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HOUSE BILL NO. 1094

Offered January 12, 2022

Prefiled January 12, 2022

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 55, consisting of sections numbered 59.1-589 through 59.1-594, relating to Fair Repair Act; access to diagnostics, tools, service documentation, and firmware; penalties.

Patron—Greenhalgh

Referred to Committee on Commerce and Energy

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 55, consisting of sections numbered 59.1-589 through 59.1-594, 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

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59 information in connection with the consumer transaction;

60 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
61 with a consumer transaction;

62 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
63 3.2-6516, or 3.2-6519 is a violation of this chapter;

64 16. Failing to disclose all conditions, charges, or fees relating to:

65 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
66 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
67 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
68 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
69 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
70 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
71 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
72 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
73 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
74 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
75 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
76 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
77 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
78 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
79 46.2-100;

80 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
81 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
82 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
83 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
84 the agreement;

85 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
86 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
87 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
88 receiving overpayments. If the credit balance information is incorporated into statements of account
89 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

90 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
91 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
92 agreement;

93 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

94 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
95 seq.);

96 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
97 seq.);

98 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
99 (§ 59.1-207.17 et seq.);

100 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

101 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
102 (§ 59.1-424 et seq.);

103 24. Violating any provision of § 54.1-1505;

104 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
105 17.6 (§ 59.1-207.34 et seq.);

106 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

107 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

108 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

109 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
110 seq.);

111 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
112 seq.);

113 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

114 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

115 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

116 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

117 35. Using the consumer's social security number as the consumer's account number with the supplier,
118 if the consumer has requested in writing that the supplier use an alternate number not associated with
119 the consumer's social security number;

120 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

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;
 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
 59. Violating any provision of subsection E of § 32.1-126;
 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
 61. Violating any provision of § 2.2-2001.5;
 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
 63. Violating any provision of § 6.2-312;
 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2; and
 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.); and
 67. Violating any provision of Chapter 55 (§ 59.1-589 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 55. FAIR REPAIR ACT.

§ 59.1-589. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authorized repair provider" means, with respect to an original equipment manufacturer, (i) an individual or business who is unaffiliated with the original equipment manufacturer and who has an arrangement with the original equipment manufacturer under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or (ii) other arrangement with the original equipment manufacturer to offer such services on behalf of the original

182 equipment manufacturer. An original equipment manufacturer who offers the services of diagnosis,
183 maintenance, or repair of digital electronic equipment manufactured by it or on its behalf, or sold or
184 otherwise supplied by it, and who does not have an arrangement described in this definition with an
185 unaffiliated individual or business, shall be considered an authorized repair provider with respect to
186 such equipment.

187 "Equipment" means digital electronic equipment or a part for such equipment originally
188 manufactured for distribution and sale in the United States.

189 "Fair and reasonable terms" means, for obtaining a part or tool or documentation, at costs and
190 terms that are equivalent to the most favorable costs and terms under which the original equipment
191 manufacturer offers the part, tool, or documentation to an authorized repair provider, accounting for
192 any discount, rebate, convenient and timely means of delivery, means of enabling fully restored and
193 updated functionality, rights of use, or other incentive or preference the original equipment
194 manufacturer offers to an authorized repair provider, or any additional cost, burden, or impediment the
195 original equipment manufacturer imposes on an owner or independent repair provider and not
196 conditioned on having an authorized repair provider arrangement. For documentation, including any
197 relevant updates, "fair and reasonable terms" also means at no charge, except that, when the
198 documentation is requested in physical printed form, a charge may be included for the reasonable
199 actual costs of preparing and sending the copy.

200 "Independent repair provider" means, with respect to an original equipment manufacturer, (i) an
201 individual or business operating in the Commonwealth, that does not have an authorized repair provider
202 arrangement with the original equipment manufacturer, and (ii) who is not affiliated with any individual
203 or business who has such an arrangement with the original equipment manufacturer, when that
204 individual or business is engaged in the services of diagnosis, maintenance, or repair of digital
205 electronic equipment. An original equipment manufacturer or, with respect to that original equipment
206 manufacturer, an individual or business who has such an arrangement with that original equipment
207 manufacturer, or who is affiliated with an individual or business who has such an arrangement with
208 that original equipment manufacturer, shall be considered an independent repair provider when
209 engaging in the services of diagnosis, maintenance, or repair of digital electronic equipment that is not
210 manufactured by or on behalf of, or sold or otherwise supplied by, that original equipment
211 manufacturer.

