

19100968D

HOUSE BILL NO. 2535

Offered January 9, 2019

Prefiled January 9, 2019

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-574, relating to protecting minors from certain actions of operators of certain digital services.

Patrons—Ayala, Gooditis, Hayes, Kory, Levine, Plum, Rodman and Simon

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-574, as follows:

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;

4. Misrepresenting geographic origin in connection with goods or services;

5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;

6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";

8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

INTRODUCED

HB2535

- 59 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
60 with a consumer transaction;
- 61 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain
62 animals by pet dealers which is described in such sections, is a violation of this chapter;
- 63 16. Failing to disclose all conditions, charges, or fees relating to:
- 64 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
65 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
66 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
67 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
68 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
69 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
70 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
71 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
72 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
73 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
74 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
75 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
76 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
77 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
78 46.2-100;
- 79 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
80 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
81 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
82 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
83 the agreement;
- 84 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
85 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
86 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
87 receiving overpayments. If the credit balance information is incorporated into statements of account
88 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 89 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
90 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
91 agreement;
- 92 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 93 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
94 seq.);
- 95 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
96 seq.);
- 97 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
98 (§ 59.1-207.17 et seq.);
- 99 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 100 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
101 (§ 59.1-424 et seq.);
- 102 24. Violating any provision of § 54.1-1505;
- 103 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
104 17.6 (§ 59.1-207.34 et seq.);
- 105 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 106 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 107 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 108 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
109 seq.);
- 110 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
111 seq.);
- 112 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 113 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 114 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 115 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 116 35. Using the consumer's social security number as the consumer's account number with the supplier,
117 if the consumer has requested in writing that the supplier use an alternate number not associated with
118 the consumer's social security number;
- 119 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 120 37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.);
 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
 43. Violating any provision of § 59.1-443.2;
 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
 47. Violating any provision of § 18.2-239;
 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";
 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
 52. Violating any provision of § 8.2-317.1;
 53. Violating subsection A of § 9.1-149.1;
 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;
 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1; ~~and~~
 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.); ~~and~~
 59. *Violating any provision of Chapter 52 (§ 59.1-571 et seq.).*
 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

CHAPTER 52.

DIGITAL PROTECTIONS FOR VIRGINIA'S MINORS.

§ 59.1-571. *Definitions.*

As used in this chapter, unless the context requires otherwise:

"Digital service" means a website, online service, online application, or mobile application.

"Digital service directed to minors" means a digital service, or a portion thereof, that is created for the purpose of reaching an audience that predominately comprises minors and is not intended for a more general audience that comprises adults. However, a digital service, or a portion thereof, shall not be deemed to be directed at minors solely because it refers or links to a digital service directed to minors by using information location tools, including a directory, index, reference, pointer, or hypertext link.

"Marketing or advertising" means, in exchange for monetary compensation, making a communication to one or more individuals, or arranging for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

"Minor" means an individual under 18 years of age who resides in the Commonwealth.

"Operator" means any person that owns a digital service. "Operator" does not include any third party that operates, hosts, or manages, but does not own, a digital service on the owner's behalf or processes information on the owner's behalf.

"Posted" means content or information that can be accessed by a user of a digital service directed at minors who is not the originator of such content or information, whether the user is a registered user or

182 *not, of the digital service where the content or information is posted.*

183 *"Restricted product or service" means any:*

184 *1. Alcoholic beverages as defined in § 4.1-100.*

185 *2. Rifle, shotgun, or weapon listed in clauses (i) through (v) of subsection A of § 18.2-308.*

186 *3. Ammunition for a firearm or explosive material as those terms are defined in § 18.2-308.2.*

187 *4. Pneumatic gun as defined in § 15.2-915.4.*

188 *5. Aerosol container of paint that is capable of defacing property.*

189 *6. Tobacco product, nicotine vapor product, or alternative nicotine product, as those terms are*
190 *defined in § 18.2-371.2.*

191 *7. Fireworks as defined in § 27-95.*

192 *8. Tanning device as defined in § 59.1-310.1.*

193 *9. Ephedrine or related compounds as defined in § 18.2-265.6.*

194 *10. Tickets or shares in a lottery game.*

195 *11. Controlled substance or imitation controlled substance for which the manufacture, sale, giving,*
196 *distribution, or possession with intent to manufacture, sell, give, or distribute is prohibited pursuant to*
197 *§ 18.2-248.*

