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SENATE BILL NO. 359

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 7, 2024)

(Patron Prior to Substitute—Senator VanValkenburg)

A BILL to amend and reenact § 59.1-575 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-577.1, relating to Consumer Data Protection Act; social media platforms; addictive feed.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-575 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-577.1 as follows:

§ 59.1-575. Definitions.

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

"Addictive feed" means a website, online service, or online or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users of a website, online service, or online or mobile application, either concurrently or sequentially, are recommended, selected, or prioritized for display to a user based, in whole or in part, on information associated with the user or the user's device, unless any of the following conditions are met, alone or in combination with one another:

1. The information is not persistently associated with the user or user's device and does not concern the user's previous interactions with media generated or shared by others;

2. The information is user-selected privacy or accessibility settings, technical information concerning the user's device, or device communications or signals concerning whether the user is a minor;

3. The user expressly and unambiguously requested the specific media or media by the author, creator, or poster of the media, provided that the media is not recommended, selected, or prioritized for display based, in whole or in part, on other information associated with the user or the user's device that is not otherwise permissible under this definition;

4. The media are direct, private communications;

5. The media recommended, selected, or prioritized for display is exclusively the next media in a preexisting sequence from the same author, creator, poster, or source; or

6. The media are provided for the purpose of interactive gaming, virtual gaming, or educational entertainment.

"Addictive social media platform" means a website, online service, or online or mobile application that offers or provides users an addictive feed that is not incidental to the provision of such website, online service, or online or mobile application.

"Affiliate" means a legal entity that controls, is controlled by, or is under common control with another legal entity or shares common branding with another legal entity. For the purposes of this definition, "control" or "controlled" means (i) ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a company; (ii) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or (iii) the power to exercise controlling influence over the management of a company.

"Authenticate" means verifying through reasonable means that the consumer, entitled to exercise his consumer rights in § 59.1-577, is the same consumer exercising such consumer rights with respect to the personal data at issue.

"Biometric data" means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that is used to identify a specific individual. "Biometric data" does not include a physical or digital photograph, a video or audio recording or data generated therefrom, or information collected, used, or stored for health care treatment, payment, or operations under HIPAA.

"Business associate" means the same meaning as the term established by HIPAA.

"Child" means any natural person younger than 13 years of age.

"Consent" means a clear affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement to process personal data relating to the consumer. Consent may include a written statement, including a statement written by electronic means, or any other unambiguous affirmative action.

"Consumer" means a natural person who is a resident of the Commonwealth acting only in an individual or household context. It does not include a natural person acting in a commercial or employment context.

"Controller" means the natural or legal person that, alone or jointly with others, determines the

60 purpose and means of processing personal data.

61 "Covered entity" means the same as the term is established by HIPAA.

62 "Decisions that produce legal or similarly significant effects concerning a consumer" means a
63 decision made by the controller that results in the provision or denial by the controller of financial and
64 lending services, housing, insurance, education enrollment, criminal justice, employment opportunities,
65 health care services, or access to basic necessities, such as food and water.

66 "De-identified data" means data that cannot reasonably be linked to an identified or identifiable
67 natural person, or a device linked to such person. A controller that possesses "de-identified data" shall
68 comply with the requirements of subsection A of § 59.1-581.

69 "Health record" means the same as that term is defined in § 32.1-127.1:03.

70 "Health care provider" means the same as that term is defined in § 32.1-276.3.

71 "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C.
72 § 1320d et seq.).

73 "Identified or identifiable natural person" means a person who can be readily identified, directly or
74 indirectly.

75 "Institution of higher education" means a public institution and private institution of higher education,
76 as those terms are defined in § 23.1-100.

77 "Nonprofit organization" means any corporation organized under the Virginia Nonstock Corporation
78 Act (§ 13.1-801 et seq.) or any organization exempt from taxation under § 501(c)(3), 501(c)(6), or
79 501(c)(12) of the Internal Revenue Code, any political organization, any organization exempt from
80 taxation under § 501(c)(4) of the Internal Revenue Code that is identified in § 52-41, and any subsidiary
81 or affiliate of entities organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56.

82 "*Parent*" means a parent or legal guardian of a child.

83 "Personal data" means any information that is linked or reasonably linkable to an identified or
84 identifiable natural person. "Personal data" does not include de-identified data or publicly available
85 information.

86 "Political organization" means a party, committee, association, fund, or other organization, whether or
87 not incorporated, organized and operated primarily for the purpose of influencing or attempting to
88 influence the selection, nomination, election, or appointment of any individual to any federal, state, or
89 local public office or office in a political organization or the election of a presidential/vice-presidential
90 elector, whether or not such individual or elector is selected, nominated, elected, or appointed.

