

SENATE BILL NO. 998

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce
on)

(Patrons Prior to Substitute—Senators Williams Graves and VanValkenburg [SB 840])

A BILL to amend and reenact §§ 40.1-2, 40.1-79.01, and 40.1-80.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 40.1-109.1 and 40.1-109.2, relating to child labor; child engaged in the work of content creation; trust account.

on _____)

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-2, 40.1-79.01, and 40.1-80.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 40.1-109.1 and 40.1-109.2 as follows:

§ 40.1-2. Definitions.

As used in this title, unless the context clearly requires otherwise, the following terms have the following meanings:

"Board" means the Safety and Health Codes Board.

"Business establishment" means any proprietorship, firm, or corporation where people are employed, permitted, or suffered to work, including agricultural employment on a farm.

"Commission" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to "Commissioner" shall include his authorized representatives.

"Content" means audiovisual content shared on an online platform in exchange for compensation.

"Content creator" means an individual or individuals 18 years of age or older, including family members, who create video content performed in the Commonwealth in exchange for compensation, and includes any proprietorship, partnership, company, or other corporate entity assuming the name or identity of a particular individual or family for the purposes of the content creation. "Content creator" does not include a child who produces his own video content.

"Department" means the Department of Labor and Industry.

"Domestic service" means services related to the care of an individual in a private home or the

31 maintenance of a private home or its premises, on a permanent or temporary basis, including services
32 performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.
33 "Domestic service" does not include work that is irregular, uncertain, or incidental in nature and duration.

34 "Employ" shall include to permit or suffer to work.

35 "Employee" means any person who, in consideration of wages, salaries, or commissions, may be
36 permitted, required, or directed by any employer to engage in any employment directly or indirectly.

37 "Employer" means an individual, partnership, association, corporation, legal representative, receiver,
38 trustee, or trustee in bankruptcy doing business in or operating within this Commonwealth who employs
39 another to work for wages, salaries, or on commission and shall include any similar entity acting directly or
40 indirectly in the interest of an employer in relation to an employee.

41 "Female" or "woman" means a female 18 years of age or over.

42 "Machinery" means machines, belts, pulleys, motors, engines, gears, vats, pits, elevators, conveyors,
43 shafts, or tunnels, including machinery being operated on farms in connection with the production or
44 harvesting of agricultural products.

45 *"Online platform" means any public-facing website, web application, or digital application, including a*
46 *mobile application. "Online platform" includes a social network, advertising network, mobile operating*
47 *system, search engine, email service, or Internet access service.*

48 **§ 40.1-79.01. Exemptions from chapter generally.**

49 A. Nothing in this chapter, except the provisions of §§ *subsection A of § 40.1-100 A*, and §§ 40.1-100.1,
50 40.1-100.2, and 40.1-103, shall apply to:

51 1. A child engaged in domestic work when such work is performed in connection with the child's own
52 home and directly for his parent or a person standing in place of his parent;

53 2. A child employed in occasional work performed outside school hours where such work is in connection
54 with the employer's home but not in connection with the employer's business, trade, or profession;

55 3. A child 12 or 13 years of age employed outside school hours on farms, in orchards, or in gardens with
56 the consent of his parent or a person standing in place of his parent;

57 4. A child between the ages of 12 and 18 employed as a page or clerk for either the House of Delegates or
58 the Senate of Virginia;

59 5. A child participating in the activities of a volunteer emergency medical services agency;

6. A child under 16 years of age employed by his parent in an occupation other than manufacturing; or

7. A child 12 years of age or older employed by an eleemosynary organization or unit of state or local government as a referee for sports programs sponsored by that eleemosynary, state, or local organization or by an organization of referees sponsored by an organization recognized by the United States Olympic Committee under 36 U.S.C. § 220522.

B. Nothing in this chapter, except §§ 40.1-100.1, 40.1-100.2, and 40.1-103, shall be construed to apply to a child employed by his parent or a person standing in place of his parent on farms, in orchards or in gardens owned or operated by such parent or person.

C. Nothing in this chapter, except subsection A of § 40.1-100 and §§ 40.1-100.1, 40.1-100.2, 40.1-103, and 40.1-109.2, shall apply to a child engaged in the work of content creation as described in § 40.1-109.1. For the purposes of this subsection, a child engaged in the work of content creation shall not be considered to be "employed, permitted, or suffered to work" in any setting described in subsection A of § 40.1-100 solely due to such child's presence in such setting, provided that:

1. Such child is not exposed to a hazard capable of causing serious physical harm or death to such child in violation of § 40.1-100.1;

2. Such child is under the direct supervision of an adult who ensures compliance with all applicable safety requirements; and

3. Such child's engagement in the work of content creation does not require direct interaction with hazardous equipment or conditions.

§ 40.1-80.1. Employment of children.