212 "Medical device" means any instrument, apparatus, implement, machine, contrivance, implant, or
213 other similar or related article, including a component part or accessory, as defined in the Federal
214 Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(H), as amended from time to time, which is intended
215 for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or
216 prevention of disease, in man or other animals.

217 "Motor vehicle" has the same meaning ascribed to that term in § 46.2-100, provided that "motor
218 vehicle" does not include a motorcycle or a recreational vehicle or manufactured home equipped for
219 habitation.

220 "Motor vehicle dealer" has the same meaning ascribed to that term in § 46.2-1500.

221 "Motor vehicle manufacturer" means any business engaged in the business of manufacturing or
222 assembling new motor vehicles.

223 "Original equipment manufacturer" or "OEM" means any business engaged in the business of
224 selling, leasing, or otherwise supplying new digital electronic equipment, or parts of equipment,
225 manufactured by or on behalf of itself, to any individual or business.

226 "Owner" means a person or business that owns or leases a digital electronic product purchased or
227 used in the Commonwealth.

228 "Part" means any replacement part, either new or used, made available by or to an original
229 equipment manufacturer for purposes of effecting the services of maintenance or repair of digital
230 electronic equipment manufactured by or on behalf of, sold or otherwise supplied by the original
231 equipment manufacturer.

232 "Tool" means (i) any software program, hardware implement, or other apparatus used for diagnosis,
233 maintenance, or repair of digital electronic equipment, including software or (ii) other mechanisms that
234 provision, program, or pair a part, calibrate functionality, or perform any other function required to
235 bring the product back to fully functional condition.

236 "Trade secret" means anything tangible or intangible or electronically stored or kept that constitutes,
237 represents, evidences, or records intellectual property, including secret or confidentially held designs,
238 processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific,
239 technical, merchandising, production, financial, business, or management information, or any other
240 trade secret as defined in 18 U.S.C. § 1839.

241 **§ 59.1-590. Requirements of original equipment manufacturers.**

242 An original equipment manufacturer shall, for digital electronic equipment, or parts for such
243 equipment, manufactured by it or on its behalf, or sold or otherwise supplied by it, and sold or used in

the Commonwealth:

1. Make available to owners of such equipment and to independent repair providers, on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates, for purposes of diagnosis, maintenance, or repair of such equipment. Nothing in this subsection requires an original equipment manufacturer to make available a part that is no longer available to the original equipment manufacturer.

2. For digital electronic equipment that contains an electronic security lock or other security-related function, the original equipment manufacturer shall make available to the owner and to independent repair providers, on fair and reasonable terms, any special documentation, tools, and parts needed to disable the lock or function, and to reset it when disabled.

§ 59.1-591. Limitations.

A. Nothing in this chapter shall be construed to require an original equipment manufacturer to divulge a trade secret, except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

B. Notwithstanding any law, rule, or regulation to the contrary, no provision of this chapter shall be read, interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of any agreement executed and in force between an authorized repair provider and an original equipment manufacturer, including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such authorized repair agreement, except that any provision in such an authorized repair agreement that purports to waive, avoid, restrict, or limit an original equipment manufacturer's compliance with this chapter shall be void and unenforceable.

§ 59.1-592. Exclusions.

A. Nothing in this chapter shall apply to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers acting in that capacity.

B. Nothing in this chapter shall require a manufacturer of a medical device to implement any provision of this chapter that is not permitted under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., or any other federal law, rule, or regulation that preempts a provision of this chapter.

§ 59.1-593. Violation 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.).

§ 59.2-594. Applicability.

The provisions of this chapter shall apply with respect to equipment sold or in use in the Commonwealth on or after January 1, 2023.

2. That the provisions of this act shall become effective on January 1, 2023.