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HOUSE BILL NO. 670
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Appropriations
 on _____)

(Patron Prior to Substitute—Delegate Maldonado)

A BILL to amend and reenact §§ 40.1-2, 40.1-2.1, and 40.1-27.4 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 40.1-22.2 and 40.1-29.01, relating to labor and employment provisions; application of law; protection of employees; definition of employer.

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-2, 40.1-2.1, and 40.1-27.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 40.1-22.2 and 40.1-29.01 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 maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs. "Domestic service" does not include work that is irregular, uncertain, or incidental in nature and duration.

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

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

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

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

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

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

"Public body" means any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, including any school board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty.

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, ~~unless, and except (i) as expressly provided otherwise or (ii) to the extent that, coverage is extended by specific regulation of the Commissioner or the Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner or the Board shall establish procedures and adopt regulations for enforcing the~~

program that shall include provisions for ~~(i)~~ (a) the issuance of proposed penalties; ~~(ii)~~ (b) the payment of such penalties or a negotiated sum in lieu of such penalties; ~~(iii)~~ (c) the deposit of such payments into the general fund of the state treasury; ~~(iv)~~ (d) fair hearings, including judicial review; and ~~(v)~~ (e) other sanctions to be applied for violations.

§ 40.1-22.2. Employer includes the Commonwealth and its agencies, etc.

For the purposes of this article, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions, and any public body.

§ 40.1-27.4. Discipline for employee's medicinal use of cannabis oil prohibited.

A. As used in this section:

"Cannabis oil" means the same as that term is defined in § 4.1-1600.

"Employee" means the same as that term is defined in § 40.1-2, except that for the purposes of this section, "employee" does not include any law-enforcement officer, as defined in § 9.1-101.

~~"Employer" means the same as that term is defined in § 40.1-2, except that for the purposes of this section, "employer" also includes the Commonwealth, any county, city, town, or other political subdivision thereof, and any agency of the Commonwealth or such county, city, town, or political subdivision.~~

B. No employer shall discharge, discipline, or discriminate against an employee for such employee's lawful use of cannabis oil under the laws of the Commonwealth pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease pursuant to § 4.1-1601.

C. Notwithstanding the provisions of subsection B, nothing in this section shall (i) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during work hours, (ii) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or (iii) require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol (THC) in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test.

§ 40.1-29.01. Employer includes the Commonwealth and its agencies, etc.

For the purposes of this article, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions, and any public body.