin Hamilton Gifford trans., Clarendon Press 1903). The first-century historian Plutarch, among others, directly cites to the ancient Carthaginians as an example of this practice, writing that "with full knowledge and understanding [the Carthaginians] offered up their own children, and those who had no children would buy little ones from poor people and cut their throats as if they were so many lambs or young birds; meanwhile the mother stood by without a tear or moan." PLUTARCH, *Superstition*, in MORALIA 451, 493 (Frank Cole Babbitt trans., Harvard Univ. Press 1928). The sale of young children for sacrifice further elucidates how children have historically been treated as property by their parents. *Id.*

3. *Children Should Be Seen and Not Heard*, OXFORD DICTIONARY OF PROVERBS 149 (Jennifer Speake ed., 6th ed. 2015).

4. Justice Potter Stewart characterized the majority decision as "assum[ing] that . . . the First Amendment rights of children are co-extensive with those of adults." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 515 (1969) (Stewart, J., concurring).

5. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682–84 (1986).

However, the judicial branch is by no means the largest source of laws affecting children. Rather, in their day-to-day lives, children are more likely to be impacted by child labor law, which is a creature of statute at both the state and federal levels.

B. *THE HISTORY OF CHILD LABOR IN IOWA*

This Section seeks to establish how the State of Iowa has regulated child labor to protect against exploitation. This Section analyzes the history of—and fight for—Iowa’s child labor laws. First, this Section explores the tangential beginnings of Iowa’s child labor laws circa 1855 before summarizing its first major set of child labor laws passed in 1906. This Section concludes by explaining the lasting problems that persist from these origins.

Despite Iowa achieving statehood in 1846,<sup>6</sup> the Iowa Legislature did not pass any child labor regulations until 1874.<sup>7</sup> This is not to say that there were no laws concerning child laborers before 1874; by 1855, a provision in the Iowa Code had altered the common law rule that a parent could “sue for, and receive the money due for, [their child’s] services.”<sup>8</sup> The new code provision established “that when [a] minor has made a contract for [their] personal services, and received payment therefor . . . the parent shall not recover the same from the person so employing the said minor.”<sup>9</sup> This code provision can now in Iowa Code section 599.4.<sup>10</sup> The legislature perhaps codified this law to express the right of child laborers to be paid for their work—or, rather, the right of businesses to not pay the same paycheck twice. The right to be paid, however, is not exactly the type of regulation that was affecting the safety of

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6. *Iowa 175th Anniversary of Statehood (1846): December 28, 2021*, U.S. CENSUS BUREAU (Dec. 28, 2021), <https://www.census.gov/newsroom/stories/iowa-admission-anniversary.html> [<https://perma.cc/VNM4-6LHG>].

7. EZEKIEL HENRY DOWNEY, HISTORY OF LABOR LEGISLATION IN IOWA 111 (Benjamin F. Shambaugh ed., 1910) [hereinafter DOWNEY, HISTORY OF LABOR LEGISLATION]. Dr. Downey’s writing on the history of child labor in Iowa was simultaneously informative and persuasive. In life, Dr. Downey was an economist and was regarded by his contemporaries as an expert in labor regulation and workers’ compensation due to his experience with the Wisconsin Industrial Committee, the Insurance Department of Pennsylvania, and other organizations. Richard T. Ely, *Introduction to EZEKIEL HENRY DOWNEY, WORKMEN’S COMPENSATION* xvii, xxiii–iv (Richard T. Ely ed., 1924). Dr. Downey received his bachelor’s and master’s degrees from the University of Iowa and was an Iowa native, born in Selma, Iowa, on December 27, 1879, one day before the thirty-third anniversary of Iowa’s statehood. *Id.* at xxiii. In this author’s opinion, Dr. Downey’s strong stance on protecting Iowan children, especially in the labor context, likely arose from those experiences.

8. *Everett v. Sherfey*, 1 Clarke 356, 361 (Iowa 1855).

9. *Id.*

10. See IOWA CODE § 599.4 (2023) (“Where a contract for the personal services of a minor has been made with the minor alone, and the services are afterwards performed, payment therefor made to the minor, in accordance with the terms of the contract, is a full satisfaction therefor, and the parent or guardian cannot recover a second time.”).

child laborers. The first safety-related regulations of children's work activities did not appear until 1874.

The child labor regulation of 1874 served a single purpose: to prohibit children under the age of ten from working in mines.<sup>11</sup> By 1906, the age requirement for mining had been raised to fourteen years of age.<sup>12</sup> Amendments to the Iowa Code have raised the age requirement further to exclude anyone under eighteen years of age from mining.<sup>13</sup> Regulations for minors operating factory machinery appeared in 1902,<sup>14</sup> which still have analogues in the Iowa Code today.<sup>15</sup> The Iowa Legislature passed no other direct regulations of child labor until 1906, when the state's first comprehensive system of child labor regulations became law.<sup>16</sup> The legislature had previously entertained, and killed, other child labor regulations: once in 1886, twice in 1890, once in 1902, and once in 1904.<sup>17</sup>

With the Child Labor Act of 1906, minors under fourteen years of age were prohibited from working in shops, slaughterhouses, and other assorted places of business; male minors under sixteen years of age were prohibited from working wherever "the health of such person[s] may be injured, or [their] morals depraved"; and female minors under sixteen years of age were prohibited from working wherever constant standing was a requirement of the job.<sup>18</sup> The Iowa House of Representatives heavily altered the bill, with one of the largest changes being the excision of the prohibition of those under the age of eighteen from working in jobs that were "dangerous to life or limb."<sup>19</sup> However, the Child Labor Act of 1906 was revolutionary for the state by establishing wide-sweeping regulations, rather than attacking a singular area of work, as the previous two regulations had done in 1874 and 1902.<sup>20</sup> Iowa's child labor laws are now represented by Iowa Code chapter 92 and Iowa Administrative Code chapter 875-32.<sup>21</sup>

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11. DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 111.

12. *Id.* at 112.

13. S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE § 92.8(7)). Curiously, although section 92.8 prohibits anyone under the age of eighteen from "mining," section 92.6 redundantly prohibits minors fourteen and fifteen years of age from working in "[a]ny mining work activity." *Id.* (to be codified at IOWA CODE § 92.6(1)(b)).

14. DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 116.

15. *See* IOWA CODE §§ 92.6(1)(f), 92.8(6) (2023).

16. DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 136.

17. *See id.* at 112-13, 122-23, 130-31.

18. *See id.* at 137.

19. *See id.* at 139-41. It is not hard for this author to imagine why this provision was excised from the bill before it became a law. This author knows family friends who were permanently maimed, including lost limbs, while working on their families' farms as children. This provision may have spelled the end for Iowan children working on farms.

20. *See id.* at 120-34.

21. *See generally* IOWA CODE ch. 92 (2023); IOWA ADMIN. CODE r. 875-32 (2023).

The sixty-year journey from statehood to the Child Labor Act of 1906 is representative of Iowa's conflicting relationship with child labor. In the years leading up to the Child Labor Act, proponents cited to two reasons for regulating child labor: (1) child labor interferes with schooling; and (2) child labor is injurious to the child, "stunt[ing] the bodily growth, dwarf[ing] the mind by undue confinement of interests, and depriv[ing] the morals by improper associations."<sup>22</sup> On the first reason, Iowa did not have compulsory education laws until 1902.<sup>23</sup> Even after the establishment of compulsory education, only the most populous cities of the state strictly adhered to it, leaving the rural majority of the state without school attendance requirements.<sup>24</sup> On the second reason, members of the legislature were concerned that Iowa was falling behind other states in regulating child labor, which could result in a physically and emotionally damaged future generation.<sup>25</sup> Both of these reasons are traced back to the concept of raising a morally upright and physically sound next generation of Iowans.<sup>26</sup>

Opponents to child labor regulations objected for five reasons: (1) work keeps children from engaging in illicit activities associated with "idleness"; (2) the previous generation worked as children without regulations, so future generations should, too; (3) regulations would prevent children from working on the family farm; (4) regulations on child labor would encourage various industries to leave the state in favor of other states without regulations; and (5) widowed mothers depend upon their male children to be breadwinners for the family.<sup>27</sup> Each of these reasons will be addressed later in this Note through the lens of children working on social media. These arguments proved effective for the first sixty years of Iowa's statehood, but opponents

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22. DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 110.

23. *Id.* at 117.

24. *See id.* at 119–21.

25. *See id.* at 112–13. Dr. Downey had personally witnessed the working conditions of children in the state. *See id.* at 142. Dr. Downey's experiences convinced him of the continuing need for greater regulations beyond the Child Labor Act of 1906, as one specific admonition elucidates:

If any one doubt the necessity of further restricting child labor in Iowa, let him take his stand some morning shortly before seven o'clock at the corner of Fifth and Mulberry streets in the city of Muscatine. Here for half an hour the streams of factory hands converge from four sides and are swallowed up in the neighboring button mills. Among them come scores of grammar school children, carrying their dinner pails, but without the satchel and shining morning face. For many of these children have been three or four years in the button factories and their pale faces, slouching gait, and under-developed bodies, tell all too sadly the story of deterioration. That we allow these boys and girls, everyone of whom ought to be in school, to toil ten mortal hours in the dust-and-germ-laden air of a finishing or grinding room, feeding tireless machines, shortening their lives and impairing the vitality of a future generation, is a reproach to our Commonwealth.

*Id.* at 146–47.

26. *See id.* at 110.

27. *See id.* at 131–35 (discussing the arguments put forward against child labor regulations).

eventually compromised with proponents of child labor regulations, resulting in the Child Labor Act of 1906.

As one commentator observed in 1910, “Iowa has been slower to move in the matter of [child labor] legislation than many of the other States, for the need of it has been felt less keenly.”<sup>28</sup> Even when the Child Labor Act of 1906 passed, it was not without its compromises and blind spots.<sup>29</sup> Criticisms of the Child Labor Act included the difficulty of its enforcement due to lenient age verification systems, the number of exceptions and omissions of various, dangerous jobs, and the excessive number of permitted jobs for fourteen-year-olds.<sup>30</sup>

The growing call for child labor laws in the early 1900s stemmed from the changing face of Iowa and its industries, such as the growing mining and factory industries in the state. However, the perception of Iowa as a largely agrarian society also bolstered opponents to child labor legislation because, in their minds, children working on family farms did not require regulation.<sup>31</sup> Indeed, in 1905, 40.7 percent of Iowans were “employed upon the farm,” and “one-fifth of [the] population liv[ed] in towns of eight thousand inhabitants or above.”<sup>32</sup> The current statistics do not support the same conclusion.

In 2017, there were 216,704 farm producers and workers in Iowa.<sup>33</sup> Therefore, in light of the 3,118,102 people that lived in the state in 2017,<sup>34</sup> farmers made up only 6.95 percent of the population. In 2020, 63.2 percent of Iowa’s population lived in an urban area.<sup>35</sup> Agriculture, forestry, fishing, and hunting collectively made up only 7.25 percent of the state’s 179.5 billion dollars in gross domestic product in 2022.<sup>36</sup> Mining, the first and one of the most heavily regulated work activities for child laborers in the state,<sup>37</sup>

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28. *Id.* at 111.

29. *See id.* at 139–41 (describing the compromises and omissions involved in passing the Child Labor Act of 1906).

30. *Id.* at 143–46.

31. *Id.* at 111.

32. *Id.*

33. William Edwards, *New Census of Agriculture Reveals Much About Iowa Farms*, IOWA STATE UNIV. EXTENSION & OUTREACH: AG DECISION MAKER (Sept. 2019), <https://www.extension.iastate.edu/agdm/articles/edwards/EdwSept19.html> [<https://perma.cc/G27H-NYSW>]. This statistic is generous because it includes those who work on farms part-time as farm workers.

34. *Population Count Data for Iowa*, OPEN DATA NETWORK, <https://www.opendatane트워크.com/entity/0400000US19/Iowa/demographics.population.count?year=2017> [<https://perma.cc/N7JN-ARSM>].

