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HOUSE BILL NO. 877

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 59.1-200 of the Code of Virginia to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-608, relating to Virginia Social Media Regulation Act established; penalties.

Patrons—Earley, Green, Kent, Lovejoy and Taylor; Senator: Sturtevant

Referred to Committee on General Laws

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 57, consisting of sections numbered 59.1-603 through 59.1-608, 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;

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- 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 § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
62 3.2-6516, or 3.2-6519 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;
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;
66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
67. Knowingly violating any provision of § 8.01-27.5;
68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period to avoid an obligation to pay for the goods or services;
69. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision, "synthetic derivative" means a chemical compound produced by man through a chemical transformation to turn a compound into a different compound by adding or subtracting molecules to or from the original compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
70. Selling or offering for sale to a person younger than 21 years of age any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
71. Selling or offering for sale any substance intended for human consumption, orally or by

182 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
183 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
184 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to
185 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of
186 such substance that constitutes a single serving, and (d) the total percentage and milligrams of
187 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol
188 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
189 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
190 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
191 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
192 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
193 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
194 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

195 72. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined
196 in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
197 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;

198 73. Selling or offering for sale any substance intended for human consumption, orally or by
199 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a
200 container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark
201 as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of
202 a manufacturer, processor, packer, or distributor of a product intended for human consumption other
203 than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or
204 distribute such substance;

205 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not
206 include a label stating that the product is not intended for human consumption. This subdivision shall
207 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
208 scheduled in the Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct
209 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that
210 were manufactured prior to July 1, 2023, provided that the person provides documentation of the date of
211 manufacture if requested;

212 75. Violating any provision of § 59.1-466.8;

213 76. Violating subsection F of § 36-96.3:1;

214 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
215 (ii) any kratom product that does not include a label listing all ingredients and with the following
216 guidance: "This product may be harmful to your health, has not been evaluated by the FDA, and is not
217 intended to diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means
218 any part of the leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

219 78. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45, to
220 a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale of
221 any such good or provision of any such continuous service; *and*

222 79. Violating any provision of Chapter 57 (§ 59.1-603 et seq.).

223 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
224 lease solely by reason of the failure of such contract or lease to comply with any other law of the
225 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
226 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
227 such contract or lease.

228 CHAPTER 57.

229 VIRGINIA SOCIAL MEDIA REGULATION ACT.

230 § 59.1-603. Definitions.

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

232 "Account holder" means a Virginia resident who has, or opens, an account or profile to use a social
233 media company's platform.

234 "Addiction" means use of a social media platform that (i) indicates the user's substantial
235 preoccupation or obsession with, or the user's substantial difficulty to cease or reduce use of, the social
236 media platform and (ii) causes physical, mental, emotional, developmental, or material harms to the
237 user.

238 "Interactive computer service" means an information service, information system, or information
239 access software provider that provides or enables computer access by multiple users to a computer
240 server and provides access to the Internet. "Interactive computer service" includes a web service, web
241 system, website, web application, and web portal.

242 "Minor" means Virginia resident who is under the age of 18, is not an emancipated minor, and is
243 not or has not been married.

"Post" means content that an account holder makes available on a social media platform for other account holders or users to view.

"Social media company" means an interactive computer service provider of a social media platform that has at least five million account holders worldwide.

"Social media platform" means a website, online service, or online or mobile application developed by a social media company that (i) permits a person to become a registered user, establish an account, or create a profile for the purpose of allowing users to create, share, or view user-generated content through the account holder's registration, account, or profile; (ii) enables an account holder to generate content that other users of the medium can view; and (iii) primarily serves as a medium for users to interact with content generated by other users of the medium.

"User" means an individual who has access to view all or some of the posts on a social media platform, but who is not an account holder.

"Virginia resident" means an individual who currently resides in Virginia.

§ 59.1-604. Age requirements for use of social media platform; parental consent.

