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SENATE BILL NO. 341

Offered January 12, 2022

Prefiled January 11, 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 59.1-592, relating to consumer protection; online marketplace; high-volume third-party sellers.

Patron—Barker

Referred to Committee on General Laws and Technology

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 59.1-592, 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; 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.

ONLINE MARKETPLACE CONSUMER PROTECTION ACT.

§ 59.1-589. Definitions.

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

"Consumer product" means any tangible personal property that is (i) distributed in commerce and (ii) normally used for personal, family, or household purposes. "Consumer product" includes property intended to be attached to or installed in any real property without regard to whether it is so attached or installed.

"High-volume third-party seller" means a participant in an online marketplace that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues.

182 "Online marketplace" means any electronically based or electronically accessed platform that (i)
183 includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase,
184 payment, storage, shipping, or delivery of a consumer product in the United States and (ii) hosts one or
185 more third-party sellers.

186 "Third-party seller" means a person or business entity, independent of an operator, facilitator, or
187 owner of an online marketplace, that sells, offers to sell, or contracts to sell a consumer product in the
188 United States through an online marketplace. "Third-party seller" does not include:

189 1. A business entity that has made available to the general public the business entity's name,
190 business address, and contact information;

191 2. A seller that has an ongoing contractual relationship with the owner of an online marketplace to
192 provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products;
193 or

194 3. A seller who has provided the online marketplace with identifying information, as described in §
195 59.1-590, that has been verified in accordance with § 59.1-590.

196 "Verify" means to confirm information provided to an online marketplace in accordance with §
197 59.1-590 by using either of the following methods:

198 1. A third-party proprietary identity verification system that has the capability to confirm a seller's
199 name, email address, physical address, and telephone number; or

200 2. A combination of two-factor authentication, public records search, and the presentation of
201 government issued identification.

202 **§ 59.1-590. Online marketplace; seller information and verification required.**

203 A. An online marketplace shall require a high-volume third-party seller to provide the online
204 marketplace with the following information within 10 business days of a seller qualifying as a
205 high-volume third-party seller:

206 1. a. Bank account information, the accuracy of which has been confirmed directly by the online
207 marketplace, a payment processor, or other third party contracted by the online marketplace; or

208 b. If the high-volume third-party seller does not have a bank account, the name of the payee for
209 payments issued by the online marketplace to the high-volume third-party seller.

210 Such bank account information or payee information may be provided (i) directly to the online
211 marketplace or (ii) to a payment processor or other third party contracted by the online marketplace to
212 maintain the information, provided that the online marketplace may obtain the information on demand
213 from the payment processor or other third party contracted;

214 2. Contact information for the high-volume third-party seller, which shall include the following:

215 a. If the high-volume third-party seller is an individual, a copy of a government-issued identification
216 for the individual that includes the individual's name and physical address;

217 b. If the high-volume third-party seller is not an individual, a copy of (i) a valid government-issued
218 photo identification for an individual acting on behalf of the high-volume third-party seller that includes
219 the individual's name and physical address or (ii) a valid government-issued record or tax document
220 that includes the business name and physical address of the high-volume third-party seller; and

221 c. A working email address and working telephone number for the high-volume third-party seller;

222 3. A business tax identification number or, if the high-volume third-party seller does not have a
223 business tax identification number, a taxpayer identification number; and

224 4. Information regarding whether the high-volume third-party seller is (i) exclusively advertising or
225 offering a consumer product on the online marketplace and (ii) currently advertising or offering for sale
226 the same consumer product on any other Internet website other than the online marketplace.

227 B. An online marketplace shall verify the information provided by a high-volume third-party seller
228 pursuant to subsection A within 10 business days of receiving the information. An online marketplace
229 shall verify any changes to the information within three days of receipt of notice of any changes to the
230 information provided by a high-volume third-party seller to the online marketplace. If a high-volume
231 third-party seller provides a copy of a valid government-issued tax document or identification, the
232 information contained within such document or identification shall be presumed verified as of the date
233 the document or identification was issued.

234 C. At least annually, an online marketplace shall (i) notify each high-volume third-party seller
235 operating in the online marketplace that the high-volume third-party seller shall inform the online
236 marketplace of any changes to information required pursuant to subsection A within three days of
237 receiving the notification and (ii) as part of such notification, instruct each high-volume third-party
238 seller to electronically certify either that the information provided pursuant to subsection A is
239 unchanged or that the high-volume third-party seller will be providing changes to the information.

240 If the online marketplace becomes aware that a high-volume third-party seller has not certified that
241 the information required pursuant to subsection A is unchanged or has not provided the changes to the
242 information within three days of receiving the notification, the online marketplace shall suspend the
243 high-volume third-party seller's participation in the online marketplace until the high-volume third-party

seller (a) certifies that the information is unchanged or (b) provides changes to the information and the information is verified.

§ 59.1-591. Disclosures to consumers required.

A. An online marketplace shall require a high-volume third-party seller to provide and disclose to consumers in a conspicuous manner and in bold print on the product listing page or, for information other than the high-volume third-party seller's full name, through a conspicuously placed link on the product listing page, the following information:

1. The identity of the high-volume third-party seller, including:
 - a. The full name of the high-volume third-party seller;
 - b. The full physical address of the high-volume third-party seller;
 - c. Whether the high-volume third-party seller also engages in the manufacturing, importing, or reselling of consumer products; and

- d. Contact information for the high-volume third-party seller, including a working telephone number and email address. The email address required to be disclosed by this subdivision may be an email address provided and assigned to the high-volume third-party seller through the online marketplace; and

2. Any other information that the Commissioner of Agriculture and Consumer Services or his duly authorized representative deems necessary to address circumvention or evasion of the requirements of this section.

B. Upon the request of a high-volume third-party seller, an online marketplace may provide for partial disclosure of the identifying information required by this section under the following circumstances:

1. If the high-volume third-party seller demonstrates to the online marketplace that the high-volume third-party seller does not have a business address and only has a residential street address, then the online marketplace may (i) direct the high-volume third-party seller to disclose only the country and, if applicable, the state in which the high-volume third-party seller resides on the listing of the consumer product; (ii) inform consumers that there is no business address available for the high-volume third-party seller; or (iii) inform consumers that consumer inquiries should be submitted to the high-volume third-party seller by telephone or email.

2. If the high-volume third-party seller demonstrates to the online marketplace that the high-volume third-party seller is a business that has a physical address for consumer product returns, the online marketplace may direct the high-volume third-party seller to disclose the physical address for consumer product returns.

3. If a high-volume third-party seller demonstrates to the online marketplace that the high-volume third-party seller only has a personal telephone number, the online marketplace may inform consumers that there is no telephone number available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by email.

C. If an online marketplace becomes aware that a high-volume third-party seller has (i) made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subsection B or (ii) requested and received a provision for partial disclosure under subsection B but has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the high-volume third-party seller by telephone or email, the online marketplace shall withdraw its provision for partial disclosure and require full disclosure of the high-volume third-party seller's identifying information required by subsection A within three business days' notice to the high-volume third-party seller.

D. An online marketplace shall disclose to consumers, in a conspicuous manner and in bold print on the consumer product listing page of any high-volume third-party seller, a reporting mechanism that allows consumers to report suspicious marketplace activity electronically or by phone and a message encouraging consumers to report suspicious activity to the online marketplace.

E. An online marketplace that warehouses, distributes, or otherwise fulfills a consumer product order shall disclose to the consumer the identifying information of any high-volume third-party seller supplying the consumer product if different from the seller listed on the product listing page.

§ 59.1-592. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 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.).