35. *Urban and Rural*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/2KXH-4FJ6>] (click “State-level 2020 and 2010 Census Urban and Rural Information for the U.S., Puerto Rico, and Island Areas sorted by state FIPS code”).

36. *See Iowa - State Economic Profile*, IBISWORLD, <https://www.ibisworld.com/united-states/economic-profiles/iowa/> [<https://perma.cc/2R27-MK8D>].

37. *See supra* notes 11–13 and accompanying text.

occupied 0.27 percent of the state's gross domestic product in 2022.<sup>38</sup> By contrast, arts, entertainment, and recreation—a category without substantial regulation in Iowa Code chapter 92, as discussed later in this Note<sup>39</sup>—occupied 0.60 percent of Iowa's gross domestic product in 2022.<sup>40</sup> The broad category of manufacturing occupied the largest portion of Iowa's gross domestic product in 2022—approximately eighteen percent.<sup>41</sup>

Based on these statistics, it is obvious that the face of Iowa has changed drastically since the Child Labor Act was drafted. To be certain, Iowa's child labor laws have not been stagnant since the Child Labor Act of 1906. Iowa Code chapter 92 addresses some of the criticisms of the Child Labor Act raised by proponents of child labor regulation, such as by addressing various work activities omitted from the Child Labor Act<sup>42</sup> and by regulating the labor of those between the ages of sixteen and eighteen.<sup>43</sup> Nevertheless, some problems have persisted for the last 118 years, and new problems have sprung up during that time. In addition, the original objections made against child labor regulations have also persisted and remain relevant. These issues will be analyzed in this Note.<sup>44</sup>

### C. THE HISTORY OF FEDERAL CHILD LABOR LAW

In addition to state law, child labor in Iowa is also regulated by federal law. Federal child labor laws encountered their own hurdles at the turn of the twentieth century. The Keating–Owen Child Labor Act was enacted in 1916, “limit[ing] the working hours of children and forb[idding] the interstate sale of goods produced by child labor.”<sup>45</sup> However, just two years later, the Act was struck down as unconstitutional by the U.S. Supreme Court in a 5–4 decision.<sup>46</sup> The Court held that the Act was an overreach of Congress's power to regulate interstate commerce, bestowed by the Federal Constitution,<sup>47</sup> and “exert[ed] a power as to a purely local matter to which the federal authority does not extend.”<sup>48</sup> Trying again, Congress passed the 1919 Child Labor Tax

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38. See *Iowa - State Economic Profile*, *supra* note 36 (showing the mining sector contributed \$440,815,612 to the state's total \$160,744,966,054 GDP).

39. See *infra* Section II.C.

40. See *Iowa - State Economic Profile*, *supra* note 36 (showing the arts, entertainment, and recreation sector contributed \$967,712,707 to the state's total \$160,744,966,054 GDP).

41. See *id.*

42. See generally IOWA CODE ch. 92 (2023) (prohibiting various work activities for minors not addressed in the Child Labor Act of 1906).

43. See IOWA CODE § 92.8 (2023).

44. See *infra* Section IV.A.

45. *Keating-Owen Child Labor Act (1916)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-ndocuments/keating-owen-child-labor-act> [<https://perma.cc/PGL9-782P>].

46. See generally *Hammer v. Dagenhart*, 247 U.S. 251 (1918) (holding the Keating–Owen Child Labor Act unconstitutional).

47. See U.S. CONST. art. I, § 8, cl. 3.

48. *Hammer*, 247 U.S. at 276.



Law, seeking to discourage child labor through Congress's taxing power.<sup>49</sup> Like the Keating–Owen Child Labor Act, the Child Labor Tax Law was found unconstitutional by the U.S. Supreme Court just three years after the law's passage.<sup>50</sup>

In response to these two Supreme Court decisions, Congress proposed a new constitutional amendment—the Child Labor Amendment.<sup>51</sup> The Child Labor Amendment “was submitted to the States [for ratification] . . . in June 1924.”<sup>52</sup> The Amendment would have given Congress “the power to limit, regulate, and prohibit the labor of persons under eighteen years of age.”<sup>53</sup> Opponents to the Amendment claimed it would infringe the traditional right of the states to regulate child labor, even going so far as to label the Child Labor Amendment “a communist-inspired plot to subvert the Constitution.”<sup>54</sup> Presbyterian preacher J. Gresham Machen, speaking before a group of ministers in 1933, rhetorically asked, “[w]ill the so-called ‘Child Labor Amendment’ and other similar measures be adopted, to the destruction of all the decencies and privacies of the home?”<sup>55</sup> Clearly, an outspoken contingent of the public opposed the Child Labor Amendment. This fact is reflected by the failed ratification of the Amendment.<sup>56</sup> The Iowa House of Representatives indefinitely postponed the ratification of the Amendment on March 11, 1925.<sup>57</sup> However, Iowa eventually voted for ratification of the Child Labor Amendment in 1933.<sup>58</sup> Because the Amendment was not ratified by the requisite three-fourths of states, it failed to be amended to the Constitution.<sup>59</sup>

The opportunity for federal child labor laws to be passed and held constitutional did not arise until 1937, with the so-called “switch in time that saved nine.” This phrase refers to the sudden switch in judicial philosophy of Justice Owen Roberts, who had previously opposed legislation that was part of

49. *Keating-Owen Child Labor Act (1916)*, *supra* note 45.

50. *See generally* Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922) (holding the Child Labor Tax Law unconstitutional).

51. *Keating-Owen Child Labor Act (1916)*, *supra* note 45.

52. CONG. RSCH. SERV., LIBR. OF CONG., THE CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION, CENTENNIAL EDITION, S. DOC. NO. 112-9, at 50 (2d Sess. 2013).

53. *Id.*

54. *Keating-Owen Child Labor Act (1916)*, *supra* note 45.

55. J. Gresham Machen, Mountains and Why We Love Them (Nov. 27, 1933), *in* CHRISTIANITY TODAY (Aug. 1934), <https://opc.org/machen/mountains.html> [<https://perma.cc/7T3M-JKX5>].

56. *See* Jessie Kratz, *Unratified Amendments: Regulating Child Labor*, NAT'L ARCHIVES (Mar. 24, 2020), <https://prologue.blogs.archives.gov/2020/03/24/unratified-amendments-regulating-child-labor> [<https://perma.cc/X6BA-CYC8>].

57. H.R. DOC. NO. 69-250, at 2 (1st Sess. 1926).

58. CQ RESEARCHER, THE CHILD LABOR AMENDMENT, 1924-1934, at 2 (1934), <https://cpress.sagepub.com/cqresearcher/report/child-labor-amendment-19241934-cqresrre1934030300> (on file with the *Iowa Law Review*).

59. *See* U.S. CONST. art. V.

President Franklin Delano Roosevelt's New Deal, in 1937.<sup>60</sup> This switch is ultimately what would embolden Congress to attempt once more at establishing federal child labor laws. Tradition holds, and empirical evidence supports, that Justice Roberts's decision "to uphold Washington's minimum wage law for women" in *West Coast Hotel v. Parrish* was motivated by threats of President Roosevelt to pack the Court—appointing new Justices that would uphold his New Deal legislation.<sup>61</sup> With Justice Roberts's shift toward supporting New Deal legislation, Congress was emboldened to retry the constitutionality of federal child labor laws, resulting in the passage of the Fair Labor Standards Act of 1938 ("FLSA").<sup>62</sup> Following the standard set by *West Coast Hotel*, the Supreme Court upheld the FLSA in *United States v. Darby Lumber Co.*<sup>63</sup> As a result of the Supreme Court holding the FLSA to be constitutional, the need for the Child Labor Amendment disappeared.<sup>64</sup>

#### D. THE GAPS FILLED AND THE GAPS THAT REMAINED

Although the FLSA withstood judicial review, the exceptions provided by the Act left holes in child labor laws nationwide. The consequences for children that fall within these legal gaps are that these laborers are left without any protections—including wage requirements, work hour limitations, and recordkeeping requirements. This Section overviews three such gaps in Iowa and federal child labor law.

First, chapter 92 provides an exception for children "working in any occupation or business operated by the child's parents."<sup>65</sup> The FLSA also has a parent-employer exception, which allows:

[A] parent [to] employ [their] own child . . . under the age of 16 years in any occupation other than the following: (a) Manufacturing; (b) mining; [or] (c) an occupation found by the Secretary to be particularly hazardous or detrimental to health or well-being for children between the ages of 16 and 18 years.<sup>66</sup>

Therefore, no state or federal protections apply to Iowan children who work for their parents in any field outside of manufacturing or mining.

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60. Daniel E. Ho & Kevin M. Quinn, *Did a Switch in Time Save Nine?*, 2 J. LEGAL ANALYSIS 69, 70 (2010).

61. *Id.* at 70, 102–03 (citing *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937)).

62. See Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, MONTHLY LAB. REV., June 1978, at 22, 24 ("After the 'switch in time,' . . . [President Roosevelt] asked Frances Perkins, 'What happened to that nice unconstitutional bill [the FLSA] you had tucked away?'").

63. See generally *United States v. Darby*, 312 U.S. 100 (1941) (upholding the constitutionality of the Fair Labor Standards Act).

64. JOHN R. VILE, ENCYCLOPEDIA OF CONSTITUTIONAL AMENDMENTS, PROPOSED AMENDMENTS, AND AMENDING ISSUES, 1789-2002, at 63 (2003).

65. IOWA CODE § 92.17(3) (2023).

66. 29 C.F.R. § 570.126 (2022).

Second, the FLSA's child labor provisions do not apply to children "engaged in the delivery of newspapers to the consumer."<sup>67</sup> Until July 1, 2023, Iowa Code chapter 92 regulated "street occupations," specifically naming "the distribution or sale of newspapers" as a street occupation.<sup>68</sup> Chapter 92 prohibited children under the age of ten from working street occupations,<sup>69</sup> required children over the age of ten but under the age of sixteen to have a work permit to engage in a street occupation, and specified the hours in the day that such a child could have engaged in a street occupation.<sup>70</sup>

Any Iowan who knows the name Johnny Gosch would be unsurprised that chapter 92 partially filled in the paperboy gap left by the FLSA. "Johnny Gosch was a 12-year-old Des Moines Register paperboy who" disappeared after leaving for his paper route around six o'clock in the morning on September 5, 1982.<sup>71</sup> Johnny Gosch's disappearance "ignited a panic over childhood safety in the United States. The America [sic] ethos of letting preteens roam freely through neighborhood streets on foot or on bicycles faded."<sup>72</sup> Yet, ironically, even if the provisions regulating street occupations in chapter 92 applied on the day of Johnny Gosch's disappearance, assuming he had the proper work permit, the hours-of-work exception in section 92.2(1)(b) would mean that—until the law was changed in 2023—Johnny Gosch would have legally been allowed to deliver newspapers alone at six o'clock in the morning, the time when he disappeared.<sup>73</sup>

Third, the FLSA exempted from its child labor provisions "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions."<sup>74</sup> Part of Congress's reasoning for excluding actors and performers from the FLSA was that "[t]he children who are employed as actors possess a distinct talent . . . and their employment is not labor in the sense of the word as applied to unfortunate youngsters, who . . . are obliged to seek employment in some workshop."<sup>75</sup> Congress also noted that "[t]he revenue obtained by the United States

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67. 29 U.S.C. § 213(d) (2018).

68. IOWA CODE § 92.1(1) (2023).

69. *Id.*

70. *Id.* § 92.2(1).

71. *What to Know About Johnny Gosch's Disappearance and Unsolved Case 40 Years Later*, DES MOINES REG. (Sept. 1, 2022, 6:32 AM), <https://www.desmoinesregister.com/in-depth/news/2022/08/31/johnny-gosch-disappearance-west-des-moines-boy-40-year-update-what-to-know-case-noreen-gosch/10153238002> [<https://perma.cc/4GD4-4BSM>].

72. *Id.*

73. Section 92.2(1)(b) allowed children between the ages of ten and sixteen to engage in street occupations starting at four o'clock in the morning. See IOWA CODE § 92.2(1)(b) (2023). Effective July 1, 2023, no minor under the age of fourteen may participate in any work activity, see S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE § 92.3), unless one of the exceptions in section 92.17 applies. See IOWA CODE § 92.17 (2023).

