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HOUSE BILL NO. 2568

Offered January 13, 2025

Prefiled January 12, 2025

A BILL to amend the Code of Virginia by adding a section numbered 8.01-226.14, relating to prohibited applications and websites; private civil action.

Patron—Leftwich

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 8.01-226.14 as follows:****§ 8.01-226.14. Private civil action for access to prohibited applications and websites.****A. For purposes of this section:***"ByteDance Ltd." means the same as that term is defined in § 2.2-5514.1.**"Child" means the same as that term is defined in § 1-207.**"Discrete violation" means each separate instance that a child accesses TikTok.**"TikTok" means the same as that term is defined in § 2.2-5514.1.**"TikTok, Inc." means the U.S. company with its principal address in Culver City, California, and any successor company or entity owned by such company.**B. 1. TikTok, Inc. and ByteDance Ltd. shall not provide access to TikTok to any child within the Commonwealth. Any violation of this provision shall be subject to civil liability.**2. A child or the child's parent, guardian, or legal custodian acting on the child's behalf, but not an officer or employee of the Commonwealth in his official capacity or local governmental entity in the Commonwealth, may bring an action against TikTok, Inc. or ByteDance Ltd. for providing access to TikTok to the child in violation of this section. If a plaintiff prevails in an action brought under this section, the plaintiff shall recover (i) damages of \$75,000 for each discrete violation, (ii) other damages, and (iii) reasonable costs and attorney fees. Notwithstanding the provisions of § 8.01-38.1 limiting the maximum amount of punitive damages to be awarded in an action, if the defendant knowingly provided the child access in violation of this section, the trier of fact may, in its discretion, award punitive damages. Notwithstanding any other provision of law, a court shall not award costs or attorney fees to a defendant in an action brought under this section.**C. Any such action brought pursuant to subsection B shall be brought in the circuit court of the jurisdiction wherein the child and parents reside or in Circuit Court of the City of Richmond.**D. A defendant in any private civil action brought under this section shall be entitled to assert all traditional defenses that may be available to tort actions, including any defense that may be available challenging the validity of any provision or application of this section, on constitutional grounds or otherwise. It shall be an affirmative defense that TikTok, Inc. or ByteDance Ltd. did not reasonably know or have reason to know of the provision of such access of TikTok to a child in the Commonwealth.**E. 1. Notwithstanding any other provision of law, neither the Commonwealth, its agencies, its political subdivisions, an attorney for the Commonwealth, a city or county attorney, nor any officer or employee of the Commonwealth, its agencies, or its political subdivisions acting in his official capacity may bring the private civil action described in subsection B. The requirements of this section shall be enforced exclusively through the private civil actions described in subsection B. No enforcement of this section in response to violations of this section may be taken or threatened by the Commonwealth, a political subdivision thereof, an attorney for the Commonwealth, or an executive or administrative officer or employee of the Commonwealth or a political subdivision of the Commonwealth against TikTok, Inc. or ByteDance Ltd.**2. The provisions of subdivision 1 shall not be construed to (i) permit the conduct prohibited by this section, (ii) limit in any way or affect the availability of a remedy established by subsection B, or (iii) limit the enforceability of any other laws that regulate or prohibit access to TikTok.**F. Notwithstanding any other provision of law, no court of the Commonwealth shall have jurisdiction over any suit in equity, or over any petition for a writ of mandamus or prohibition, arising out of this section, including over any equitable action that challenges the validity of any provision or application of this section, on constitutional grounds or otherwise.**G. Notwithstanding any other provision of law, the immunity of the Commonwealth, its agencies, and its political subdivisions from any action, claim, or counterclaim arising out of this section, or any type of legal or equitable action that challenges the validity of any provision or application of this section, on constitutional grounds or otherwise, is hereby preserved. No provision of the Code of Virginia or act of the General Assembly shall be construed to waive or abrogate an immunity described in this subsection unless it expressly waives immunity under this section.*

INTRODUCED

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59 *H. Notwithstanding any other provision of law, the Commonwealth, its agencies, its political subdivisions,*
60 *an attorney for the Commonwealth, a city or county attorney, or any officer or employee of the*
61 *Commonwealth, its agencies, or its political subdivisions acting in his official capacity shall not intervene in*
62 *an action brought under this section. This subsection shall not prohibit the Commonwealth, its agencies, its*
63 *political subdivisions, or any person described by this subsection from filing an amicus curiae brief in the*
64 *action.*