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HOUSE BILL NO. 9

Offered January 10, 1996

Prefiled December 14, 1995

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 33.1, consisting of sections numbered 59.1-434.1 through 59.1-434.4, relating to information infrastructure providers; disclosure of sexually explicit content; penalties.

Patrons—Marshall and O'Brien

Referred to Committee on Corporations, Insurance and Banking

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 33.1, consisting of sections numbered 59.1-434.1 through 59.1-434.4 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 which are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or which 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 which 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 which are void or unenforceable under any otherwise applicable laws of this Commonwealth, or under federal statutes or regulations;

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

15. Violating any provision of §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

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

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 This subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to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

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

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

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

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

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

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

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

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

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

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

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

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

33. Violating any provision of the Virginia Information Infrastructure Service Disclosure and Billing Act, Chapter 33.1 (§ 59.1-434.1 et seq.) of this title.

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 this 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 33.1.
VIRGINIA INFORMATION INFRASTRUCTURE SERVICE
DISCLOSURE AND BILLING ACT.

§ 59.1-434.1 Definitions.

As used in this chapter:

"Credit card issuer" means any person engaged in the extension of credit under an open-end credit or similar plan under which a finance charge may be imposed upon the cardholder. The term also includes any person engaged in providing travel and entertainment accounts to cardholders.

"Information infrastructure service" or "service" means any service furnished via the Internet, the World Wide Web, Usenet, bulletin board systems, on-line systems, telephone networks, or any other telecommunications, cable, or computerized network.

"Long distance carrier" means any interexchange telephone company providing services within the Commonwealth.

"Provider" means any person providing an information infrastructure service.

"Sexually explicit content" means any (i) description of or (ii) picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting, sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, coprophilia, urophilia, or fetishism.

"Telephone company" means a certificated local exchange telephone company which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly.

§ 59.1-434.2. Provider disclosure of sexually explicit content.

A. Every provider whose service features or includes selections with sexually explicit content shall indicate such content with the description "sexually explicit content" in all advertising or solicitations for such service within the Commonwealth.

1. In any written advertising or solicitation, including those transmitted electronically, this disclosure shall be displayed in a type size identical to that of the largest letters or characters therein.

2. In any television advertisement or solicitation, the disclosure shall be positioned in the lower portion of the television screen in letters large enough to be easily read by viewers and displayed for the duration of the advertisement or solicitation.

B. Every provider whose service is (i) transmitted orally via telephone and (ii) has sexually explicit content shall, prior to making any other disclosures that may be required by law, transmit a statement that the service has "sexually explicit content."

C. Every provider whose service (i) is accessed via computer and (ii) has sexually explicit content shall generate a computer video display stating that the service has "sexually explicit content." The display shall be immediately visible upon accessing or connecting to such service and in letters large enough and for an interval sufficiently long enough to enable ease of reading on a computer monitor.

D. Every provider of on-line services shall (i) provide subscribers thereto with on-line access to their billing accounts, (ii) identify within such billing accounts those user selections during the relevant billing period with sexually explicit content with the notation "sexually explicit content," and (iii) enable subscribers to review at any time, on-line, all billing activity within their accounts for a period spanning the preceding sixty days, or the two most recent billing periods, whichever period is longer.

E. Every provider, other than a provider of on-line services, furnishing a service with sexually explicit content for which it seeks payment from the service's users through billings or invoices issued by any long distance carrier, telephone company or credit card issuer shall (i) disclose to any such billing entity that the services have sexually explicit content and (ii) continually update the information required to be furnished under clause (i).

§ 59.1-434.3. Billings to identify charges for services with sexually explicit content; charges for juvenile's use of such services unenforceable.

A. Any telephone company, long distance carrier or credit card issuer billing a customer for a service with sexually explicit content shall identify the charges therefor with the notation "sexually explicit content" to the extent such information is furnished by a provider as required by § 59.1-434.2. However, no such company, carrier or issuer shall be deemed in violation of this subsection if its failure to so identify and describe such charges are a consequence of a provider's refusal or failure to comply with the provisions of § 59.1-434.2.

B. Charges for any service with sexually explicit content (i) related to a juvenile's use of such service or (ii) not properly identified as such in any telephone company, long distance carrier or credit card billing shall be deemed void. However, any telephone customer or credit card account holder who, invoking the provisions of this subsection, fraudulently seeks to avoid payment for any such service shall, in addition to any remedies otherwise available to the provider or billing entity, be subject to the

183 *penalties provided in § 59.1-434.4.*

184 *C. Every telephone company, long distance carrier and credit card issuer shall notify new and*
185 *current telephone and credit customers of this section's provisions. Such notice shall be provided to new*
186 *customers concurrent with establishing any new customer account, and to current customers not later*
187 *than thirty days prior to the effective date of this section.*

188 *§ 59.1-434.4. Violations of chapter; penalties.*

189 *A. Any person who knowingly and willfully violates any provision of this chapter shall be guilty of a*
190 *Class 3 misdemeanor.*

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