74. 29 U.S.C. § 213(c)(3).

75. 83 CONG. REC. 7441 (1938).

Government from the motion-picture industry is one worthy of . . . most serious consideration.”<sup>76</sup> Congress reasoned that the actor/performer exception would not have a wide-sweeping effect because, at that time, “[t]here [were] hardly more than 10 [child actors] employed at one time.”<sup>77</sup> As such, the FLSA left the regulation of child performers to the states.

Some states, Iowa not included, have introduced laws that are meant to fill in the gaps for child performers that the FLSA left. A hallmark of such states’ child labor laws is Coogan accounts, blocked trust accounts that require employers of children to withhold at least fifteen percent of a child employee’s gross earnings and deposit that amount into a trust.<sup>78</sup> These accounts have been adopted by a multitude of states across the country, including states not normally associated with child entertainers.<sup>79</sup> These accounts usually apply to child employees who contract “to render artistic or creative services, either directly or through a third party.”<sup>80</sup> Until “the beneficiary of the trust attains the age of 18 years . . . no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the . . . court.”<sup>81</sup>

By contrast, Iowa Code chapter 92 is silent to most entertainment jobs for children. Chapter 92 does, however, allow for and regulate modeling for minors under the age of sixteen.<sup>82</sup> The lack of protections for child entertainers, in both the FLSA and state statutes, is becoming a nationwide issue with the growth of social media.<sup>83</sup>

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76. *Id.*

77. *Id.* at 7442.

78. *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/XA66-HA7E>]. The unofficial name, Coogan account, is derived from the name of actor Jackie Coogan, who played Uncle Fester in *The Addams Family* but also had an earlier career as a child actor. *Id.* Upon reaching the age of majority, Coogan discovered that “he was left with none of the earnings he had work [sic] so hard for as a child. Under California law at the time, the earnings of the minor belonged solely to the parent.” *Id.* Coogan’s “terrible situation” inspired the first iteration of the eponymous Coogan account in California law in 1939. *Id.*

79. See CAL. FAM. CODE § 6750 (Deering 2023); KAN. STAT. ANN § 38-620 (2021); NEV. REV. STAT. § 609.540 (2019); N.Y. EST. POWERS & TRUSTS LAW § 7-7.1 (McKinney Supp. 2024); N.C. GEN. STAT. § 48A-14 (West 2013); TENN. CODE § 50-5-222 (2022); 820 ILL. COMP. STAT. 205/12.5 (2022); N.M. STAT. ANN. § 11.1.4.13 (West 2022); 43 PA. STAT. AND CONS. STAT. ANN. § 40.5 (West 2020).

80. See, e.g., CAL. FAM. CODE § 6750(a)(1) (2022) (example Coogan account scope).

81. See, e.g., *id.* § 6753(b) (example Coogan account withdrawal language).

82. See S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE §§ 92.5(3), 92.17(4)).

83. See, e.g., Ana Saragoza, Comment, *The Kids Are Alright? The Need for Kidfluencer Protections*, 28 AM. U. J. GENDER, SOC. POL’Y & L. 575, 589 (2020) (“California’s current Coogan Law and child labor laws ensure that kidfluencers will not be considered as child laborers, and thus, not protected by blocked trust accounts.”).

## E. THE SOCIAL MEDIA FASCINATION

In 1938, at the time of the drafting of the FLSA, interstate entertainment rooted in technology was limited to film, television, and radio.<sup>84</sup> Access to entertainment through technology has drastically changed in the twenty-first century. As of 2021, 91.7 percent of Iowa households had a computer, and 84.9 percent of Iowa households had access to a broadband internet connection.<sup>85</sup> Through the internet, Americans of all ages have access to social media platforms like Facebook, Instagram, TikTok, and YouTube. Social media also provides the opportunity for the monetization of social media content through advertisements. Social media advertising is not an obscure phenomenon. Eighty-six percent of young Americans say that they “would post sponsored content for money” on social media.<sup>86</sup>

The trend toward social media advertising shows no signs of stopping. Worldwide, 4.74 billion people used some form of social media in 2022.<sup>87</sup> In 2022, global social media advertisement spending totaled \$190 billion.<sup>88</sup> Likewise, social media advertisement revenue amassed \$116 billion worldwide in 2021 and is expected to be \$262 billion by 2028.<sup>89</sup> The number of children on social media also continues to grow. In 2019, thirty-one percent of tweens—defined as children between the ages of eight and twelve—used social media.<sup>90</sup> By 2021, that number increased to thirty-eight percent.<sup>91</sup> The number of children on social media continues to increase despite the policies of social media companies requiring that users be at least thirteen years of age.<sup>92</sup>

The availability of social media makes it especially important for states without historical entertainment industries to recognize its breadth. The 84.9 percent of Iowa households with access to broadband internet<sup>93</sup> are all

84. See 29 U.S.C. § 213(c)(3).

85. *QuickFacts Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/IA#> [<https://perma.cc/9F4C-2AWE>].

86. Taylor Locke, *86% of Young People Say They Want to Post Social Media Content for Money*, CNBC (Nov. 11, 2019, 4:34 PM), <https://www.cnn.com/2019/11/08/study-young-people-want-to-be-paid-influencers.html> [<https://perma.cc/9VHL-6DTP>].

87. Stacey McLachlan, *85+ Important Social Media Advertising Statistics to Know*, HOOTSUITE (Apr. 6, 2023), <https://blog.hootsuite.com/social-media-advertising-stats> [<https://perma.cc/8Q6W-D3ZF>].

88. *Social Media Advertising – Worldwide*, STATISTA, <https://www.statista.com/outlook/dmo/digital-advertising/social-media-advertising/worldwide> [<https://perma.cc/PX2L-6F62>].

89. *Social Media Advertising Spending Worldwide from 2021 to 2028*, STATISTA, <https://www.statista.com/statistics/271406/advertising-revenue-of-social-networks-worldwide/#> [<https://perma.cc/FgTH-K5NF>].

90. Melinda Wenner Moyer, *Kids as Young as 8 Are Using Social Media More Than Ever, Study Finds*, N.Y. TIMES (Mar. 24, 2022), <https://www.nytimes.com/2022/03/24/well/family/child-social-media-use.html> (on file with the *Iowa Law Review*).

91. *Id.*

92. *Id.*

93. *QuickFacts Iowa*, *supra* note 85.

capable of accessing social media through any electronic device that can connect to the internet. In this way, social media distinguishes itself from traditional forms of entertainment like television and radio.<sup>94</sup> Therefore, the accessibility of entertainment work activities for minors within Iowa has never been greater. This trend is especially important when considering the psychological effects that social media can have on adolescents.<sup>95</sup>

In recent years, the COVID-19 pandemic has also forced upon the world remote work and nontraditional work environments.<sup>96</sup> Zoning laws in particular have begun to clash with the decentralized work environment that has only grown in recent years.<sup>97</sup> As a whole, the nature of work is changing, beyond the growing presence and force that is social media. The Iowa Legislature itself has recognized the changing landscape of work in the wake of the COVID-19 pandemic.<sup>98</sup> However, further changes are necessary for the protection of minors who engage in home-based businesses, which social media often falls under.

## II. THE CURRENT ISSUES IN IOWA'S CHILD LABOR LAW

The gaps in child labor legislation in the State of Iowa presented in Part I have only continued to widen with time. The cause of those widening gaps is due in part to the actions of the executive branch of the state, but also the limiting, restrictive language of Iowa Code chapter 92 and the changing technological landscape of the nation. This Part, therefore, analyzes the ongoing deregulation of child labor in Iowa in recent years, the ambiguities and blind spots of Iowa Code chapter 92, and the failure of other states' child

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94. The silence of Iowa Code chapter 92 toward children in these traditional forms of entertainment is understandable given the few large film productions over the course of its history. Iowa is not comparable to California in this regard, with its long history of films and television, despite the stray production filmed in Iowa over the years, such as *Children of the Corn*, *Field of Dreams*, *The Bridges of Madison County*, or *Twister*. See, e.g., *Hollywood in Iowa*, TRAVEL IOWA, <https://www.traveliowa.com/hollywood-in-iowa> [<https://perma.cc/2UFZ-ET98>].

95. See, e.g., Jasmine Fardouly, Natasha R. Magson, Carly J. Johnco, Ella L. Oar & Ronald M. Rapee, *Parental Control of the Time Preadolescents Spend on Social Media: Links with Preadolescents' Social Media Appearance Comparisons and Mental Health*, 47 J. YOUTH & ADOLESCENCE 1456, 1464 (2018) ("Parental control over the time preadolescents spend on social media was associated with greater preadolescent life satisfaction . . .").

96. M. Nolan Gray, *The Pandemic Scramble to Legalize Home-Based Businesses*, BLOOMBERG (Jan. 31, 2022, 1:48 PM), <https://www.bloomberg.com/news/articles/2022-01-31/zoning-rules-shouldn-t-hurt-home-based-businesses> (on file with the *Iowa Law Review*) ("In the first year of the pandemic, half of all full-time workers—and more than 70 [percent] of white-collar professionals—went fully or partially remote in the U.S., and many are saying they may never return to the office.").

97. See *id.* ("U.S. zoning codes regularly subject home-based businesses to unworkable standards, if they don't ban them altogether."); Stephanie M. Stern, *Untransit: Remote Work and the Transformation of Zoning*, 33 STAN. L. & POL'Y REV. 79, 88–92 (2022).

98. See, e.g., IOWA CODE § 414.33 (2023) (creating a new category of "no-impact home-based business" and restricting municipalities from regulating such businesses).

labor regulations to capture social media within the scope of their currently existing laws.

A. *IN THE SHADOW OF THE STATE FAIR*

Despite the long-fought efforts of many Iowans to bring about the Child Labor Act of 1906, the actions of the Iowa Governor in recent years have diminished the protections for Iowa child laborers. This shift began with former Iowa Governor Terry Branstad's open declaration in 2014 that the Iowa Department of Education should no longer allow Iowa's public schools to begin the school year before September 1st, as the Iowa Legislature had authorized it to do since 1983.<sup>99</sup> Although not directly limiting the regulations of Iowa child labor, this declaration encouraged the continued presence of child laborers at the Iowa State Fair. The Governor's reasoning was that the early school start dates "interfere[d] with families' summer plans and seasonal hiring while . . . do[ing] nothing to improve the quality of education. It also results in students missing class to participate in 4-H, FFA and other Iowa State Fair activities."<sup>100</sup> Commentators latched onto this reference to the Iowa State Fair, and with good reason. At the time of the declaration, the Governor "indicat[ed] that early start dates negatively affected attendance at the State Fair and threatened tourism."<sup>101</sup> Governor Branstad had already drawn a correlation between the state's school-age youth and the laborers of the Iowa State Fair when he established a scholarship, known as the Governor Terry E. Branstad Iowa State Fair Scholarship,<sup>102</sup> that provided undergraduate scholarships to students "who have actively participated in the Iowa state fair."<sup>103</sup>

At the time of the Governor's declaration, this author was an Iowa high school student and clearly remembers the difficulties that educators faced with having to adapt their syllabi to the new school start date. Indeed, even if all of the schools in Iowa were set to a new start date, the rest of the nation was not, and many educators were forced to accelerate their Advanced Placement courses to align with rapidly approaching, nationally standardized test dates.<sup>104</sup> Iowa educators have continued to oppose the delayed school start

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99. See Letter from Terry E. Branstad, Governor of Iowa, to Brad Buck, Dir. of the Iowa Dep't of Educ. (Dec. 12, 2014), <http://cdn.radioiowa.com/wp-content/uploads/2014/12/Governors-letter-School-Start-Date-PDF.pdf> [<https://perma.cc/6JR5-97QZ>].

100. *Id.* (emphasis added).

101. Dave Swenson, *School Start Dates Have Nothing to Do with Tourism*, BLEEDING HEARTLAND (Mar. 25, 2015), <https://www.bleedingheartland.com/2015/03/25/school-start-dates-have-nothing-to-do-with-tourism> [<https://perma.cc/3MFU-5XV8>].