A. Except as provided in §§ 40.1-79.01, 40.1-88, 40.1-102, ~~and~~ 40.1-109, 40.1-109.1, and 40.1-109.2, no child under ~~sixteen~~ 16 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation more than the number of hours per week or more than the number of hours per day or during the hours of the day that the Commissioner shall determine by regulations to be detrimental to the lives, health, safety, or welfare of children. These regulations shall incorporate the standards contained in regulations promulgated by the ~~United States~~ U.S. Secretary of Labor pursuant to the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) concerning the number of hours per week, hours per day, and the hours of the day that children under the age of ~~sixteen~~ 16 may work in, about, or in connection with, any gainful occupation.

89 B. No child shall be employed or permitted to work for more than five hours continuously without an
90 interval of at least ~~thirty~~ 30 minutes for a lunch period, and no period of less than ~~thirty~~ 30 minutes shall be
91 deemed to interrupt a continuous period of work.

92 **§ 40.1-109.1. Child engaged in the work of content creation; criteria.**

93 A. A child under the age of 16 is considered engaged in the work of content creation when the following
94 criteria are met at any time during the previous 12-month period:

95 1. At least 30 percent of the content creator's compensated video content produced within a 30-day period
96 included the likeness, name, or photograph of the child. Content percentage is measured by the percentage of
97 time the likeness, name, or photograph of the child or, if more than one child regularly appears in the
98 creator's content, any of the children visually appears or is the subject of an oral narrative in a video
99 segment as compared to the total length of the segment; and

100 2. The number of views received per video segment on any online platform met the online platform's
101 threshold for the generation of compensation or the content creator received actual compensation for video
102 content equal to or greater than \$0.10 per view.

103 B. All content creators whose content features a child under the age of 16 engaged in the work of content
104 creation shall maintain the following records and shall provide them to the child and the holder of the trust
105 account required pursuant to § 40.1-109.2 on an ongoing basis:

106 1. The name and documentary proof of the age of the child engaged in the work of content creation;

107 2. The number of videos that generated compensation as described in subsection A during the reporting
108 period;

109 3. The total number of minutes of the video content that the content creator received compensation for
110 during the reporting period;

111 4. The total number of minutes each child was featured in video content during the reporting period;

112 5. The total compensation generated from video content featuring a child during the reporting period; and

113 6. The amount deposited into the trust account for the benefit of the child engaged in the work of content
114 creation, as required by § 40.1-109.2.

115 C. If a content creator whose video content features a child under the age of 16 engaged in the work of
116 content creation fails to maintain the records as provided in subsection B, the child, or his parent or
117 guardian on behalf of such child, may commence a civil action to enforce the provisions of this section. No

action shall be commenced under this section more than two years after the date on which the child engaged in the work of content creation attained 18 years of age.

§ 40.1-109.2. Child engaged in the work of content creation; trust account.

A. A child engaged in the work of content creation as described in subsection A of § 40.1-109.1 shall be compensated by the content creator. The content creator shall set aside gross earnings on the video content that includes the likeness, name, or photograph of the child in a trust account to be preserved for the benefit of the child upon attaining 18 years of age or having been declared emancipated, according to the following distribution:

1. Where only one child meets the content threshold described in § 40.1-109.1, the percentage of total gross earnings on any video segment including the likeness, name, or photograph of the child that is equal to or greater than half of the content percentage that includes the child as described in § 40.1-109.1; or

2. Where more than one child meets the content threshold described in § 40.1-109.1 and a video segment includes more than one of those children, the percentage described in subdivision 1 for all children in any segment shall be equally divided among the children, regardless of differences in percentage of content provided by the individual children.

B. A trust account required under this section shall provide, at a minimum, the following:

1. That the funds in the account shall be available only to the child engaged in the work of content creation;

2. That the account shall be held by a financial institution, corporate fiduciary, or trust company;

3. That the funds in the account shall become available to the child engaged in the work of content creation upon the child attaining the age of 18 years or when the child is declared emancipated; and

4. That the account meets the requirements of the Virginia Uniform Transfers to Minors Act (§ 64.2-1900 et seq.).

C. If a content creator knowingly or recklessly violates this section, a child engaged in the work of content creation as described in subsection A of § 40.1-109.1, or his parent or guardian on behalf of such child, may commence an action to enforce the provisions of this section regarding the trust account. The court may award, to a child who prevails in any action brought in accordance with this section, the following damages: (i) compensatory damages; (ii) punitive damages; and (iii) the costs of the action, including reasonable attorney fees and costs. No action shall be commenced under this section more than two years after the date

147 *on which the child engaged in the work of content creation attained 18 years of age.*

148 *D. This section does not affect any right or remedy available under any other provision of law.*

149 *E. Nothing in this section shall be construed to have any effect on a party that is neither the content*

150 *creator nor the child engaged in the work of content creation.*