

Testimony before the House Committee  
on Labor and Industry  
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Terri Gerstein  
Director, NYU Wagner Labor Initiative  
NYU Robert F. Wagner Graduate School of Public Service  
[Terri.gerstein@nyu.edu](mailto:Terri.gerstein@nyu.edu)

To:

Chair Alfonso Lopez and Members  
Virginia House of Delegates Labor and Commerce Committee, Subcommittee 2

RE: HB 100 and child labor

Dear Chair Lopez and Subcommittee Members,

Thank you for the opportunity to provide testimony regarding child labor and HB 100. I provide this testimony in my personal capacity. I am the Director of [NYU Wagner Labor Initiative](#), at the NYU Robert F. Wagner Graduate School of Public Service. In this position, among other things, I help state and local government agencies increase their capacity to enforce worker protection laws. Previously, I directed the State and Local Enforcement Project at the Harvard Center for Labor and a Just Economy. From 1999 through early 2017, I enforced workplace laws in New York, including as Labor Bureau Chief in the New York State Attorney General's Office, and as a Deputy Commissioner overseeing wage and hour enforcement in the New York State Department of Labor.

My testimony will review child labor laws; describe the recent upsurge in violations; outline ways in which the current system is inadequate to address the problem; summarize recent federal proposals, including several bipartisan bills; and analyze possibilities for state action. Summarized in brief:

- Child labor laws protect minors from dangerous worksites and damaging work schedules, while still allowing teenagers over 14 to gain work experience.
- Government data and media reporting both demonstrate a significant and concerning recent increase in serious child labor violations.
- Enforcement of child labor laws is complex and resource-intensive.
- Our current system is inadequate to address the problem for various reasons, including insufficient enforcement resources, minimal penalties, and insulation of lead corporations from responsibility.
- Many potentially impactful legislative avenues exist for addressing this crisis, including measures proposed in bipartisan bills in the U.S. Senate.

- Virginia has numerous policy options for addressing this ongoing crisis. HB 100 is a good first step and increasing civil penalties as proposed is important; however, higher penalties alone will likely be insufficient to deter violations.
- During a deeply divided national moment, this crisis represents an opportunity for state legislators to take action reflecting our shared values of protecting children.

## **I. Federal and state child labor laws**

### **A. Children are legally permitted to work in many jobs**

As an initial matter, both federal and Virginia laws allow children, even those as young as 14, to work in a broad range of jobs: work in offices, stocking shelves at grocery stores, working as a cashier, handling most duties at restaurants, working in retail, and much more.

However, there are some important limitations. The federal child labor law, located within the Fair Labor Standards Act (FLSA), contains two general sets of prohibitions: one prohibits employers from employing minors in very dangerous jobs, and the other limits the hours children under 16 can be assigned to work, to protect their ability to get an education.<sup>1</sup> Virginia law has these same two general prohibitions (barring hazardous jobs and limiting hours of work), with some additional safeguards, including the requirement of a lunch break if shifts extend past five hours.<sup>2</sup> In addition, like a majority of states,<sup>3</sup> Virginia requires minors to obtain work permits; in Virginia's case, they are issued by the Labor Commissioner and are required for minors under 16 years of age.<sup>4</sup>

### **B. Enforcement of child labor laws**

Key elements of the enforcement scheme are as follows:

- Child labor laws are enforced by state or federal government. No private right of action exists.
- Civil remedies include penalties, which go to the state, and injunctive relief. There are no damages provisions for children who have been victims.
- Civil monetary penalties are generally modest. Under federal law, the highest civil monetary penalty is in the \$15,000 range per violation. In Virginia, currently the maximum penalty for a violation resulting in a child's serious injury or death is \$10,000; for all other child labor violations—including hazardous, prohibited work that has not yet resulted in injury or death—the maximum penalty is \$1,000. There is no increase for second, subsequent, or egregious violations, and the statute requires consideration of the size of the business and gravity of the violation, which results in lowering of penalties to levels below the maximum.
- The federal government and some states impose criminal penalties for child labor violations, but they are typically very low-level charges and rarely brought. I was not able to identify criminal penalties for child labor laws within Virginia's statutes.