102. IOWA ADMIN. CODE r. 283-36.1 (2023).

103. IOWA CODE § 261.62 (2023).

104. One anecdote from this author's education proves pertinent to this discussion. To accommodate the delayed school start date, this author's high school teacher had to accelerate the Advanced Placement English Language and Composition course to reach the end of the course syllabus in time for the national Advanced Placement exams. After the exam, because the coursework was already complete to prepare for the exam, the final two weeks of class time were

date, “sa[ying that] having less time away from school [would] avoid[] learning loss” among the students over the annual summer break.<sup>105</sup> Although not a direct action on child labor regulations, the Governor’s declaration seemed to demonstrate that, when it comes to having a child labor force at the state fair versus education, in the eyes of the Governor the “need” for a labor force wins out.

The Governor’s declaration was a portend of further action. On August 10, 2022, the Iowa Labor Commissioner announced, a day before the start of the Iowa State Fair, that “[t]welve and thirteen-year-old workers are allowed under the observation of a parent working for the same employer,” and “[w]orkers twelve to fifteen years old may work until 10:00 PM.”<sup>106</sup> The Labor Commissioner justified this pronouncement by saying that “[t]he Iowa State Fair is a unique family event for the citizens of the entire state” that “is held for a short period of time *when school is not in session*” and “has a wide variety of employment opportunities, including educational and charitable employers.”<sup>107</sup> Thus, said the Labor Commissioner, “[l]atitude from strict adherence to child labor law is warranted.”<sup>108</sup> The Labor Commissioner’s order is “in effect [indefinitely] unless it is specifically revoked.”<sup>109</sup>

The Iowa Legislature is also trending toward loosening child labor regulations. In early 2022, lobbyists for Casey’s, a chain of convenience stores in Iowa, advocated for the Iowa Legislature to amend Iowa Code chapter 92 to allow sixteen-year-olds to operate pizza dough rolling machines, which the Iowa Code prohibited for those under the age of eighteen at that time.<sup>110</sup> Casey’s lobbyists compared Iowa’s regulations, which were stricter than the federal guidelines, to the regulations of Illinois and Missouri, which followed the federal guidelines and allowed for sixteen-year-olds to operate the pizza dough rolling machines.<sup>111</sup> The initial draft of this Note predicted that, based on previous legislation in recent years, Casey’s was likely to be successful. For example, in 2021, the legislature voted to allow sixteen-year-olds to “operate

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spent on writing comedic skits, drawing book covers, and leisure. Yet, in the words of the Governor, the previous school start dates “d[id] nothing to improve the quality of education.” Letter from Terry E. Branstad, *supra* note 99.

105. O. Kay Henderson, *Bill to Get Rid of Iowa’s Mandatory School Start Date Tabled*, RADIOIOWA (Jan. 26, 2022), <https://www.radioiowa.com/2022/01/26/bill-to-get-rid-of-iowas-mandatory-school-start-date-tabled> [<https://perma.cc/P8T6-SPA8>].

106. In the Matter of the Emp. of Minors at the Iowa State Fair, No. 2022-11 (Iowa Div. of Lab. Aug. 10, 2022), <https://www.iowadivisionoflabor.gov/sites/default/files/2022-08/General%20Order%20state%20fair%20RR.pdf> [<https://perma.cc/D68U-3EBZ>].

107. *Id.* (emphasis added).

108. *Id.*

109. *Id.*

110. Justin Hellinga, *Child Labor Law Change Would Let Older Teens Roll Out the Pizza at Casey’s*, KIWA RADIO (Feb. 1, 2022), <https://kiwaradio.com/local-news/child-labor-law-change-would-let-older-teens-roll-out-the-pizza-at-caseys> [<https://perma.cc/R5HB-TGB8>]; see IOWA CODE § 92.8(10) (2022).

111. Hellinga, *supra* note 110.



the rides at Iowa amusement parks.”<sup>112</sup> This loosening of regulations occurred despite the high-profile death of an eleven-year-old boy at the Iowa amusement park Adventureland that same year.<sup>113</sup> Indeed, the prediction of the initial draft of this Note came true: The Iowa Legislature passed the amendment advocated for by Casey’s, among a large number of other changes to chapter 92, and Iowa Governor Kim Reynolds signed the bill into law on May 26, 2023.<sup>114</sup> The new laws took effect July 1, 2023.<sup>115</sup> Commentators view the loosening of child labor regulations in recent years as an effort “to address Iowa’s workforce shortage.”<sup>116</sup> Governor Reynolds obliquely admitted as much: “I mean, honestly, it helps fill a need.”<sup>117</sup> Because of potential threats to life, limb, and education, there is a growing need for more child labor regulations, yet the trend of the last ten years has been toward looser regulation.

The current tenor across various states is to deregulate child labor.<sup>118</sup> Yet, in recent years, there have also been high-profile cases of franchises flagrantly violating the already-existing child labor laws.<sup>119</sup> Although this is an issue that must be addressed, this Note is focused first and foremost upon resolving the current issues with Iowa’s child labor laws and addressing the lack of protections for child labor on social media.

#### B. THE AMBIGUITIES OF THE CODE

Regardless of the current trend toward deregulating areas of child labor law in Iowa, the existing laws contain ambiguities that will fail to protect children as the child labor landscape changes with time. Iowa Code chapter 92 attempts to create an exhaustive list of all work activities that a child could

112. *Id.*

113. Elisabeth Smith & Daniel Lathrop, *What to Know About the Deadly 2021 Adventureland Accident, One Year Later*, DES MOINES REG. (June 30, 2022, 8:38 PM), <https://www.desmoinesregister.com/story/news/2022/06/30/adventureland-iowa-death-accident-lawsuit-michael-jaramillo/7774220001> [<https://perma.cc/TWY8-BPQN>].

114. Katarina Sostaric, *Iowa Governor Signs Law to Loosen Child Labor Regulations*, IOWA PUB. RADIO (May 26, 2023, 6:10 PM), <https://www.iowapublicradio.org/state-government-news/2023-05-26/iowa-governor-signs-law-to-loosen-child-labor-regulations> [<https://perma.cc/QHP2-FY4A>].

115. *Id.*

116. Hellinga, *supra* note 110.

117. Sostaric, *supra* note 114.

118. See Harm Venhuizen, *Some Lawmakers Propose Loosening Child Labor Laws to Fill Worker Shortage*, PBS NEWSHOUR (May 25, 2023, 2:54 PM), <https://www.pbs.org/newshour/politics/some-lawmakers-propose-loosening-child-labor-laws-to-fill-worker-shortage> [<https://perma.cc/EX8J-P5KB>] (“Lawmakers proposed loosening child labor laws in at least 10 states over the past two years . . .”).

119. See, e.g., *McDonald’s Franchises Fined for Child Labor Violations in Labor Department Crackdown*, PBS NEWSHOUR (May 3, 2023, 5:38 PM), <https://www.pbs.org/newshour/nation/mc-donalds-franchises-fined-for-child-labor-violations-in-labor-department-crackdown> [<https://perma.cc/2YN9-5XCQ>]; *Chipotle Fined \$1.37M over Thousands of Child Labor Abuses*, PBS NEWSHOUR (Jan. 28, 2020, 6:13 PM), <https://www.pbs.org/newshour/economy/chipotle-fined-1-37m-over-thousands-of-child-labor-abuses> [<https://perma.cc/4KDU-PWUV>].

have, to its own detriment. Section 92.8 provides a list of prohibited work activities for those under the age of eighteen,<sup>120</sup> while section 92.6 provides a list of work activities specifically prohibited for fourteen- and fifteen-year-olds.<sup>121</sup> Section 92.5 and section 92.6A provide a list of *permitted* work activities for fourteen- and fifteen-year-olds, respectively.<sup>122</sup> The lists of work activities in these sections appear to be exhaustive: “Persons fourteen years of age may be employed or permitted to work *in the following work activities.*”<sup>123</sup> In interpreting statutes, the Iowa Supreme Court has been clear that it adheres strictly to the language of statutes, holding that:

In examining the statutes at hand, we [the court] are to be guided by the maxim ‘*expressio unius est exclusio alterius*,’—expression of one thing is the exclusion of another. This expresses the well-established rules of statutory construction that legislative intent is expressed by omission as well as by inclusion, and *the express mention of one thing implies the exclusion of others not so mentioned*. In addition, in our search for legislative intent, we are to be guided by what the legislature actually said, rather than what it should or could have said. We cannot, under the guise of construction, enlarge or otherwise change the terms of a statute as the legislature adopted it.<sup>124</sup>

The court does not always adhere to the maxim *expressio unius est exclusio alterius*, such as when a list is preceded by the word “includes.”<sup>125</sup> However, because neither section 92.5 nor section 92.6 uses such language, it is likely that a court would interpret these lists as being exhaustive. Therefore, if a work activity does not fall under one of the categories in these lists, or another applicable list such as section 92.8, whether that work activity is prohibited or permitted is unclear. For example, it is unclear whether a fourteen- or fifteen-year-old Iowan is permitted to be an actor in a television or social media series.<sup>126</sup> Section 92.5 permits fourteen and fifteen-year-olds to model, but

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120. S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE § 92.8).

121. *Id.* (to be codified at IOWA CODE § 92.6).

122. *See id.* (to be codified at IOWA CODE §§ 92.5, 92.6(A)).

123. *Id.* (to be codified at IOWA CODE § 92.5) (emphasis added). Fifteen-year-olds are allowed to work the same jobs as fourteen-year-olds, plus a few more. *Id.* (to be codified at IOWA CODE § 92.6A) (“Persons fifteen years of age may be employed or permitted to work in any of the work activities provided in section 92.5.”).

124. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995) (emphasis added) (citations omitted).

125. *See, e.g., Am. Eyecare v. Dep’t Hum. Servs.*, 770 N.W.2d 832, 837–38 (Iowa 2009) (“As federal and state courts have recognized, “[i]ncludes” has various shades of meaning, and its interpretation “depends upon the context” in which the term is used.” (quoting *Liverpool v. Balt. Diamond Exch., Inc.*, 799 A.2d 1264, 1274 (Md. 2002) (quoting *Hous. Auth. v. Bennett*, 754 A.2d 367, 375–76 (Md. 2000)))).

126. Since July 1, 2023, the Iowa Code has provided an exception for those under sixteen years of age “performing in motion pictures, theatrical productions, or musical performances, if the written permission of the parent, guardian, or custodian of the child is obtained prior to the

there is no mention of acting.<sup>127</sup> Section 92.6 does not prohibit acting for fourteen- and fifteen-year-olds,<sup>128</sup> nor does section 92.8 prohibit acting for those under the age of eighteen.<sup>129</sup> Therefore, the Code clearly allows sixteen-year-olds to be actors. In addition, section 92.3 states that “[n]o person under fourteen years of age shall be employed or permitted to work with or without compensation in any work activity,” so the Code clearly prohibits those under the age of fourteen from acting.<sup>130</sup> Yet it is ambiguous as to whether a fifteen-year-old actor is violating the Code. The status of such work activities is especially important given the penalties, both criminal and civil, that arise from violations of chapter 92.<sup>131</sup>

Section 92.17 provides a list of exceptions to the regulations in the rest of chapter 92.<sup>132</sup> Section 92.17(4) states that “[n]othing in this chapter shall be construed to prohibit . . . [a] child from working in any work activity or business operated by the child’s parents.”<sup>133</sup> The Administrative Code further clarifies this provision (based on the language of the Code before July 1, 2023) by saying,

“Occupation or business operated by the child’s parents,” as used in Iowa Code section 92.17(4) [the previous section 92.17(3)], means a business operated by the child’s parent where the parent has control of the day-to-day operation of the business and is on the premises during the hours of the child’s employment.<sup>134</sup>

Therefore, Iowa’s child labor regulations cannot “prohibit” a child from working in a business when one of the child’s parents manages “the day-to-day operation” of that business and that parent is on the premises of the business.