198 *12. Controlled paraphernalia as defined in § 54.1-3466.*

199 *13. Obscene items as enumerated in § 18.2-373.*

200 **§ 59.1-572. Duties of operator of a digital service.**

201 *A. An operator of a digital service directed to minors or an operator of a digital service that has*
202 *actual knowledge that a minor is using its digital service shall:*

203 *1. Permit a minor who is a registered user of the operator's digital service to remove or, if the*
204 *operator prefers, to request and obtain removal of content or information posted on the operator's*
205 *digital service by the registered user;*

206 *2. Provide notice to a minor who is a registered user of the operator's digital service that the minor*
207 *may remove or, if the operator prefers, request and obtain removal of content or information posted on*
208 *the operator's digital service by the registered user;*

209 *3. Provide clear instructions to a minor who is a registered user of the operator's digital service on*
210 *how the minor may remove or, if the operator prefers, request and obtain the removal of content or*
211 *information posted on the operator's digital service; and*

212 *4. Provide notice to a minor who is a registered user of the operator's digital service that the*
213 *removal described under subdivision 1 does not ensure complete or comprehensive removal of the*
214 *content or information posted on the operator's digital service by the registered user.*

215 *B. An operator or a third party is not required to erase or otherwise eliminate, or to enable erasure*
216 *or elimination of, content or information in any of the following circumstances:*

217 *1. Any other provision of federal or state law requires the operator or third party to maintain the*
218 *content or information.*

219 *2. The content or information was stored on or posted to the operator's digital service by a third*
220 *party registered user other than the minor, including any content or information posted by the registered*
221 *user that was stored, republished, or reposted by the third party.*

222 *3. The operator anonymizes the content or information posted by the minor who is a registered user*
223 *so that the minor who is a registered user cannot be individually identified.*

224 *4. The minor does not follow the instructions provided to the minor pursuant to subdivision A 3 on*
225 *how the registered user may request and obtain the removal of content or information posted on the*
226 *operator's digital service by the registered user.*

227 *5. The minor has received compensation or other consideration for providing the content.*

228 *C. This section shall not be construed to limit the authority of a law-enforcement agency to obtain*
229 *any content or information from an operator as authorized by law or pursuant to an order of a court of*
230 *competent jurisdiction.*

231 *D. An operator shall be deemed compliant with this section if:*

232 *1. It renders the content or information posted by the minor user no longer visible to other users of*
233 *the service and the public even if the content or information remains on the operator's servers in some*
234 *form; or*

235 *2. Despite making the original posting by the minor user invisible, it remains visible because a third*
236 *party has copied the posting or reposted the content or information posted by the minor.*

237 *E. This section shall not be construed to require an operator of a digital service to collect age*
238 *information about users.*

239 **§ 59.1-573. Prohibited marketing or advertising on digital services directed to minors.**

240 *A. An operator of a digital service directed to minors shall not market or advertise a restricted*
241 *product or service on its digital service directed to minors.*

242 *B. An operator of a digital service:*

243 *1. Shall not market or advertise a restricted product or service to a minor who the operator has*

actual knowledge is using its digital service and is a minor, if the marketing or advertising is specifically directed to that minor on the basis of information specific to that minor, including the minor's profile, activity, address, or location sufficient to establish contact with a minor, and excluding Internet Protocol (IP) address and product identification numbers for the operation of a service.

2. Shall be deemed to be in compliance with subdivision 1 if the operator takes reasonable actions in good faith designed to avoid marketing or advertising under circumstances prohibited under subdivision 1.

C. An operator of a digital service directed to minors or who has actual knowledge that a minor is using its digital service shall not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising products or services to that minor for a restricted product or service.

D. This section shall not be construed to require an operator of a digital service to collect or retain age information about users.

E. With respect to marketing or advertising provided by an advertising service, the operator of a digital service directed to minors shall be deemed to be in compliance with subsection A if the operator notifies the advertising service, in the manner required by the advertising service, that the site, service, or application is directed to minors. If an advertising service is notified, in the manner required by the advertising service, that a digital service is directed to minors, the advertising service shall not market or advertise on the operator's digital service a restricted product or service.

F. The marketing and advertising restrictions described in subsections A, B, and C shall not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing and advertising of a restricted product or service.

§ 59.1-574. Violations of chapter; penalty.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

2. That the provisions of this act shall become effective on January 1, 2020.