- The federal Fair Labor Standards Act is a floor, not a ceiling. States (and localities) are free to legislate more protective standards.

### **C. Oppressive child labor is extremely harmful to young people**

While age-appropriate work can be valuable for children, oppressive child labor in violation of the law is terribly harmful to them: It places them in serious physical danger and interferes with their opportunity to get an education.

When children work in prohibited hazardous occupations, it places them at risk of injury and even death. The risk of children working in hazardous occupations is not theoretical. When I worked in the New York Attorney General's Office, our team prosecuted a case involving a 17-year-old high school senior, Brett Bouchard, who was working at an Italian restaurant in upstate New York, near the Canadian border. His arm was severed at the elbow when his employer assigned him to clean machinery that was prohibited for minors. Brett underwent multiple surgeries to have the arm surgically reattached.<sup>5</sup>

Like Brett, children today are being placed at great risk. Three sixteen-year-old boys, for example, were killed on the job during a five-week period last year.<sup>6</sup> Many children also have the added vulnerability of being immigrants, not knowing English, sometimes being unaccompanied and on their own. The jobs included in federal and Virginia laws as "[hazardous occupations](#)"<sup>7</sup> are terribly dangerous. They are among the most dangerous out there *for adults*, and they are even more perilous for children. Prohibited hazardous work under federal law includes, for example, mining; demolition; roofing; work involving exposure to radioactive substances; and work involving use, cleaning, or maintenance of various kinds of power-driven machines, such as those used in meat-processing plants.<sup>8</sup>

Importantly, the jobs included in the list of federal hazardous occupations were not chosen at random, nor were they selected 85 years ago when the Fair Labor Standards Act was first passed. The regulations were most recently updated in 2010, based on data from the National Institute of Occupational Safety and Health, focusing on the jobs with the highest incidence of serious workplace injury and fatalities.<sup>9</sup> There was virtually no opposition to that regulatory update, and very limited comments were submitted.

Young workers are also at higher risk of workplace injuries in general. Young workers have [much higher rates](#)<sup>10</sup> of non-fatal injuries on the job and the [highest rates](#)<sup>11</sup> of injuries that require emergency department attention. Due to the vulnerability and inexperience of young workers, data on these workers is likely an undercount due to fears or barriers in being able to speak up and report dangerous situations or child labor law violations.

In addition, when employers require children to work excessive hours, in violation of legal limitations on children's working hours, it harms young people's social and educational development, impeding their ability to get an education. Exceedingly long work schedules beyond the legal limits are [damaging to children's education](#).<sup>12</sup> Studies have found that working

more than 20 hours per week leads to [higher dropout rates](#)<sup>13</sup> and [lower grades](#)<sup>14</sup> and interferes with sleep.

## **II. There has been an unacceptable recent upsurge in child labor violations, involving hazardous work and excessive work schedules.**

### **A. Government statistics indicate a significant and growing problem.**

The Wage and Hour Division (WHD) of the USDOL is responsible for enforcing the FLSA's child labor provisions. The WHD has reported an 88% increase in overall child labor violations since 2019.<sup>15</sup> In addition, as the Economic Policy Institute [has noted](#), "These numbers represent just a tiny fraction of violations, most of which go unreported and uninvestigated."<sup>16</sup> Authorities have also noted an increase in child labor violations at the state level, as well. For example, in New York, child labor cases have more than tripled since 2019,<sup>17</sup> and in Massachusetts, the attorney general [noted](#) that within the past three years, the Office's Fair Labor Division had cited 127 employers for violating commonwealth child labor laws.<sup>18</sup> Pennsylvania reported a 276% increase in 2023 child labor investigations compared with 2022,<sup>19</sup> Maine's labor department reported more injury claims filed for workers ages 14 to 17 in 2022 than in any of the previous 10 years.<sup>20</sup>

### **B. Media reporting has uncovered serious violations**

Media reporting has also uncovered extensive child labor violations involving immigrant children. The stories are heartbreaking and deeply concerning; they illustrate the unique vulnerability of migrant children, as well as the unscrupulous conduct of employers that hire them. Notable examples are as follows:

Reuters in [a series of stories](#)<sup>21</sup> found migrant children, some as young as 12, were manufacturing car parts at suppliers to Korean auto giant Hyundai in Alabama and working in chicken processing plants in the state. In the case of the car part suppliers, the children were hired by a staffing company to work for a subcontractor for Hyundai. This kind of outsourcing, multi-layered "fissured" supply chain structure<sup>22</sup> helps household-name lead corporations deflect responsibility for child labor violations, allowing them to blame a subcontractor or staffing agency and evade accountability for what happens during the manufacturing of their products. Reuters coverage describes a fourteen-year-old girl working at the automobile plant "just over four feet tall, with rosy cheeks and a timid smile," as well as two brothers, aged 13 and 15, who were "staying with other factory workers in a sparsely furnished house owned by the president of the staffing company that hired them." Articles also report that two adult workers said they raised concerns with management; one was ignored, the other told to focus on production; other adult workers said they noticed the minors but fearing for their own jobs, they didn't speak up.

The New York Times published an extensive [exposé](#)<sup>23</sup> regarding widespread child labor violations at a range of employers in various industries nationwide, including at processing plants for household-name foods like Cheerios and Nature Valley, J. Crew and Fruit of the

Loom. As in the cases reported by Reuters, these examples include violations at subcontractors working for lead corporations; for example, Hearthside, a food processor where a 15-year-old was working, makes and packages food for other companies, including Frito-Lay, General Mills and Quaker Oats. Notably, the coverage includes an interview showing that employers do have the ability to discern when children are applying for jobs, and to avoid hiring them: the article describes a meat plant's human resources manager who actively tries not to hire children even if they "use heavy makeup or medical masks to try to hide their youth." Wrenching subsequent reporting in the New York Times follows a 14-year-old whose arm was severely and permanently maimed while working the overnight shift in a Purdue slaughterhouse in Virginia:

He was starting to accept that he would probably never wear short sleeves again. At his most recent checkup, the doctor explained that his arm had healed badly and he would need at least three more surgeries. Marcos found himself crying in the examination room for the first time. "I thought they were going to tell me I was finally done," he said. "It made me realize I might never get better."<sup>24</sup>

Additional New York Times reporting revealed children working as roofers,<sup>25</sup> and reported on the ineffectiveness of corporate supply chain monitoring.<sup>26</sup>

The Boston Globe [reported](#)<sup>27</sup> on minors working at factories and fish processing plants. The article describes, for example, one youth who "had come from Guatemala on his own to join his father, desperate to escape a poor, violent country where two of his childhood friends were shot to death. From 7 p.m. to 7 a.m., Walter trimmed plastic with sharp knives and retrieved hot molds stuck inside machines, then went straight to Framingham High School, bleary eyed, often falling asleep in class."

### **C. Additional child labor cases demonstrate the breadth and extent of violations**

Numerous additional cases brought by federal and state authorities demonstrate the extent of violations.

Some well-known fast-food companies and/or their franchisees have committed serious violations of child labor laws, most commonly involving infractions related to seriously excessive work hours, but sometimes also including hazardous prohibited work, such as allowing minors to use specific frying or cooking equipment that is disallowed because of the risk of injury. The [USDOL found](#) that three franchisees collectively operating 62 McDonalds locations in Kentucky, Indiana, Maryland, and Ohio employed 305 children to work more than the legally allowed hours; at least one also performed tasks prohibited for young workers.<sup>28</sup> The youngest workers were ten years old. The investigations led to assessments of \$212,544 in civil money penalties against the franchisees. Chipotle, too, is a notable offender: the burrito chain has paid more than \$9 million based on thousands of child labor violations in D.C. (2023),<sup>29</sup> [New Jersey](#) (2022)<sup>30</sup> and [Massachusetts](#) (2020).<sup>31</sup> Earlier this month, the Massachusetts Attorney General recovered \$1 million in penalties based on violations by Dunkin' franchisees.<sup>32</sup>