However, this language begs the question of what “prohibits” means. To answer that question, an Iowa court would first look at “the plain meaning” of the word “prohibits.”<sup>135</sup> Merriam-Webster defines the word as both “to forbid by authority” and “to prevent from doing something.”<sup>136</sup> Black’s Law Dictionary also provides two definitions: “[t]o forbid by law” and “[t]o

commencement of the work.” S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE § 92.17(4A)).

127. See *id.* (to be codified at IOWA CODE §§ 92.5, 92.6A).

128. See *id.* (to be codified at IOWA CODE § 92.6).

129. See *id.* (to be codified at IOWA CODE § 92.8).

130. See *id.* (to be codified at IOWA CODE § 92.3).

131. See *id.* (to be codified at IOWA CODE §§ 92.20, 92.22(1)) (imposing criminal penalty of serious misdemeanor and civil penalty of ten thousand dollars).

132. See *id.* (to be codified at IOWA CODE § 92.17).

133. See *id.* (to be codified at IOWA CODE § 92.17(4)).

134. IOWA ADMIN. CODE r. 875–32.1(92) (2023) (emphasis omitted).

135. See *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017).

136. *Prohibit*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/prohibit> [https://perma.cc/Q4YP-WZ7F].

prevent, preclude, or severely hinder.”<sup>137</sup> Therefore, “prohibit,” as used in the statute, could mean outright forbiddance, or it could mean any regulation that would “severely hinder” or act as an impediment.

Analyzing the other exceptions in section 92.17, subsections 92.17(6) through 92.17(8) all explicitly state that section 92.8’s prohibition on certain work activities for those under the age of eighteen still applies to those subsections despite the exemptions ostensibly granted in each of them.<sup>138</sup> These subsections still grant exemptions from work hours restrictions.<sup>139</sup> Therefore, by implication, all other exemptions in section 92.17 that do not explicitly apply the prohibitions of section 92.8, including the parent-employer exemption in section 92.17(4), grant an exemption from hours restrictions *and* all of the prohibited work activities listed in chapter 92. In other words, “prohibit” as used in section 92.17 likely means “to prevent, preclude, or severely hinder” because even something like hour restrictions would be considered a prohibition of a child working in an activity, even though hour restrictions are not an outright forbiddance of a child engaging in that work activity.

### C. THE ABSENCE OF CHILD ENTERTAINMENT REGULATIONS

As mentioned previously, the FLSA does not provide protections for “any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”<sup>140</sup> Before July 1, 2023, there were no regulations for children acting or performing in radio, theater, film, or television in Iowa Code chapter 92. After July 1, 2023, there are now exceptions for “child[ren] under sixteen years of age . . . performing in motion pictures, theatrical productions, or musical performances, if the written permission of the parent, guardian, or custodian of the child is obtained prior to the commencement of the work.”<sup>141</sup> The Code is still silent as to children performing in television programs or social media programs. Child modeling, which was the only entertainment-related activity that was regulated before the July 1, 2023, law, is spread throughout chapter 92; child modeling is expressly *permitted* for fourteen- and fifteen-year-olds,<sup>142</sup> is *not prohibited* for those under the age of eighteen,<sup>143</sup> is *prohibited* for those under the age of fourteen,<sup>144</sup> is *exempted* from the requirements of chapter 92 if the

137. *Prohibit*, BLACK’S LAW DICTIONARY (11th ed. 2019).

138. See S. File 542 (to be codified at IOWA CODE § 92.17(6)–(8)).

139. *Changes Effective July 1, 2023*, IOWA DEP’T OF INSPECTIONS, APPEALS & LICENSING, IOWA DIV. OF LAB., <https://www.iowadivisionoflabor.gov/child-labor> [<https://perma.cc/CUB3-TZLM>].

140. 29 U.S.C. § 213(c)(3).

141. S. File 542 (to be codified at IOWA CODE § 92.17(4A)).

142. *Id.* (to be codified at IOWA CODE §§ 92.5(3), 92.6A).

143. *Id.* (to be codified at IOWA CODE § 92.8).

144. *Id.* (to be codified at IOWA CODE § 92.3).

child is modeling for their parent's business,<sup>145</sup> and is *exempted* from the requirements of chapter 92 for those under the age of sixteen if certain preconditions are met.<sup>146</sup> As a result of the July 1, 2023, law, the Iowa Legislature has recognized the presence of child entertainers in Iowa, but the Code's regulations of such activities are still sparse. The scarcity of regulation in this area is especially dangerous. Without regulation, there are no safeguards protecting the income that children earn in these entertainment fields, and there are no codified limitations on how many hours a day or week a child could be made to perform for an audience.

Entertainment jobs were not always so sparsely regulated under the Iowa Code. In 1927, the Iowa Code stated that “[n]o person under fourteen years of age shall be employed with or without compensation in any . . . place of amusement,” but still provided an exception if the place of amusement were operated by the child's parent.<sup>147</sup> In *State v. Erle*, the Iowa Supreme Court interpreted “place of amusement,” as used in the statute, to include theaters.<sup>148</sup> The court also held that the parent-employer exception applied to the facts of that case.<sup>149</sup> Although the child was under the age of fourteen and performed at a theater that was not operated by the child's parent, the court held that the child's labor did not violate the Code because the child's mother contracted with the theater to stage an act she owned and in which the child played a part.<sup>150</sup> Succinctly, the court engaged in hypophora, rhetorically questioning and answering: “The material question is: Did [the mother] have an occupation? Yes. What was that occupation? Furnishing entertainment. Who operated it? The mother. . . . In brief, the mother operated the occupation and owned the act in which the boy was assigned . . . .”<sup>151</sup> To further explain its reasoning, the court posed a hypothetical:

Apply the same test to the mother who made a contract with the Western Union, in which contract she agreed, at a fixed salary, to deliver or collect messages for said company. Would the mother, who used her boy under fourteen years to assist in carrying out her

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145. *Id.* (to be codified at IOWA CODE § 92.17(3)).

146. *Id.* (to be codified at IOWA CODE § 92.17(4)).

147. IOWA CODE § 1526 (1927). The parent-employer exception was not universal for all occupations in the 1927 version of the Iowa Code, unlike its modern counterpart. For example, the 1927 Code stated that “[n]o person under sixteen years of age shall be employed . . . in or about any . . . restaurant” and included no parent-employer exception. *Id.* § 1536; Child Labor, 18 Iowa Op. Att’y Gen. 169 (1930), 1929 WL 62660. However, now, the exception would apply to any such occupation. The 1927 Iowa Code also prohibited sixteen-year-olds from being employed “in any occupation dangerous to life or limb,” IOWA CODE § 1536 (1927), which was contentious and excised from the original Child Labor Act of 1906. *See supra* note 19 and accompanying text. No reference to “life or limb” appears in the current Iowa Code chapter 92.

148. *State v. Erle*, 232 N.W. 279, 281 (Iowa 1930).

149. *Id.*

150. *Id.* at 281–82.

151. *Id.* at 281.

contract, be within the prohibition of section 1526 [the section prohibiting a child under the age of fourteen from working in a place of amusement but also in the distribution of messages]? In both instances it must be said that it was the mother's business or occupation. The word "occupation" is a term of broad significance and includes vocation, trade, calling, profession, office employment, or business by which one generally earns his or her living.<sup>152</sup>

It is likely that the court's reasoning would still apply today because the parent-employer exceptions in the 1927 Code and the July 1, 2023, amendments to the Code use almost identical terminology: "operated by his parents"<sup>153</sup> and "operated by the child's parents,"<sup>154</sup> respectively. In addition, the Administrative Code defines an "[o]ccupation or business operated by the child's parents" as "a business operated by the child's parent where the parent has control of the day-to-day operation of the business and is on the premises during the hours of the child's employment."<sup>155</sup> The mother from the *Erle* decision, as the owner and manager of the child's stage act, would fit this definition.

This interpretation has significant ramifications for children on social media. If child labor via social media were to be regulated by Iowa Code chapter 92, as advocated by this Note, the *Erle* court's interpretation of "operated by the child's parents" would exempt any child who is managed by their parent. Federal laws indirectly restrict social media companies from allowing users below the age of thirteen.<sup>156</sup> In the context of most social media platforms, that means that a person must be at least thirteen to create an account, such as on YouTube.<sup>157</sup> Without an account, users are incapable of posting content and, by extension, are incapable of posting sponsored content. Therefore, any child on social media under thirteen on such a social media platform must be using the account of a person over thirteen, likely that child's parent. Any sponsorship deals done with that account would go through the owner of the account, thereby implicating the parent-employer exception. And this is to say nothing of the sponsors who contract indirectly with children through their parents, rather than directly with the children, simply for the ease of contracting with a person who has reached the age of majority.

Alternatively, a parent on their own social media account may post content of their family. A sponsor could contract directly with that parent

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152. *Id.*

153. IOWA CODE § 1526 (1927).

154. S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE § 92.17(3)).

155. IOWA ADMIN. CODE r. 875-32.1(92) (2023).

156. Moyer, *supra* note 90 (discussing how social media platforms "require users to be at least 13 because of a law that prohibits companies from collecting data from children").

157. See *Parent Resources*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2802272> [<https://perma.cc/4SQL-4FWA>]; *Age Requirements on Google Accounts*, GOOGLE ACCT. HELP, <https://support.google.com/accounts/answer/1350409> [<https://perma.cc/3FD6-22XQ>].

but would require the parent's children to appear in the sponsored content. In these situations, the *Erle* decision is outcome determinative as to whether any hypothetical social media regulation under Iowa Code chapter 92 would be effective.

Under the precedent of *Erle*, any parent who partakes in “furnishing entertainment” as part of their occupation, which the court defines broadly, would be able to employ their child as part of that business without any regulations.<sup>158</sup> Therefore, even if the Iowa Legislature were to pass some measure regulating child labor on social media, the parent-employer exception, if left unchanged, would nullify any such statute because almost all child performers on social media will be managed or contracted through their parent. If any regulation of children's work activities on social media are to have teeth, the parent-employer exception's scope must be reduced, at the very least with regard to social media work activities.

#### D. SOCIAL MEDIA'S EVASIVENESS

Social media's evasion of child labor regulations is not unique to Iowa Code chapter 92.<sup>159</sup> Indeed, even states that traditionally have more thoroughly regulated child entertainment jobs have failed to regulate children's labor on social media platforms.<sup>160</sup> Social media's evasion of child labor regulations is exemplified by the failure of Coogan accounts to also protect child laborers on social media.

Despite the strength of the protections provided by Coogan accounts, it is not clear that the Coogan account requirements of many states apply to children engaging in advertisements and sponsored content on social media. This is due to the scope of Coogan accounts, which is “artistic or creative services.” California's definition of “artistic or creative services” is extensive and a model for other jurisdictions. The definition states that “[a]rtistic or creative services’ includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.”<sup>161</sup> Despite the list claiming to be nonexhaustive, the list of services in the definition is lengthy and specific. Although it is possible that a court could determine that a child posting sponsored content online is a “performer or entertainer,” as used in the statute, California legislators are not certain. Some California legislators attempted to address their concerns “[i]n 2018, [when] the Democratic California assembly member Kansen Chu

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158. See *supra* notes 151–52 and accompanying text.

159. See Marina A. Masterson, Comment, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers,”* 169 U. PA. L. REV. 577, 594–95 (2021) (noting a systematic failure of local governments to enact appropriate legislation to protect social media “kidfluencers”).

160. *Id.* at 602–03 (identifying flaws in California's model).

161. CAL. FAM. CODE § 6750(a)(1) (West 2022).

introduced a bill that would have amended the [California] Coogan Act to cover the ‘employment of a minor in social media advertising.’”<sup>162</sup> However, that provision of the bill did not survive the legislative process.<sup>163</sup> The reason for the excision of the social media advertising provision was not because California legislators thought it was unnecessary or redundant; rather, assemblymember Chu stated that fringe benefits that children often receive from sponsors, such as “tickets and toys and clothes and other little things,” complicated the Coogan account calculus.<sup>164</sup>

Iowa is not the only state to feel the need for clear regulations of child labor on social media. Even states like California, with a long history of regulating child entertainers, are failing to clearly apply their existing laws to the burgeoning field of sponsored content on social media platforms. Therefore, it is especially important for a state like Iowa, which currently lacks substantial regulations for child entertainers, to not merely adopt the existing regulations of other states, but to improve and adapt those laws to the modern landscape of social media.