A. No social media company shall permit a minor to be an account holder on such social media company's social media platform unless the minor has the express consent of a parent or guardian. Notwithstanding any provision of this chapter, no social media company shall permit a minor to hold or open an account on a social media platform if the minor is ineligible to hold or open an account under any other provision of state or federal law.

B. A social media company shall verify the age of any Virginia resident account holder. If an account holder is a minor, the social media company shall confirm that such minor has received parental consent pursuant to subsection A at the time such user opens a new account or, for an account holder who has not yet verified his age pursuant to this section, within 14 calendar days of such account holder's attempt to access the account. If an account holder fails to meet the verification requirements of this section within the required time period, the social media company shall deny access to the account upon the expiration of the time period and until all verification requirements are met.

§ 59.1-605. Prohibitions on data collection and advertising; use of information.

With respect to any social media platform account held by a minor account holder, a social media company:

1. Shall prohibit direct messaging between the minor and any other user that is not linked to the minor's account through friending;

2. May not show the account in search results for any user that is not linked to the minor's account through friending;

3. Shall prohibit the display of any advertising to the minor account holder;

4. Shall not collect or use any personal information from any posts, content, messages, text, or usage activities of the minor's account other than information that is necessary to comply with, and to verify compliance with, state or federal law, including the name of the minor's parent or guardian, the minor's birth date, and any other information required to be submitted under this chapter; and

5. Shall prohibit the display of targeted or suggested groups, services, products, posts, accounts, or users to the minor's account.

§ 59.1-606. Limitations on use of social media accounts by minors; parental access.

A. A social media company shall provide a minor's parent or guardian with a password or other means for the parent or guardian to access the minor's account, which shall allow the parent or guardian to view (i) all posts the minor account holder makes under the social media platform account and (ii) all responses and messages sent to or by the minor account holder on the social media platform account.

B. A social media company shall prohibit a minor account holder from having access to the minor account holder's account during the hours of 10:30 p.m. to 6:30 a.m., unless the access is modified by the minor's parent or guardian. A social media company shall calculate the time of day for purposes of this section based on the Internet Protocol address being used by the minor account holder at the time such account holder attempts to access the account. A social media company shall provide options for a parent or guardian with access to a minor's account to (i) change or eliminate the time-of-day restriction described in this subsection and (ii) set a limit on the number of hours per day that a minor account holder may use the account.

C. No social media company shall permit a minor account holder to change or bypass restrictions on access as required by this section.

D. Notwithstanding any provision of this section, a social media company shall permit a parent or guardian with access to a minor's account to access the minor's account with no time-of-day restrictions.

§ 59.1-607. Social media platform design; civil penalty.

A. No social media company shall use any practice, design, or feature on such company's social

media platform that the social media company knows, or which by the exercise of reasonable care should know, could cause a minor account holder to have an addiction to the social media platform. In addition to any other penalty provided by law, a social media company shall be subject to (i) a civil penalty of \$250,000 for each practice, design, or feature shown to have caused addiction and (ii) a civil penalty of up to \$2,500 for each minor account holder who is shown to have been exposed to any such practice, design, or feature found to have caused addiction.

B. No social media company shall be subject to a civil penalty for violating this section if the social media company, as an affirmative defense, demonstrates that the social media company (i) instituted and maintained a program of at least quarterly audits of the social media company's practices, designs, and features to detect practices, designs, or features that have the potential to cause or contribute to the addiction of a minor account holder or user and (ii) corrected, within 30 days of the completion of an audit, any practice, design, or feature discovered by the audit to present more than a de minimus risk of violating this section.

C. Nothing in this section shall be construed to impose liability on a social media company for any of the following:

1. Content that is generated by an account holder, or uploaded to or shared on a social media platform by an account holder, that may be encountered by another account holder;

2. Passively displaying content that is created entirely by a third party;

3. Information or content for which the social media company was not, in whole or in part, responsible for creating or developing; or

4. Any conduct by a social media company involving a minor account holder who would otherwise be protected by federal or Virginia law.

D. Civil penalties assessed pursuant to this section shall be paid to the Literary Fund.

§ 59.1-608. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under 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.).