91 "Precise geolocation data" means information derived from technology, including but not limited to
92 global positioning system level latitude and longitude coordinates or other mechanisms, that directly
93 identifies the specific location of a natural person with precision and accuracy within a radius of 1,750
94 feet. "Precise geolocation data" does not include the content of communications or any data generated
95 by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

96 "Process" or "processing" means any operation or set of operations performed, whether by manual or
97 automated means, on personal data or on sets of personal data, such as the collection, use, storage,
98 disclosure, analysis, deletion, or modification of personal data.

99 "Processor" means a natural or legal entity that processes personal data on behalf of a controller.

100 "Profiling" means any form of automated processing performed on personal data to evaluate, analyze,
101 or predict personal aspects related to an identified or identifiable natural person's economic situation,
102 health, personal preferences, interests, reliability, behavior, location, or movements.

103 "Protected health information" means the same as the term is established by HIPAA.

104 "Pseudonymous data" means personal data that cannot be attributed to a specific natural person
105 without the use of additional information, provided that such additional information is kept separately
106 and is subject to appropriate technical and organizational measures to ensure that the personal data is not
107 attributed to an identified or identifiable natural person.

108 "Publicly available information" means information that is lawfully made available through federal,
109 state, or local government records, or information that a business has a reasonable basis to believe is
110 lawfully made available to the general public through widely distributed media, by the consumer, or by
111 a person to whom the consumer has disclosed the information, unless the consumer has restricted the
112 information to a specific audience.

113 "Sale of personal data" means the exchange of personal data for monetary consideration by the
114 controller to a third party. "Sale of personal data" does not include:

115 1. The disclosure of personal data to a processor that processes the personal data on behalf of the
116 controller;

117 2. The disclosure of personal data to a third party for purposes of providing a product or service
118 requested by the consumer;

119 3. The disclosure or transfer of personal data to an affiliate of the controller;

120 4. The disclosure of information that the consumer (i) intentionally made available to the general
121 public via a channel of mass media and (ii) did not restrict to a specific audience; or

5. The disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller's assets.

"Sensitive data" means a category of personal data that includes:

1. Personal data revealing racial or ethnic origin, religious beliefs, mental or physical health diagnosis, sexual orientation, or citizenship or immigration status;

2. The processing of genetic or biometric data for the purpose of uniquely identifying a natural person;

3. The personal data collected from a known child; or

4. Precise geolocation data.

"Social media platform" means a public or semipublic Internet-based service or application that has users in the Commonwealth and that meets the following criteria:

1. A primary function of the service or application is to connect users in order to allow users to interact socially with each other within such service or application. No service or application that provides email or direct messaging services shall be considered to meet this criterion on the basis of that function alone; and

2. The service or application allows users to do all of the following:

a. Construct a public or semipublic profile for purposes of signing into and using such service or application;

b. Populate a public list of other users with whom such user shares a social connection within the system; and

c. Create or post content viewable by other users, including content on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users. No service or application that consists primarily of news, sports, entertainment, ecommerce, or content preselected by the provider, or for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of such content, shall be considered to meet this criterion on the basis of that function alone.

"State agency" means the same as that term is defined in § 2.2-307.

"Targeted advertising" means displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from that consumer's activities over time and across nonaffiliated websites or online applications to predict such consumer's preferences or interests.

"Targeted advertising" does not include:

1. Advertisements based on activities within a controller's own websites or online applications;

2. Advertisements based on the context of a consumer's current search query, visit to a website, or online application;

3. Advertisements directed to a consumer in response to the consumer's request for information or feedback; or

4. Processing personal data processed solely for measuring or reporting advertising performance, reach, or frequency.

"Third party" means a natural or legal person, public authority, agency, or body other than the consumer, controller, processor, or an affiliate of the processor or the controller.

"User" means a person not acting as an agent of an operator or processor.

§ 59.1-577.1. Social media platforms; responsibilities and prohibitions related to children.

A. For purposes of this section, "child" or "minor" means any natural person younger than 18 years of age.

B. No person that operates a social media platform shall provide an addictive feed to a user unless such operator (i) uses commercially reasonable methods to determine that the user is not a minor or (ii) obtains verifiable parental consent, as defined in 15 U.S.C. § 6501, to provide an addictive feed to the minor user. Information collected for the purpose of determining a user's age shall not be used for any purpose other than age determination. For the purposes of this section, the operator of an addictive social media platform shall treat a user as a minor if the user's device communicates or signals that the user is or shall be treated as a minor, including through a browser plug-in or privacy setting, device setting, or other mechanism.

B. Nothing in this section shall be construed as requiring the operator of an addictive social media platform to give a parent who grants verifiable parental consent any additional or special access to or control over the data or accounts of his child.

C. No operator of an addictive social media platform shall withhold, degrade, lower the quality of, or increase the price of any product, service, or feature to a user due to the operator not being permitted to provide an addictive feed to such user under subsection B.