### III. HOW IOWA’S CHILD LABOR LAW SHOULD BE AMENDED

This Note proposes three solutions that represent the first steps toward resolving the existing issues in Iowa Code chapter 92 and creating necessary safeguards for children working through social media. The first solution is to redraft the lists of prohibited and permitted work activities for fourteen- and fifteen-year-olds in chapter 92 so that such listed activities are nonexhaustive. The second solution is to redefine “prohibit” as it appears in chapter 92 to resolve ambiguities and provide greater protections. The third solution is to add mandatory Coogan accounts to chapter 92, specifically targeting work activities involving social media advertising.

#### A. RESOLVING AMBIGUITIES

The ambiguities described in Section II.B require only simple amendments to resolve. The first ambiguity, the exhaustive language the legislature uses in the preamble to the list of permitted work activities for fourteen- and fifteen-year-olds in sections 92.5 and 92.6A, can be resolved in two ways. In the first option, the legislature could remove sections 92.5 and 92.6A, thereby making all work activities, other than those prohibited by sections 92.6 and 92.8, available to fourteen- and fifteen-year-olds. However, the second available option is more favorable. In the second option, the legislature could amend the preamble of section 92.5 from reading,

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162. Julia Carrie Wong, *‘It’s Not Play if You’re Making Money’: How Instagram and YouTube Disrupted Child Labor Laws*, GUARDIAN (Apr. 24, 2019, 1:00 AM), <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> [<https://perma.cc/4B6H-FR7A>].

163. *Id.*

164. *Id.*



“[p]ersons fourteen years of age may be employed or permitted to work in the following work activities,”<sup>165</sup> to, “[p]ersons fourteen years of age may be employed or permitted to work in certain work activities, including, but not limited to.”<sup>166</sup> This second option would still allow for some work activities not prohibited by sections 92.6 and 92.8 to be excluded, but—under the jurisprudence of the Iowa Supreme Court—it would encourage courts to interpret the statute to read the list of permitted work activities as not exhaustive. “[T]he verb ‘includes’ imports a general class, some of whose particular instances are those specified in the definition.”<sup>167</sup>

Returning to the hypothetical question of whether a fifteen-year-old television or social media actor is permitted under chapter 92, courts would use the language proposed above to determine whether acting falls into the general class or classes of work activities permitted by sections 92.5 and 92.6A. Subsection 92.5(3) already permits “[c]ashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping,”<sup>168</sup> so a court could determine that acting falls into the general class of this subsection, especially when this class includes “modeling” and “art work”—two creative, artistic work activities that appear tangential to acting.

If the legislature added a residual category to the prohibited work activities of section 92.6, thereby making that section nonexhaustive, this interpretation of the Code would be bolstered. The amended section 92.6 already uses broad language to list the prohibited work activities of this section, such as “[a]ny manufacturing work activity” or “[o]peration or tending of hoisting apparatus or of any power-driven machinery.”<sup>169</sup> A residual category—a hypothetical subsection 92.6(1)(k)—would therefore fit with the broad language of section 92.6. Historically, this residual category has taken the form of “any occupation dangerous to life or limb.”<sup>170</sup> Although this Note does not advocate for a specific definition for what “dangerous to life or limb” means, the legislature is more than capable of limiting the definition to fit their policy concerns, as many of the broad categories of work activities prohibited in section 92.8 are refined and defined in the Administrative Code.<sup>171</sup> Adding this residual category is preferable to the first option because the possible work activities children can do are currently in flux. Thus, attempting to maintain an exhaustive list is impractical during such a time of change.

165. S. File 542, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (to be codified at IOWA CODE § 92.5).

166. This same change would be applied, *mutatis mutandis*, to section 92.6A.

167. *Am. Eyecare v. Dep’t of Hum. Servs.*, 770 N.W.2d 832, 837 (Iowa 2009) (quoting *Helvering v. Morgan’s, Inc.*, 293 U.S. 121, 126 n.1 (1934)).

168. S. File 542 (to be codified at IOWA CODE § 92.5(3)).

169. *Id.* (to be codified at IOWA CODE § 92.6).

170. See DOWNEY, *HISTORY OF LABOR LEGISLATION*, *supra* note 7, at 139–41; IOWA CODE § 1536 (1927).

171. See IOWA ADMIN. CODE r. 875–32.8(92) (2023).

On July 1, 2023, the Iowa Legislature added an exception for “child[ren] under sixteen years of age . . . performing in motion pictures, theatrical productions, or musical performances, if the written permission of the parent, guardian, or custodian of the child is obtained prior to the commencement of the work.”<sup>172</sup> With the addition of this exception, the Iowa Legislature missed an opportunity to address other forms of entertainment, such as television and social media. Instead, the legislature once again used exhaustive language to describe an area that is currently in flux.

The second ambiguity is the lack of a definition for “prohibit” in Iowa Code chapter 92. Although this Note concludes in Section II.B that “prohibit,” as used in chapter 92, means “severely hinders” or impedes rather than “to forbid,” this interpretation is not made clear in the language of the statute. The location for this definition is best suited for the Administrative Code, in section 875–32.1, the definitions section of the chapter.<sup>173</sup> The proposed definition could use the broader meaning of “severely hinders,” but the legislature should, for policy reasons, change course and use the narrower meaning of “to forbid.”

As the Iowa Supreme Court recognized in the *Erle* decision:

It must be conceded that the state may, in the exercise of its police power, prohibit the employment of such persons in defined occupations as are deemed dangerous, either to the life or limb, or injurious to the morals, or the future welfare of children of tender years . . . . To what extent the supervision and control shall be exercised is a question of expediency which is the province of the Legislature to determine.<sup>174</sup>

The legislature has previously recognized the need for some oversight and discretion in the work activities that are not expressly prohibited by the Code. Prior to July 1, 2023, the Code required laborers under the age of sixteen to apply for a work permit to work.<sup>175</sup> This Note advocates for the return of work permits, albeit with a limited scope, directed at children working in social media. The legislature had previously given the Labor Commissioner the discretionary power to deny work permits “if, in the commissioner’s judgment, the best interests of the minor would be served by such refusal.”<sup>176</sup>

However, even if work permits were to return, by interpreting “prohibit” so broadly, the legislature would be depriving children of a safeguard that gives the Director (the new name for the Labor Commissioner as of July 1, 2023) the ability to assess the work environment and protect children on a case-by-case basis. Depriving children employed by their parents of the

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172. S. File 542 (to be codified at IOWA CODE § 92.17(4A)).

173. See IOWA ADMIN. CODE r. 875–32.1 (2023).

174. *State v. Erle*, 232 N.W. 279, 280 (Iowa 1930).

175. IOWA CODE § 92.10 (2023).

176. *Id.* § 92.13.

safeguard of submitting a work permit application, which had to include “the name and location of the establishment where the child is to be employed [and] the industry,”<sup>177</sup> to the Director would be especially dangerous as more parents begin to use the images and personalities of their children on social media to generate income. The legislature could further protect children by requiring details of the duties associated with the work activity in addition to the work activity industry. Social media content comes in many forms, so merely listing the industry does not provide the Director adequate information to properly assess each application on a case-by-case basis.

### B. CREATING CHILD ENTERTAINMENT REGULATIONS

The Iowa Legislature should mandate Coogan accounts for children in entertainment, including social media. As described in Section II.D, many states—not just those with an industry like Hollywood—have adopted mandatory Coogan accounts for children who contract “to render artistic or creative services, either directly or through a third party.”<sup>178</sup> Iowa should have these same protections, much like the similarly populated and agrarian<sup>179</sup> nearby State of Kansas.<sup>180</sup>

Rather than expressing distrust of parents, these Coogan accounts represent a Lockean understanding of property. Seventeenth-century philosopher John Locke wrote that, through labor, one creates their own property.<sup>181</sup> The labor of children results in their income; therefore, their income is their property. This Lockean approach to property is central to the American ethos. Thomas Jefferson, Founding Father and drafter of the Declaration of Independence, held John Locke in high regard, referring to Locke as one of “the three greatest men that [has] ever lived, without any

177. *Id.* § 92.14.

178. *See, e.g.*, CAL. FAM. CODE § 6750(a)(1) (West 2022) (exemplifying Coogan account scope).

179. At a glance, Iowa and Kansas have similar populations (3.2 million and 2.9 million, respectively) and similar gross domestic product (\$179.5 billion and \$162.2 billion). *Compare Iowa – State Economic Profile, supra* note 36, *with Kansas - State Economic Profile*, IBISWORLD, <https://www.ibisworld.com/united-states/economic-profiles/kansas/> [https://perma.cc/ABX2-ADDR]. The percentage of gross domestic product produced from agriculture (8.09 percent in Iowa and 5.39 percent in Kansas) and entertainment (0.60 and 0.51 percent) are also similar. *Id.*

180. *See* KAN. STAT. ANN. § 38-620 (2021).

181. *See* JOHN LOCKE, TWO TREATISES OF GOVERNMENT 305–06 (Peter Laslett ed., Cambridge Univ. Press 1963) (1690). Addressing how private property is possible when “the Earth, and all inferior Creatures [are] common to all Men,” John Locke wrote:

[E]very Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*.

*Id.*

exception.”<sup>182</sup> As many commentators have noted, “the Declaration [of Independence], in its form, in its phraseology, follows closely certain sentences in Locke’s second treatise on government,”<sup>183</sup> where Locke first wrote about his theory of property. Yet, before Coogan accounts, “[u]nder California law at the time, the earnings of the minor belonged solely to the parent.”<sup>184</sup> As such, Coogan accounts, which often only guarantee fifteen percent of the child’s gross income be preserved for the child, represent the minimum that a child is due under a Lockean theory of property. Such accounts are especially important for children in entertainment because of the potential for large amounts of income in those work activities. This is true, as well, for social media advertisements, which are expected to have a total revenue of \$247 billion by 2027.<sup>185</sup>

The Coogan accounts of states like California cannot, however, merely be imported into Iowa. Rather, these accounts should expand their definition of “artistic or creative services” to include social media advertising, in accordance with the California State Assembly’s amendment of Assembly Member Chu’s proposed bill:

The employment or appearance of a minor in social media advertising. For purposes of this subdivision, “social media advertising” is the use, demonstration, or placement of a product through a social media communication pursuant to a contract with a resident of this state for the promotion of that product. This contract may be for any form of engagement, retention, or employment of a minor, either directly or through third persons or a parent or guardian, and includes a contract with an independent contractor.<sup>186</sup>

However, this definition of “social media advertising” also has its issues. Although this definition does capture the kind of private contracts with brands that social media users engage in, it does not capture the income that social media influencers earn through the YouTube Partner Program and Google AdSense. Google AdSense includes, but is not limited to, the money that Google, the owner of YouTube, pays to creators that are part of the YouTube Partner Program for allowing advertisements to play or be displayed while a person views that creator’s YouTube videos.<sup>187</sup> However, it is not clear that the revenue a YouTube partner earns through AdSense is

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182. Letter from Thomas Jefferson to John Trumbull (Feb. 15, 1789), <https://founders.archives.gov/documents/Jefferson/01-14-02-0321> [<https://perma.cc/USZJ-W2JC>].

183. CARL BECKER, *THE DECLARATION OF INDEPENDENCE: A STUDY IN THE HISTORY OF POLITICAL IDEAS* 27 (1922).

184. *Coogan Law*, *supra* note 78.

185. *Social Media Advertising – Worldwide*, *supra* note 88.

