

20102031D

HOUSE BILL NO. 955

Offered January 8, 2020

Prefiled January 7, 2020

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 children's online privacy protection.

Patron—Ayala

Referred to Committee on Communications, Technology and Innovation

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

HB955

- 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;
 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; and
 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; and
 61. 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.

CHILDREN'S ONLINE PRIVACY PROTECTION.

§ 59.1-571. Definitions.

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

"Operator" means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes.

"Personal information" means individually identifiable information about an individual collected online, including a first and last name, a home or other physical address including street name and name of a city or town, an e-mail address, a telephone number, a social security number, or any identifier that permits the physical or online contacting of a specific individual.

§ 59.1-572. Release of personal information collected from minor prohibited; measure to protect confidentiality required.

A. No operator shall release personal information collected from a minor for any purpose, except where the personal information is provided to a person other than an operator that provides support for the internal operations of the website, online service, online application, or mobile application of the operator, excluding any activity relating to targeted marketing directed to minors, and does not disclose

182 or use that personal information for any other purpose.

183 B. Each operator shall establish and maintain reasonable procedures to protect the confidentiality,
184 security, and integrity of personal information collected from children.

185 **§ 59.1-573. Safe harbor for disclosures to minor's parent.**

186 Neither an operator of a website or online service nor the operator's agent shall be in violation of
187 § 59.1-572 for any disclosure made in good faith and following reasonable procedures in responding to
188 a request for disclosure of personal information to the parent of a minor, provided the request complies
189 with the requirements of 16 C.F.R. § 312.6.

190 **§ 59.1-574. Violations of chapter; penalty.**

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

194 **2. That the provisions of this act shall become effective on January 1, 2021.**