In recent years, state enforcers have also found child labor violations include locations of [Burger King](#), [Dunkin'](#), [Wendy's](#), [Qdoba](#), [Dave & Busters](#), [Taco Bell](#), and multiple franchisees of Dunkin (in [2021](#), [2022](#), and [2023](#)).<sup>33</sup> Meanwhile, the USDOL has found child labor violations at Sonic locations in [Kansas](#)<sup>34</sup> and [Nevada](#),<sup>35</sup> as well as a [Zaxby's franchisee](#),<sup>36</sup> [Dunkin'](#),<sup>37</sup> another [McDonalds](#),<sup>38</sup> [Arbys](#),<sup>39</sup> [Crumbl Cookies](#),<sup>40</sup> and more. A [North Carolina Chick-Fil-A](#) allowed three workers under 18 to operate, load, or unload a trash compactor prohibited as hazardous. (The company also paid certain employees in meal vouchers rather than wages).<sup>41</sup>

Numerous recent cases also involve youth assigned to do hazardous work prohibited for minors, such as my office's prior case mentioned earlier: the New York Attorney General prosecuted an employer for assigning a minor to hazardous work that ultimately led to the teen's [arm being severed](#).<sup>42</sup> The USDOL found 14 and 15-year-olds in [Maine](#) assigned to use fryers prohibited by law, as well as to operate a power-driven meat-slicer, also not permitted.<sup>43</sup> A [lathe mill in Ohio](#) employed a 15-year-old worker illegally in a hazardous occupation: operating a sawmill, leading to serious injury to the teen "when he became entangled in the gears of a powered wood processing machine."<sup>44</sup> Earlier this week, OSHA [issued a citation](#) including more than \$200,000 in penalties in a case involving a sixteen-year-old killed on the job last summer at a Mississippi poultry processing plant.<sup>45</sup>

In many cases, the oppressive child labor occurred in the context of multiple, additional types of labor violations. This is not uncommon: In my experience enforcing New York's labor laws, employers that violate one law often violate a cluster of workplace laws. For example, employers that failed to pay overtime in many cases also created false payroll records to hide their violations, along with under-reporting workers' wages for unemployment insurance, workers' compensation, or tax purposes. In this way, child labor violations are often part and parcel of an overall approach of employer impunity and disregard for workplace laws.

For example, in one federal [case](#), a 15-year-old worker fell approximately 20 feet off the roof of a two-story Orlando home.<sup>46</sup> The Occupational Safety and Health Administration (OSHA) found that the employer "failed to install a guardrail, safety net or personal fall arrest system for employees doing roofing work," improperly used ladders, and failed to train workers to recognize fall hazards. The Wage and Hour Division investigated once the minor's age was known, and not only found violations of the FLSA's hazardous occupation and hours provisions, but also discovered that the employer had misclassified some workers as independent contractors, did not pay proper overtime, and did not pay people for all hours worked.

In Pennsylvania, a [USDOL case](#) involved a 17-year-old who fell 24 feet from the roof of a home. The employer was found to have violated not only child labor laws, but also to have misclassified workers as independent contractors, failed to pay overtime, and failed to keep accurate payroll records, as well as exposing other workers to dangerous fall hazards.<sup>47</sup>

The statistics, media reporting, and enforcement cases all demonstrate that child labor violations are widespread throughout the country, in a range of industries, and there is an urgent need to address them.

### **III. Our current system is inadequate to address the child labor crisis.**

#### **A. Child labor enforcement is complex and time-intensive; enforcement resources are inadequate.**

Noncompliance with workplace laws has been described as a “rational” profit-maximizing decision made by unethical employers in response to low enforcement rates and deficient penalties. Scholars who have analyzed employer costs and benefits of noncompliance find that such “employers will not comply with the law if the expected penalties are small either because it is easy to escape detection or because assessed penalties are small.”<sup>48</sup> A broader way of understanding this calculus is that labor law compliance is a product of the likelihood of detection and the seriousness/severity of consequences if detected.

Currently, our system fails on both fronts: the likelihood of detection is exceedingly small, and the consequences of detection are insufficient. Federal enforcement resources are grossly insufficient,<sup>49</sup> and state resources typically are similarly inadequate for the task.<sup>50</sup> In addition, the likelihood of detection is further decreased by the unlikelihood of complaints by child workers, given their heightened vulnerability.