186. Assemb. B. 2388, 2017–2018 Leg., Reg. Sess. (Cal. 2018).

187. *How to Earn Money on YouTube*, GOOGLE ADSENSE HELP, <https://support.google.com/adsense/answer/72857?hl=en> [<https://perma.cc/Q5CA-GHQZ>].

captured by the definition of “social media advertising” above because Google plays and displays these advertisements on YouTube videos regardless of whether the creator of the YouTube video is a Partner. Therefore, it is unclear whether an advertisement playing before a YouTube Partner’s video is “the . . . demonstration . . . of a product through a social media communication pursuant to a contract with a resident of this state for the promotion of that product.”<sup>188</sup> As such, the California State Assembly’s bill must be refined. One way to capture this nuance is by amending the bill to read: “For purposes of this subdivision, ‘social media advertising’ is the use, demonstration, or placement of a product through a social media communication pursuant to a contract *or terms of service* with a resident of this state.”

Social media advertising presents many of the same monetary dangers for minors as traditional entertainment. For example, in 2018, the founder of a social media influencer management company estimated that a child influencer on Instagram “with 500,000 followers would earn about \$5,000 for a single [sponsored] image.”<sup>189</sup> In 2018, two-year-old twins Taytum and Oakley Fisher had 2.2 million followers on Instagram and were estimated to make “between \$15,000 and \$25,000 for a single post.”<sup>190</sup> “The Fishers . . . can earn upwards of \$200,000 per month, with money coming in from brand deals and advertising revenue from Facebook and YouTube.”<sup>191</sup> Fifteen percent of that monthly income would equal \$30,000 that could be saved for their future use. Since then, the Fisher twins’ follower base has only continued to grow, with now more than 3.1 million users following their Instagram page,<sup>192</sup> meaning they now earn approximately forty-one percent more than their estimated income per Instagram post in 2018. The Fisher twins

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188. Cal. Assemb. B. 2388.

189. Katharine Schwab, *The 2-Year-Old Instagram Influencers Who Make More than You*, FAST CO. (Dec. 17, 2018), <https://www.fastcompany.com/90278778/the-2-year-old-instagram-influencer-s-who-make-more-than-you-do> [<https://perma.cc/4QHR-7P6S>].

190. *Id.*

191. Ines Novacic, “*It’s Kinda Crazy*”: *Kid Influencers Make Big Money on Social Media, and Few Rules Apply*, CBS NEWS (Aug. 23, 2019, 8:08 AM), <https://www.cbsnews.com/news/kid-influencer-s-instagram-youtube-few-rules-big-money-cbsn-originals> [<https://perma.cc/4DU4-QQN2>].

192. Taytum & Oakley Fisher (@taytumandoakley), INSTAGRAM, <https://www.instagram.com/taytumandoakley> [<https://perma.cc/SDB8-FQ4W>]. As previously mentioned, Instagram’s policy is that users must be thirteen years old to create an account. *See Moyer, supra* note 90. Cognizant of this, the “Bio” of the Fisher twins’ Instagram page says “[m]anaged by [mom] @Madisonbontempo.” Taytum & Oakley Fisher (@taytumandoakley), *supra*. This message is not purely for getting around Instagram’s age requirement. Brands would likely use this information to contact the twins’ mother for sponsorships. Additionally, the message demonstrates a self-justification that many parents engage in when using the money earned through the labor of their children: they view themselves as their children’s manager and “pay” themselves accordingly. Pavithra Mohan, *My Kid Is an Instagram Influencer: Here’s What I Do with Her Money*, FAST CO. (May 8, 2019), <https://www.fastcompany.com/90343690/my-kid-is-an-instagram-influencer-heres-what-i-do-with-her-money> [<https://perma.cc/2YZR-ACAC>].

represent just one example of the many children who either choose to monetize themselves or are monetized by their parents on social media.

Furthermore, the Iowa Legislature could take guidance for crafting Coogan accounts that specifically apply to social media work from Illinois's new legislation, set to take effect July 1, 2024.<sup>193</sup> The law “covers children under the age of 16 featured in monetized online platforms” and guarantees the children “a percentage of earnings based on how often they appear on video blogs or online content that generates at least 10 cents per view” if the child is “featured in at least 30 [percent] of the content in a 30-day period.”<sup>194</sup> Illinois is the first state to take steps to directly address the proliferation of child labor on social media. However, it is not likely to be the last and could become a model for future states, much like how California was for other states when first establishing Coogan account laws.

Certainly, the Illinois legislation is not perfect. For example, the legislation only applies to “vlogs” (i.e., “video blogs”), which the statute defines as “content shared on an online platform in exchange for compensation” but is further refined elsewhere in the statute so that it only includes “video content, performed in Illinois.”<sup>195</sup> This definition completely excludes any income a parent might make from photographic content of their children, such as through sponsored content on a platform like Facebook or Instagram, leaving a large gap in the protection of children on social media. In addition, there is an exception such that the statute does not apply to “any person under the age of 16 who produces his or her own vlogs.”<sup>196</sup> There is no definition of “to produce” in the statute, so there is no indication given as to when video content would be deemed “produced” by the minor, as opposed to by another. There are many steps in the video production process, from setup to recording to editing. How involved a minor must be to “produce” their video content is nebulous and potentially ripe for abuse.

#### IV. ADDRESSING CRITIQUES

Part IV is dedicated to addressing potential criticisms of this Note's proposed solutions, as well as criticisms of greater child labor regulations generally. First, this Part addresses the traditional criticisms that Iowa legislators have raised in the past regarding greater child labor regulations.

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193. Claire Savage, *Starting Next Year, Child Influencers Can Sue If Earnings Aren't Set Aside, Says New Illinois Law*, ASSOCIATED PRESS (Aug. 12, 2023, 1:55 PM), <https://apnews.com/article/tiktok-child-influencer-illinois-social-media-f784b4bc52cb75ad1eod28785993b1c5> [<https://perma.cc/ZKD2-773S>]; see also S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023) (“This Act takes effect July 1, 2024.”).

194. Savage, *supra* note 193; see also S.B. 1782 (“A minor satisfying the criteria described in subsection (a) of Section 2.6 must be compensated by the vlogger.”).

195. S.B. 1782.

196. *Id.*

Second, this Part addresses the ambiguities and issues raised by the proposed Coogan account law in Section III.B. Third, this Part addresses the feasibility of these proposed changes to Iowa Code chapter 92 and why Iowa should be among the first states to pass such laws.

#### A. THE TRADITIONAL CRITICISMS

When Iowa's Child Labor Act of 1906 was enacted, opponents objected to the Act for five reasons.<sup>197</sup> Those same objections remain relevant, to varying degrees, to this day, and warrant responses.

First, opponents to greater child labor regulations argue that labor keeps children busy and away from illicit activities.<sup>198</sup> In essence, “[i]dle hands are the devil’s workshop.”<sup>199</sup> Writing in 1910, Dr. Ezekiel Henry Downey<sup>200</sup> criticized “[t]his argument [as] assum[ing] that if children are not allowed to work . . . they will be thrown upon the street.”<sup>201</sup> This argument comes from a time when Iowa’s compulsory education laws were just beginning<sup>202</sup> and not yet widely adhered to.<sup>203</sup> Rather, the pendulum has swung in the opposite direction from where it was a century before; the zeitgeist is now concerned with the cyberbullying of American youth that results from unregulated use of social media.<sup>204</sup> In 2021, forty-six percent of American children between the ages of thirteen and seventeen reported being cyberbullied at least once in their lives.<sup>205</sup> Government websites like stopbullying.gov are now dedicated to educating parents on the dangers posed by children’s unregulated access to social media.<sup>206</sup>

“Illicit activities” are not just for idle children. Children on social media are at a heightened risk to be targeted by child predators. In 2019, YouTube was forced to disable the comment sections for “the majority of channels featuring kids”<sup>207</sup> because “the comment sections [were] full of people time

197. See *supra* Section I.B.

198. See DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 131.

199. Proverbs 16:27 (Living Bible), <https://www.biblegateway.com/passage/?search=Proverbs%2016%3A27-29&version=TLB> [<https://perma.cc/MF3G-4GED>].

200. For a discussion of Dr. Downey’s credentials, see *supra* note 7.

201. DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 132.

202. See *id.* at 117.

203. See *id.* at 119–21.

204. See *Social Media, Apps, and Sites Commonly Used by Children and Teens*, STOPBULLYING.GOV, <https://www.stopbullying.gov/cyberbullying/social-media-apps-sites-commonly-used-children-teens> [<https://perma.cc/A6MR-PCYV>] (explaining social media “can be an avenue through which cyberbullying occurs”).

205. Justin W. Patchin, *2021 Cyberbullying Data*, CYBERBULLYING RSCH. CTR. (June 1, 2021), <https://cyberbullying.org/2021-cyberbullying-data> [<https://perma.cc/X529-B9AX>].

206. See, e.g., *Social Media, Apps, and Sites Commonly Used by Children and Teens*, *supra* note 204.

207. Julia Alexander, *YouTube Is Disabling Comments on Almost All Videos Featuring Children*, VERGE (Feb. 28, 2019, 12:53 PM), <https://www.theverge.com/2019/2/28/18244954/youtube-comments-minor-children-exploitation-monetization-creators> [<https://perma.cc/DCD9-gYU2>].

stamping specific scenes that sexualize[d] the child or children in the video. Comments about how beautiful young girls are . . . litter[ed] the comment section.”<sup>208</sup> In this way, social media and other entertainment jobs present unique risks that the Iowa Legislature must recognize and address for the safety of the state’s youth. To do so, the legislature should give the Director the power to approve and monitor child social media advertising on a case-by-case basis.

Second, opponents to greater child labor regulations argue that new regulations are unnecessary because they were unnecessary for their generation.<sup>209</sup> “I had to work when I was a boy,” declared more than one member of the legislature, “and I don’t believe it hurt me any.”<sup>210</sup> Once again, Dr. Downey presents an apt counterargument: The work done by these legislators in their childhoods was not the same type of work the legislature was proposing to regulate.<sup>211</sup> Rather, the face of child labor had changed since the childhoods of those legislators. The same is true now with social media. Even the youngest theoretical legislator in the Iowa Legislature would only be twenty-one years of age,<sup>212</sup> on the precipice of the advent of social media and the social media influencer generation. As such, social media presents dangers unknown to the current members of the Iowa Legislature during their adolescences.

Third, opponents to greater child labor regulations argue that such regulations would threaten Iowa’s farming industry.<sup>213</sup> This Note, although critical of the ongoing deregulation of child labor in the state<sup>214</sup> and skeptical of the claim that the family farm is still the cornerstone of Iowa’s economy,<sup>215</sup> attempts to be sensitive to this potential argument against further regulations. This Note advocates that any changes to Iowa’s child labor laws focus on the new dangers posed by social media. The arguments against the parent-employer exception of section 92.17(3) presented in this Note are directed at social media advertising. Even if the definition of “prohibit,” as used in the statute, is altered in such a way as to disallow parent-employers to escape the (revitalized) work permit requirement, as this Note advocates for, it is not immediately threatening to the farming industry. As discussed, the Labor Commission, who used to oversee and approve work permit applications,<sup>216</sup>

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208. Julia Alexander, *YouTube Still Can’t Stop Child Predators in Its Comments*, VERGE (Feb. 19, 2019, 11:50 AM), <https://www.theverge.com/2019/2/19/18229938/youtube-child-exploitation-recommendation-algorithm-predators> [<https://perma.cc/3JAX-j2XR>].

209. See DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 132.

210. *Id.*

211. *See id.*

212. IOWA CONST. art. III, 2d, § 4 (“No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years . . .”).

213. See DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 132–33.

214. *See supra* Section II.A.

215. *See supra* Section I.B.

216. IOWA CODE § 92.13 (2023).



was sympathetic to Iowa minors' participation in the farming industry.<sup>217</sup> Even if the legislature does not want to leave the option of denying work permits to children working in agriculture open to the Director's discretion, the legislature could limit the current parent-employer exception to just agricultural work activities or those work activities outside the scope of Coogan accounts. Alternatively, the legislature could limit a work permit requirement to only entertainment work activities.

Fourth, opponents to greater child labor regulations argue that such regulations would cause the industries being regulated to take their business outside of the state.<sup>218</sup> However, these social media platforms are distinguishable from previous industries in that they are all on the internet. These platforms are inherently international and therefore must already comply with various, disparate jurisdictions. In addition, the laws proposed in this Note do not burden the brands that use social media advertising beyond compliance with the Coogan account law, requiring them to divert fifteen percent of a contract price to the account. Regardless of these laws, Iowans will continue to use social media. Therefore, the market of consumers that brands using social media advertising want to target will remain unchanged.

