

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD LABOR LAWS TO INCLUDE
5 DIGITAL LABOR PRACTICES; PROVIDING DEFINITIONS; REQUIRING VLOGGERS TO PROVIDE JUST
6 COMPENSATION TO MINORS FEATURED IN VLOGS; ESTABLISHING A MINOR TRUST FUND;
7 PROVIDING FOR COURT-AWARDED DAMAGES TO A MINOR FOR VIOLATIONS TO PROVIDE JUST
8 COMPENSATION; AND AMENDING SECTION 41-2-103, MCA."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 41-2-103, MCA, is amended to read:

13 **"41-2-103. Definitions.** As used in this part, the following definitions apply:

14 (1) "Agriculture" means:

15 (a) all aspects of farming, including the cultivation and tillage of the soil;

16 (b) (i) dairying; and

17 (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural
18 commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing
19 Act, 12 U.S.C. 1141j(g);

20 (c) the raising of livestock, bees, fur-bearing animals, or poultry; and

21 (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm
22 as an incident to or in conjunction with farming operations, including preparation for market or delivery to
23 storage, to market, or to carriers for transportation to market.

24 (2) "Department" means the department of labor and industry provided for in 2-15-1701.

25 (3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational
26 activity related to and conducted in or around a private residence, including but not limited to babysitting, pet
27 sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial
28 homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Family" has the meaning provided in 41-5-103.

~~(6)~~(7) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or a high school equivalency diploma;

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program; or

(c) is 16 years of age or older and is a student-employee under the direct and close supervision of a qualified and experienced person with experience in the occupation in which the minor is employed as provided in 41-2-110.

~~(7)~~(8) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.

(9) "Online platform" means a public-facing website, web application, or digital application, including a mobile application. The term includes a social network, advertising network, mobile operating system, search engine, e-mail service, or internet access service.

(10) "Vlog" means content shared on an online platform in exchange for compensation.

(11) (a) "Vlogger" means an individual or family that creates video content, performed in the state, in exchange for compensation, and includes a proprietorship, partnership, company, or other corporate entity assuming the name or identity of a particular individual or family for the purposes of that content creation.

(b) The term does not include a person under 16 years of age who independently produces vlogs."

1 **NEW SECTION. Section 2. Minors featured in vlogs -- trust fund.** (1) A minor under 16 years of

2 age is considered to be engaged in the work of vlogging when the following criteria are met at any time during
3 the previous 12-month period:

4 (a) at least 30% of the vlogger's compensated video content produced within a 30-day period
5 includes the likeness, name, or photograph of the minor. Content percentage is measured by the amount of
6 time the likeness, name, or photograph of the minor visually appears or is the subject of an oral narrative in a
7 video segment, as compared to the total length of the segment.

8 (b) the number of views received for each video segment on an online platform meet the online
9 platform's threshold for the generation of compensation or the vlogger received actual compensation for video
10 content equal to or greater than \$0.10 a view.

11 (2) A vlogger whose content features a minor under 16 years of age engaged in the work of
12 vlogging shall maintain the following records and shall provide them to the minor on an ongoing basis:

13 (a) the name and documentary proof of the age of the minor engaged in the work of vlogging;

14 (b) the number of vlogs that generated compensation as described in subsection (1) during the
15 reporting period;

16 (c) the total number of minutes of the vlogs that the vlogger received compensation for during the
17 reporting period;

18 (d) the total compensation generated from vlogs featuring a minor during the reporting period; and

19 (e) the amount deposited in the trust account for the benefit of the minor engaged in the working of
20 vlogging, as required by this section.

21 (3) If a vlogger whose vlog content features a minor under 16 years of age engaged in the work of
22 vlogging fails to maintain the records as provided in subsection (2), the minor may commence a civil action to
23 enforce the provisions of this section.

24 (4) A minor satisfying the criteria described in subsection (1) must be compensated by the vlogger.
25 The vlogger shall set aside gross earnings on the video content including the likeness, name, or photograph of
26 the minor in a trust account to be preserved for the benefit of the minor on reaching the age of majority
27 according to the following distribution:

28 (a) when only one minor meets the content threshold described in subsection (1), the percentage

1 of total gross earnings on a video segment including the likeness, name, or photograph of the minor that is
2 equal to or greater than half of the content percentage that includes the minor; or

3 (b) when more than one minor meets the content threshold described in subsection (1) and a
4 video segment includes more than one of the minors, the percentage described in subsection (1)(a) for all
5 minors in a segment must be equally divided between the minors, regardless of differences in percentage of
6 content provided by the individual minors.

7 (5) A trust account required under this section must provide, at a minimum, the following:

8 (a) the funds in the account must be available only to the minor engaged in the work of vlogging;

9 (b) the account must be held by an entity authorized to exercise trust powers under Title 32,
10 chapter 1;

11 (c) the funds in the account must be available to the minor engaged in the work of vlogging on the
12 minor attaining 18 years of age or until the minor is declared emancipated; and

13 (d) the account meets the requirements of Title 72, chapter 26.

14 (6) If a vlogger knowingly or recklessly violates this section, a minor satisfying the criteria
15 described in subsection (1) may commence an action up to 25 years of age or 3 years after discovery,
16 whichever is later, to enforce the provisions of this section regarding the trust account. The court may award to
17 a minor who prevails in an action brought in accordance with this section the following damages:

18 (a) actual damages;

19 (b) punitive damages; and

20 (c) the costs of the action, including attorney fees and litigation costs.

21 (7) This section does not affect a right or remedy available under any other law of the state.

22 (8) Nothing in this section may be interpreted to have any effect on a party that is not the vlogger
23 or the minor engaged in the work of vlogging.

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25 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
26 integral part of Title 41, chapter 2, part 1, and the provisions of Title 41, chapter 2, part 1, apply to [section 2].

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