The consequences for violating child labor laws are also insufficient to deter violations. Federal and state civil and criminal penalties are very low, and there are no damages available for victims. Further, our laws generally make it far too difficult to hold lead corporations accountable. Lead companies’ use of “fissured” business models<sup>51</sup> with outsourced subcontractors and staffing agencies means that these large multinational corporations—those with the greatest ability to prevent child labor in their supply chains—often avoid responsibility for child labor violations—including repeat and widespread violations—occurring in plain sight among the workers directly handling and preparing their products.

In addition, child labor investigations are extremely resource intensive, requiring extensive work by teams of investigators for an extended period of time.<sup>52</sup>

#### **B. It is too easy for lead corporations to evade accountability for violations occurring on their worksites, in relation to their products, and in their supply chains**

In a number of the cases and media reports described above, there were widespread and blatant child labor violations in the supply chains of major national corporations. Yet it is too easy under current law for these corporations to deflect responsibility for these violations, instead pointing a finger at subcontractors and staffing agencies.

It is the lead corporations, more than any entity, that have the ability to prevent child labor violations in their supply chains. They can extensively monitor their subcontractors and can also terminate contracts immediately where child labor is found. As two legal experts from the National Employment Law Project recently wrote in *Fortune*, “Big corporations have the power to ensure compliance with labor and employment laws among their labor contractors and prevent the exploitation of children within their supply chains. They can set minimum labor standards in their supply chains, regularly audit their subcontractors and suppliers to ensure compliance, and cease working with subcontractors and suppliers that violate minimum labor standards. A subcontractor will do whatever it takes to stay in the good graces of major brand names.”<sup>53</sup>

Further, there is no law of nature that requires large corporations to subcontract. (I was surprised to learn that my Cheerios were packaged by a company called Hearthside, and not by General Mills). Companies that currently use a subcontracting business model, if they want to be sure to avoid child labor violations, can take these jobs in-house. Indeed, the multinational meat corporation JBS this year [announced](#) the creation of “JBS Sanitation” in partnership with the United Food and Commercial Workers International Union (UFCW): instead of subcontracting work to be performed by exploited and vulnerable migrant children, as had previously been the case, JBS is “creating hundreds of union jobs across the country” with “competitive wages and benefits.”<sup>54</sup>

Household-name major multinational corporations have the power and ability to make sure oppressive child labor is not used to produce their products - not used by themselves directly or by subcontractors, staffing agencies, or franchisees. However, our laws make it more difficult than it should be to hold them accountable. This is so even if there are repeat child labor violations within supply chains for the same corporation: it is an uphill battle to hold lead corporations responsible and they have ample legal resources to resist such cases in court.

The definition of “employ” under federal law is extremely broad—“to suffer or permit to work”—which would seem on its face to readily allow accountability for lead corporations in supply chains. Yet the case law that has developed over the years makes it much more difficult than it should be to get a finding of joint employer status, often focusing on factors very particular to the individual worker, such as who hired the worker, set their pay, directly supervised the work, and similar considerations.

As the National Employment Law Project’s lawyers have written,

We...need laws that ensure large corporations with the power to eradicate child labor in their supply chains use that power. Major brands should be held strictly liable for egregious labor violations in their labor supply chains. They should be held responsible regardless of whether they knew about the violations. Strict liability will make corporations detect and root out exploitative working conditions among their contractors and suppliers, and eliminate the Dickensian conditions suffered by migrant children.<sup>55</sup>



Lead corporations may claim they didn't know about child labor violations in their supply chains; clearly, they have the ability to learn of such abuses, and in some instances, given the widespread nature of violations, it somewhat defies credulity to think that the companies at the top of the chain didn't know. At the very least, though, it's hard to imagine any reason not to impose strict liability on lead corporations for second and subsequent violations discovered in their supply chains; at that point, there is no question regarding their knowledge and ability to remedy.

Finally, the government can and should ensure that it does not enter into contracts with corporations that have a history of child labor anywhere in their supply chains.

### **C. Penalties are too small to deter violations**

Currently, penalties are too low to deter violations. As noted above, federal civil monetary penalties are just over \$15,000 per violation, and in Virginia, the maximum penalty is \$1,000, unless a child dies or is seriously injured, in which case the maximum penalty is \$10,000.

