

HOUSE BILL NO. 1468

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Communications, Technology and Innovation
on February 5, 2024)

(Patron Prior to Substitute--Delegate Leftwich)

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.

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 website.

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.

"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 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.

25 Notwithstanding the provisions of § 8.01-38.1 limiting the maximum amount of punitive damages
26 to be awarded in an action, if the defendant knowingly provided the child access in violation of this section,
27 the trier of fact may, in its discretion, award punitive damages.

28 For purposes of this subsection, "discrete violation" means each separate instance that a child
29 accesses TikTok.

30 C. A defendant in any private civil action brought under this section shall be entitled to assert all
31 traditional defenses that may be available to tort actions, including any defense that may be available
32 challenging the validity of any provision or application of this section, on constitutional grounds or
33 otherwise.

34 D. 1. Notwithstanding any other provision of law, neither the Commonwealth, its agencies, its
35 political subdivisions, an attorney for the Commonwealth, a city or county attorney, nor any officer or
36 employee of the Commonwealth, its agencies, or its political subdivisions acting in his official capacity
37 may bring the private civil action described in subsection B. The requirements of this section shall be
38 enforced exclusively through the private civil actions described in subsection B. No enforcement of this
39 section in response to violations of this section may be taken or threatened by the Commonwealth, a
40 political subdivision thereof, an attorney for the Commonwealth, or an executive or administrative officer
41 or employee of the Commonwealth or a political subdivision of the Commonwealth against TikTok, Inc.
42 or ByteDance Ltd.

43 2. The provisions of subdivision 1 shall not be construed to (i) permit the conduct prohibited by
44 this section, (ii) limit in any way or affect the availability of a remedy established by subsection B, or (iii)
45 limit the enforceability of any other laws that regulate or prohibit access to TikTok.

46 E. Notwithstanding any other provision of law, no court of the Commonwealth shall have
47 jurisdiction over any suit in equity, or over any petition for a writ of mandamus or prohibition, arising out
48 of this section, including over any equitable action that challenges the validity of any provision or
49 application of this section, on constitutional grounds or otherwise.

50 F. Notwithstanding any other provision of law, the immunity of the Commonwealth, its agencies,
51 and its political subdivisions from any action, claim, or counterclaim arising out of this section, or any

52 type of legal or equitable action that challenges the validity of any provision or application of this section,
53 on constitutional grounds or otherwise, is hereby preserved. No provision of the Code of Virginia or act
54 of the General Assembly may be construed to waive or abrogate an immunity described in this subsection
55 unless it expressly waives immunity under this section.

56 G. Such action shall be brought in the circuit court of the jurisdiction wherein the child and parents
57 reside or in Circuit Court of the City of Richmond.

58 H. Notwithstanding any other provision of law, a court may not award costs or attorney fees to a
59 defendant in an action brought under this section.

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

66 J. It shall be an affirmative defense that TikTok, Inc. or ByteDance Ltd. did not reasonably know
67 or have reason to know of the provision of such access of TikTok to a child in the Commonwealth.

68 #