The last, and most outdated, of the arguments is that limiting child labor is detrimental because widowed mothers depend upon their male children to be breadwinners for the family.<sup>219</sup> Interpreting this argument more broadly, many families do rely on the income of their children to sustain themselves. However, this Note focuses on work activities that fall within the scope of Coogan accounts—"artistic or creative services," including social media. These work activities are not of the type that most would consider as the first choices for children attempting to help their families subsist. The "starving artist" is a trope for good reason. For reference, 94.73 percent of Instagram users have fewer than 100,000 followers, and 26.43 percent of users have fewer than one thousand followers.<sup>220</sup> Yet, the top 5.27 percent of users have the opportunity to engage in the rapidly increasing market of social media advertising and can profit far more than a child who is engaging in a more traditional job that pays Iowa's current minimum wage of \$7.25 per hour.<sup>221</sup> Therefore, the scope of the Coogan account law this Note advocates for is

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217. See *In the Matter of the Emp. of Minors at the Iowa State Fair*, No. 2022-11 (Iowa Div. of Lab. Aug. 10, 2022), <https://www.iowadivisionoflabor.gov/sites/default/files/2022-08/General%20Order%20state%20of%20fair%20RR.pdf> [<https://perma.cc/D68U-3EBZ>]; *supra* Section I.B.

218. See DOWNEY, HISTORY OF LABOR LEGISLATION, *supra* note 7, at 133.

219. *Id.* at 134.

220. See *Instagram Followers*, MENTION, <https://mention.com/en/reports/instagram/followers> [<https://perma.cc/X8U7-NUB3>].

221. *Wage & Hour - Common Questions*, IOWA DEP'T OF INSPECTIONS, APPEALS & LICENSING, IOWA DIV. OF LAB., <https://www.iowadivisionoflabor.gov/idol/wage-hour/faq> [<https://perma.cc/RKPS-QPPU>].

targeted at high-earning work activities not used by Iowa children merely to help sustain themselves and their families.

B. ISSUES IN THE PROPOSED LAWS

Two immediate issues arise from the Coogan account law proposed in Section III.B. First, the law is ambiguous as to whether fifteen percent of fringe benefits from contracts should be held in trust.<sup>222</sup> Second, the law is ambiguous as to the scope of what constitutes a “social media communication.”<sup>223</sup>

The first issue was already raised when assemblymember Chu attempted to amend California’s Coogan account law.<sup>224</sup> In Chu’s own words, “[w]e [the California State Assembly] ran into the challenge of how do we comply with the Coogan Act . . . when [the children] are being paid by tickets and toys and clothes and other little things?”<sup>225</sup> For example, Ryan’s World is a YouTube account starring ten-year-old Ryan Kaji, who makes sponsored videos of himself playing with toys.<sup>226</sup> Of course, Ryan is compensated monetarily for his sponsored content—grossing \$250 million in 2021 across his many ventures<sup>227</sup>—but he is also compensated in the products he plays with, the toys themselves.<sup>228</sup> Ryan’s mother has said that “[o]ne room in our house is completely dedicated to toy storage . . . . But Ryan doesn’t keep all the toys he gets – we give a lot of them away to friends and family, and also a lot of them away to charity.”<sup>229</sup>

Although it is not clear whether these fringe benefits would fall within the scope of these Coogan accounts, this Note does not advocate for attempting to fit these fringe benefits into the Coogan account model. For example, one common sponsor found on YouTube is HelloFresh, a subscription service that delivers meal kits, “ready for customers to turn into home-cooked meals.”<sup>230</sup> As is the nature of its business as a meal kit company, HelloFresh sponsorships of YouTube channels involve the YouTuber preparing and eating the meal on camera. If a child is eating that meal, and contractually commenting on how delicious it is, that meal is a fringe benefit. It would be illogical to say that fifteen percent of that child’s meal should be

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222. See Assemb. B. 2388, 2017–2018 Leg., Reg. Sess. (Cal. 2018).

223. See *id.*

224. See Wong, *supra* note 162.

225. *Id.*

226. See Jay Caspian Kang, *The Boy King of YouTube*, N.Y. TIMES MAG. (Jan. 8, 2022), <https://www.nytimes.com/2022/01/05/magazine/ryan-kaji-youtube.html> (on file with the *Iowa Law Review*).

227. *Id.*

228. See Geoff Weiss, *This 4-Year-Old Has the Most-Viewed YouTube Channel in the World*, TUBEFILTER (Sept. 8, 2016), <https://www.tubefilter.com/2016/09/08/ryan-toys-review-most-watched-youtube-channel-in-the-world> [<https://perma.cc/U6W6-P4Z8>].

229. *Id.*

230. Michael J. de la Merced, *HelloFresh, a Meal Delivery Start-Up, Raises \$50 Million*, N.Y. TIMES: DEALBOOK (June 18, 2014, 11:07 AM), <https://archive.nytimes.com/dealbook.nytimes.com/2014/06/18/hellofresh-a-meal-delivery-start-up-raises-50-million> [<https://perma.cc/XDB4-N8KU>].

physically withheld and kept in trust. As such, fringe benefits like toys and meals should not be within the scope of a Coogan account.

The second issue is the ambiguous meaning of “social media communication.” Once again, the HelloFresh example is apt. Normally, when HelloFresh sponsors a YouTube video, the entire video is not dedicated to preparing and eating the HelloFresh meal. The sponsored video will consist of that YouTube channel’s normal content, interrupted for a few minutes while the YouTuber talks about HelloFresh, before resuming the normal content. Is that interruption the “social media communication,” or is the entire video the “social media communication”? If the advertisement itself is the social media communication, then any income from that advertisement does not need to go to a child if the child appears in all of the video *except* the explicit HelloFresh advertisement. Conversely, using the broader definition of “social media communication,” even if the child does not appear in the advertising section, if the child appears elsewhere in the video, a portion of the income from the advertisement must go to the Coogan account. Using the narrower definition, one can imagine a savvy parent who films content entirely centering on and monetizing their child but does not allow their child to appear in these overtly sponsored sections of the video to avoid the scope of the Coogan account law. Therefore, the broader definition is appropriate because, if the content, viewership, and engagement depend upon the child, then the eyes of the consumers viewing the overtly sponsored sections of the video are only on the video because of that child, so the income from that advertisement arises from the labor of that child.

### C. FEASIBILITY

Opponents to the Iowa Legislature regulating children in artistic and creative work activities are likely to cite the international nature of social media, as admitted in Section IV.A of this Note. Such laws, opponents may argue, are not necessary for *Iowa* to pass or are better suited for Congress. Although it is true that arts, entertainment, and recreation made up only 0.60 percent of Iowa’s gross domestic product in 2022,<sup>231</sup> this statistic alone is not enough to warrant no regulations. First, other work activities are regulated by the Code but make up a smaller percent of the gross domestic product—such as mining,<sup>232</sup> which was 0.27 percent of the state’s gross domestic product in 2022.<sup>233</sup> Second, even though, in the words of John Adams, “it is folly to

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231. See *Iowa - State Economic Profile*, *supra* note 36.

232. S. File 542, 90th Gen. Assemb., Reg. Sess. (2023) (to be codified at IOWA CODE § 92.6(1)(b), §92.8(8)).

233. See *Iowa - State Economic Profile*, *supra* note 36.

anticipate evils,”<sup>234</sup> the growing social media advertising market<sup>235</sup> and the number of American youths that have an interest in participating in that market<sup>236</sup> are real and imminent issues. Third, Congress has previously expressed that it would leave the regulation of entertainment jobs to the states.<sup>237</sup> Even if the rise in social media advertising will change Congress’s attitude on that matter, the imminence of a rapidly expanding social media advertising market for children necessitates immediate action on the part of the states, including Iowa.

In addition, the Iowa Legislature is better suited to tailor any social media child labor legislation to Iowa’s landscape. Although Congress must consider the economies of the fifty states in broad strokes, the Iowa Legislature can craft bespoke legislation that fits within the current framework of Iowa Code chapter 92. Therefore, the legislation proposed in this Note also serves a prophylactic purpose: to prevent federal overreach that may ultimately result in negative effects to other areas of Iowa’s economy, the Iowa Legislature must act first.

Iowa should also be a leader among the various states in child labor law. Iowa has long shown an interest in bettering the lives of its children, being one of the first states to “creat[e] a system of free public schools.”<sup>238</sup> In addition, the Governor has declared “[m]aking Iowa an employment destination” one of her priorities.<sup>239</sup> The Governor—or, at least, her website—recognizes that “[t]he needs and expectations of Iowans have changed over the last four decades.”<sup>240</sup> Iowa should back up these words with action by protecting its minor workers in this ever-expanding work environment.

Although Section II.A describes how the executive and legislative branches of Iowa have consistently deregulated child labor in recent years, the types of jobs being deregulated in those cases differ significantly from the social media regulations advocated for in this Note. As explained in Section IV.A, entertainment jobs that fall under the scope of the Coogan account law proposed in this Note differ from jobs that are normally associated with the jobs done by children attempting to support their families, such as working

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234. 46 JOHN ADAMS, DIARY 48 (Aug. 4, 1796), [https://www.masshist.org/digitaladams/archive/doc?id=D46&bc=%2Fdigitaladams%2Farchive%2Fbrowse%2Fdiaries\\_by\\_date.php](https://www.masshist.org/digitaladams/archive/doc?id=D46&bc=%2Fdigitaladams%2Farchive%2Fbrowse%2Fdiaries_by_date.php) [https://perma.cc/R22N-ERUW].

235. See McLachlan, *supra* note 87.

236. See *The Influencer Report: Report Summary*, MORNING CONSULT (Oct. 2019), <https://morningconsult.com/influencer-report-engaging-gen-z-and-millennials> (on file with the *Iowa Law Review*).

237. See 29 U.S.C. § 213(c)(3).

238. Amanda Rooker, *Report Card on Iowa Schools: Data Shows How Iowa Compares to Other States*, KCCI (Aug. 22, 2022, 7:11 PM), <https://www.kcci.com/article/report-card-on-iowa-schools-data-shows-how-iowa-compares-to-other-states/40961606> [https://perma.cc/R8KG-BVEE].

239. *About Governor Reynolds*, IOWA: GOVERNOR KIM REYNOLDS, <https://governor.iowa.gov/learn-more-about-governor/gov-reynolds-bio> [https://perma.cc/39ZT-75AM].

240. *Aligning Government to Better Serve Iowans*, IOWA: GOVERNOR KIM REYNOLDS, <https://governor.iowa.gov/vision-iowa/government-alignment> [https://perma.cc/GNC6-WC2j].

on farms or in convenience stores. These entertainment jobs have a high barrier of entry, with few reaching the point of making a career out of these jobs. However, those that do reach that point can earn an income that far exceeds the income of the jobs being deregulated by the executive and legislative branches in recent years. These differences are crucial and merit the consideration of the legislative and executive branches.

#### CONCLUSION

Iowa's child labor laws have changed greatly since 1847. However, the laws, as they exist now, are out of date. Iowa's current child labor laws must be updated, not only for the sake of clarity but also to provide greater, much-needed protections. These laws should prepare, as best they can, for a future work environment very different from that found in Iowa's history. The Iowa Legislature and Governor must recognize that social media advertising and other internet-based work activities are here to stay and must be addressed accordingly. This Note advocates for those changes to take the form of refining existing ambiguities in Iowa's child labor laws and adding additional regulations for children engaging in entertainment jobs, like social media advertising. Despite the current trend toward loosening child labor regulations in Iowa's executive and legislative branches, the changes advocated for in this Note are distinguishable from the work activities that those branches of government are currently concerned with deregulating. Importantly, the changes advocated for in this Note can be made without compromising Iowa's current dependence on children in the agricultural field. Although the changes proposed by this Note are only the first steps necessary to protecting Iowa's youth in the expanding realm of social media, such changes will provide a foundation allowing Iowa to keep pace with our modern times.