Increasing child labor penalties is extremely important. However, that alone will be insufficient to effectively deter violations. A lead corporation is not likely to be deterred by even substantial penalties if it can readily deflect accountability to its subcontractors, and those subcontractors will likely be unmoved by high penalties if their violations are highly unlikely ever to be detected.

## **IV. Measures that would help address the current crisis**

Following from the prior section, three urgently needed measures include:

- **Increasing funding for enforcement**
- **Holding lead corporations responsible, at the very least for repeat, widespread, or unremedied violations, and**
- **Increasing penalties for violations.**

Additional policies that should be considered for enactment are as follows:

### **A. Prevent corporations with repeat, egregious, or unremedied child labor violations from receiving state contracts**

Corporations that commit repeat or egregious violations of child labor laws, or that fail to pay penalties and remedy existing infractions, should not receive government contracts paid with taxpayer money. Ideally government contracting should lead to high-quality jobs, with family-sustaining wages and benefits. But at the very least, procurement laws should require strict compliance with child labor laws by potential government contractors as well as their subcontractors and supply chains.

## B. Incorporate child labor and other labor rights in high school curricula

A major challenge in relation to all workplace rights enforcement, including child labor, is that many workers—both minors and those of all ages—do not know their workplace rights.

Research has shown that workers often are unaware of laws that protect them. Several examples:

- Studies in New York City have revealed large knowledge gaps about rights at work among low-income employees, including about paid sick days.<sup>56</sup>
- A 2020 survey revealed that nearly half of Americans had heard very little or nothing about federal paid leave benefits that had recently passed to ensure paid leave during the early days of the Covid-19 pandemic.<sup>57</sup>
- A 2022 survey of New Jersey workers by Rutgers' Heldrich Center, requested by the New Jersey Department of Labor and Workforce Development, found that only approximately half of those surveyed were aware of the state's family leave insurance (i.e. paid family leave) or earned sick leave laws,<sup>58</sup> which had been in effect since 2009 and 2018, respectively.

This lack of knowledge is unsurprising: there is no systematic way for young people to learn their rights at work. The knowledge gap is an impediment for enforcement, given that many resource-constrained enforcement systems are largely complaint-based and reactive: how will workers know to complain if they don't know their rights in the first place?

One important way to begin addressing this problem is to mandate workplace rights education in the high school curriculum.<sup>59</sup> California this year passed a bill requiring one week of each year to be designated as "workplace readiness week," in which high school students will be provided information about their rights as workers, including child labor laws, as well as minimum wage, workplace safety and health, and more.<sup>60</sup> California's law also requires minors seeking work permits to be provided with accessible and multi-lingual information explaining basic labor rights.

The work permit or employment certificate process can also be used to educate teenagers, and legislation mandating this, while useful, is not needed. Several other states routinely include labor rights information on their work permit applications and forms, such as Hawai'i, Oklahoma, and Washington. In this way, the work permit/employment certificate application process serves an educational purpose for all parties involved (teenagers who wish to work, their parents, the school, and the employer) and helps to prevent violations. Based on what I was able to locate on the internet, it appears that the forms (hard copy and online) for an employment certificate in Virginia do not currently include a summary of child labor laws or other useful information that could help prevent violations. For example, there is an approximately three-minute video explaining to minors how to apply for an employment certificate, but that video contains no information about child labor laws.<sup>61</sup>

### **C. Allow minors injured on the job where child labor laws have been violated to file lawsuits for damages**

Workers' compensation insurance was originally created in the early 20th century in what has been described as a "grand bargain": workers get the benefit of what is supposed to be guaranteed no-fault occupational injury and illness insurance, and in exchange, they lose the right to file lawsuits against their employers for damages.

When minors are injured on the job in the midst of child labor violations, some states do not limit those children to workers' compensation as the exclusive remedy. Instead, they allow a minor to file damages lawsuits against their employer. These provisions provide more meaningful redress for minors. Importantly, this approach may also be likely to have a meaningful impact on deterring child labor violations, because they change an employer's risk calculus. If an employer hires children to do prohibited hazardous work and a child is killed or gravely injured, the employer's potential financial exposure is likely considerably greater in a lawsuit for damages than it would be in the workers' compensation system, where the most probable consequence would be a slightly higher annual premium for insurance.

Three states that have such laws include Colorado ([HB23-1196](#)), New Jersey ([NJ Code 34:15-10](#)), and Illinois ([820 ILCS 305 §5](#)) (unlike the other two, Illinois law requires minors or their representatives to choose between workers' compensation and a lawsuit in court).

In addition, Wisconsin law creates statutory damages for minors whose rights have been violated, creating greater redress for them.

### **D. Create additional enforcement tools and remedies**

Additional enforcement tools and remedies include:

- Creation of an anti-retaliation provision to protect minors, co-workers, and other potential witnesses who report child labor violations to authorities. Many workers—both immigrants and those who were born here—rightly fear discharge or other retaliation by their employers if they report violations of the law. Immigrants face additional barriers to reporting violations (such as language access issues), and children of all backgrounds, with less experience at work, are even less likely to know their rights or speak up. Strong anti-retaliation protections will help remove obstacles to reporting of violations.
- Creation of a state-level "hot goods" provision, like the Fair Labor Standards Act's, to allow the state labor department to obtain a court order halting the shipment of goods produced in violation of child labor laws. Stopping tainted goods from reaching consumers is a powerful way to ensure that corporations take responsibility.
- Establishment of a private right of action for child labor violations. As noted above, currently, the only method for enforcing these laws is through government enforcement. Adding a private right of action would expand the pool of cases being

brought and serve as a resource multiplier by allowing nonprofit, pro bono, and private lawyers to sue for violations.

- Creating a *qui tam* right of action for whistleblowers who learn of child labor violations. Allowing them to receive a portion of penalties recovered would incentivize reporting of violations to the government.
- Adding liquidated or compensatory damages to the child labor statute would help compensate victims for their experiences, while also creating additional deterrence preventing employer violations. As noted above, Wisconsin has a provision creating statutory damages for child labor victims.<sup>62</sup>
- New York State has an innovative [“tagging” provision](#) applicable to the garment industry; it allows the state labor department to attach a tag on unlawfully manufactured apparel labeling it as such, helping inform consumers about products they use.<sup>63</sup>

## V. Recent bills introduced in Congress to address the child labor crisis

Last month, several federal bills were introduced in Congress to address the growing child labor crisis. Three of those bills are bipartisan.

- Senators Josh Hawley (R-MO) and Corey Booker (D-NJ) introduced the bipartisan *Preventing Child Labor Exploitation Act*.<sup>64</sup> It would prohibit federal agencies from contracting with companies that have violated federal child labor laws or that employ vendors that have failed to address child labor infractions. Specifically, the bill would require companies seeking federal contracts to disclose child labor and worker safety infractions by the company itself as well as by any of their contractors in the preceding three years, with stiff penalties for failure to report; empower the Labor Secretary to determine corrective measures for a company and/or their contractors to remain eligible for contracts; and require the Labor Secretary to create a list of companies ineligible for federal contracts each year based on serious, repeated, or pervasive child labor violations. The bill would also require a federal study on the prevalence and nature of child labor among federal contractors.
- A bipartisan group of Senators including Alex Padilla (D-Calif.), Marco Rubio (R-Fla.), John Hickenlooper (D-Colo.), and Roger Marshall (R-Kan.) introduced the *Child Labor Accountability Act of 2023*. It has two primary provisions: first, it would expand the amount of time the federal labor department has to trigger the “hot goods” provision in a child labor investigation, from the current 30 days to 90 days (consistent with the hot goods time period for minimum wage violations). Second, the bill would require the federal labor department to submit an annual report to Congress on its child labor work.<sup>65</sup>
- Senators Brian Schatz (D-Hawai’i) and Todd Young (R-Ind.) introduced the *Stop Child Labor Act*,<sup>66</sup> which would increase maximum penalties for violations, establish new criminal penalties, allow victims to file private lawsuits for damages and create both a

national advisory committee on child labor and a grant program to help employers avoid violations.<sup>67</sup>

- Finally, Senators Sherrod Brown (D-OH), Bob Casey (D-PA) and Patty Murray (D-WA) and Congresswoman Rosa DeLauro (D-CT-3) introduced *The Children Harmed in Life-threatening or Dangerous (CHILD) Labor Act*.<sup>68</sup> The comprehensive bill, which is not yet bipartisan, has a number of provisions including: creation of lead corporation liability for violations by contractors and subcontractors; increasing civil monetary penalties; establishment of monetary damages payable to victims; requiring federal contracts to include provisions prohibiting use of illegal child labor; and granting the federal labor department authority to issue a stop-work-order where violations are occurring and to affix warning labels to goods manufactured with oppressive child labor, as well as requiring annual reporting on violations.

## VI. Potential legislative solutions to address child labor in Virginia

As the above discussion makes clear, there are many ways for Virginia legislators to address the problem of oppressive child labor.

### General Observations

A more robust package could include, for example, higher civil monetary penalties; procurement reform to ensure taxpayer dollars do not go to child labor violators; some form of lead corporation liability for repeat, egregious, or widespread violations by contractors, subcontractors, staffing agencies, or others in their supply chains; availability of private damages lawsuits for victims; requiring workplace rights education in the high school curriculum; and annual reporting, as well as an increase in funding for state enforcement agencies.

A more modest package could include state-level implementation of all of the federal bipartisan proposals highlighted above: increased civil monetary penalties; establishment of a hot goods provision with a 90-day statute of limitations; strict measures to prevent state agencies from contracting with corporations that have violated child labor laws or that use vendors that have failed to address child labor infractions; allowing a private lawsuit for damages for victims; annual reporting about child labor violations; and creation of a state-wide advisory committee on child labor. Again, it is worth emphasizing that each and every one of these provisions was included in bi-partisan Senate bills proposed just last month.

### Analysis of HB 100

HB 100 would be a valuable step in the right direction, by increasing Virginia's maximum penalty amount to \$25,000 (for child labor violations resulting in death or serious injury), increasing the maximum penalty in other cases to \$2,500 per violation, and by setting a minimum penalty of \$500 per violation to serve as a floor. At the same time, as noted above,

increased penalties alone will likely be inadequate to deter violations sufficiently, absent other measures, such as increasing enforcement resources.

### **Cautionary note regarding HB 401**

HB 401 would make Department of Labor and Industry employees “whose duties include ensuring compliance with child labor laws mandatory reporters of child abuse and neglect.” While this proposal appears well-intentioned, based on my seventeen years of enforcing state labor laws, as well as nearly seven years of working closely with state and local labor enforcement agencies, my assessment is that HB 401 overall would be counterproductive. Labor department investigators are not trained to identify child abuse and have no specific expertise in that area. More importantly, if workers or community members believe that parents or guardians may themselves be investigated when child labor violations come to light, this is likely to chill reporting of child labor violations. Certainly, parents or guardians will benefit from support of various kinds, as well as education about child labor laws. And when families are struggling, they can surely benefit from supportive social service agencies and a strong safety net. But making state labor investigators mandatory child abuse reporters will likely curb reporting of child labor violations and make oppressive child labor harder to detect and prevent, opening the door to increased exploitation of children.

### **VII. Conclusion**

The problem of oppressive child labor stems from employers violating the law: companies that exploit children, make them work excessive hours that endanger their education, and hire them to work in hazardous situations that endanger their bodies and lives. Child labor also results from large corporations that use subcontracting models and willfully turn a blind eye to child labor violations in their supply chains, even when violations are repeated or widespread. If employers did not hire children to do dangerous work for long hours in violation of the law, our child labor crisis would not exist.

Although our country has deep divisions right now, I like to think there are still some values we all share. We want children to have a good education, to develop a solid work ethic, to have positive experiences in their first jobs, and to be safe from physical harm. State legislators in Virginia and around the nation have a crucial role to play in bringing these values to life, and in protecting our country’s children from oppressive child labor. It is a critical opportunity for leadership and action.

Thank you.

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<sup>1</sup> <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf>

<sup>2</sup> [VA Code § 40.1-80.1\(B\)](#)

<sup>3</sup> <https://www.dol.gov/agencies/whd/state/age-certificates>

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- <sup>7</sup> <https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture>
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