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SENATE BILL NO. 341

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 2, 2022)

(Patron Prior to Substitute—Senator Barker)

A BILL 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; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. 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:

CHAPTER 55.

ONLINE MARKETPLACE CONSUMER PROTECTION ACT.

§ 59.1-589. Definitions.

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, with an aggregate total of \$5,000 or more in gross revenues. For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues, an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.

"Online marketplace" means any person or entity that operates a consumer-directed electronically based or electronically accessed platform that (i) includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States; (ii) is used by one or more third-party sellers for such purposes; and (iii) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

"Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace platform.

"Third-party seller" means any seller, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. With respect to an online marketplace, "third-party seller" does not include:

1. A seller who operates the online marketplace platform; or
2. A business entity that has (i) made available to the general public the business entity's name, business address, and contact information; (ii) an ongoing contractual relationship with the owner of an online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and (iii) provided the online marketplace with identifying information, as described in § 59.1-590, that has been verified in accordance with § 59.1-590.

"Verify" means to confirm information provided to an online marketplace in accordance with § 59.1-590, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided by a seller or an individual acting on a seller's behalf are valid, not misappropriated, and not falsified.

§ 59.1-590. Collection, verification, and disclosure of information by online marketplaces; seller information and verification required.

A. An online marketplace shall require that any high-volume third-party seller on such online marketplace platform provide the online marketplace with the following information no later than 10 business days after qualifying as a high-volume third-party seller on the platform:

1. a. A bank account number; or
- b. If the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller.

Such required bank account information or payee information may be provided by the seller to the online marketplace or to a payment processor or other third party contracted by the online marketplace to maintain the information, provided that the online marketplace ensures that it can obtain the

information on demand from the payment processor or other third party;

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

a. If the high-volume third-party seller is an individual, the individual's name;

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

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

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

B. An online marketplace shall verify the information provided by a high-volume third-party seller pursuant to subsection A within 10 business days of receiving the information. If a high-volume third-party seller provides a copy of a valid government-issued tax document, the information contained within such document or identification shall be presumed verified as of the date the document or identification was issued.

C. At least annually, an online marketplace shall (i) notify each high-volume third-party seller operating in the online marketplace that the high-volume third-party seller shall inform the online marketplace of any changes to information required pursuant to subsection A within 10 business days of receiving the notification and (ii) as part of such notification, instruct each high-volume third-party seller to electronically certify either that the information provided pursuant to subsection A is unchanged or that the high-volume third-party seller will be providing changes to the information.

D. In the event that a high-volume third-party seller does not provide the information or certification required by this section after the online marketplace has provided the seller with written or electronic notice and an opportunity to provide such information or certification, the online marketplace shall, after providing the seller with a second written or electronic notice and an opportunity to provide such information or certification within 10 business days after the issuance of such notice, suspend any future sales activity of such seller until the seller provides the required information or certification.

E. Data collected solely to comply with the requirements of this section shall not be used for any other purpose unless so required by law. An online marketplace shall implement and maintain reasonable security procedures and practices, including appropriate administrative, physical, and technological safeguards relative to the nature and purposes of the data collected to comply with the requirements of this section, in order to protect such data from unauthorized use, disclosure, access, destruction, or modification.

§ 59.1-591. Disclosures to consumers required.

A. An online marketplace shall require each high-volume third-party seller with an aggregate total of \$20,000 or more in annual gross revenues through such online marketplace platform to provide and disclose to consumers in a clear and conspicuous manner the information required by subsection B in (i) any order confirmation message or other document or communication made to a consumer once a purchase is finalized and (ii) the consumer's account transaction history.

B. An online marketplace shall require each high-volume third-party seller as described in subsection A to disclose the identity of the high-volume third-party seller in the manner prescribed by subsection A, including the following information:

1. The full name of the high-volume third-party seller, which may include the seller name, the seller's company name, or the name by which the seller or company operates in the online marketplace;

2. The physical address of the high-volume third-party seller;

3. Contact information for the high-volume third-party seller, for the purpose of allowing direct and unhindered communication between high-volume third-party sellers and users of the online marketplace, provided the requirements of this subsection shall not prevent an online marketplace from preventing fraud, abuse, or spam through such communications, including a current working telephone number, a current working email address, or other means of electronic messaging that may be provided to the high-volume third-party seller by the online marketplace; and

4. Whether the high-volume third-party seller uses a different seller to fulfill purchase orders to customers placed through the online marketplace. Upon the request of an authenticated purchaser, if a high-volume third party seller uses a different seller to fulfill purchase orders to consumers, the online marketplace shall require such high-volume third-party seller to provide identifying information for the different seller.

C. 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 certifies to the online marketplace that the high-volume

third-party seller does not have a business address and only has a residential street address, or that the high-volume third party seller has a combined business and residential address, the online marketplace may (i) disclose only the country and, if applicable, the state in which the high-volume third-party seller resides and (ii) inform consumers that there is no business address available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by telephone, email, or other means of electronic messaging provided to such seller by the online marketplace.

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

3. If a high-volume third-party seller certifies to the online marketplace that the high-volume third-party seller does not have any phone number other than 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 or other means of electronic messaging provided to such seller by the online marketplace.

D. 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, email, or other means of electronic messaging provided to the seller by the online marketplace; the online marketplace shall, after providing the seller with a written or electronic notice and an opportunity to respond no later than 10 business days after the issuance of such notice, suspend any future sales activity of such seller unless the seller consents to the disclosure of the identifying information required by subsection A.

E. An online marketplace shall disclose to consumers, in a clear and conspicuous manner on the product listing of any high-volume third-party seller, a reporting mechanism that allows for electronic and telephone reporting of suspicious marketplace activity to the online marketplace.

F. If a high-volume third-party seller does not comply with the requirements to provide and disclose information under this section, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 business days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

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

A. The Attorney General shall have exclusive authority to enforce the provisions of this chapter.

B. Prior to initiating any action under this chapter, the Attorney General shall provide an online marketplace or high-volume third-party seller with 30 days' written notice identifying the specific provision or provisions of this chapter that the Attorney General alleges have been or are being violated. If within this 30-day period the online marketplace or high-volume third-party seller cures the noticed violation or violations and provides the Attorney General with an express written statement that the alleged violation or violations have been cured and that no further violations shall occur, no action shall be initiated against the online marketplace or high-volume third-party seller.

C. If an online marketplace or high-volume third party seller continues to violate the provisions of this chapter following the 30-day cure period under subsection B or breaches an express written statement provided to the Attorney General under subsection B, the Attorney General may initiate an action in the name of the Commonwealth and may seek an injunction to restrain any violations of this chapter and civil penalties of up to \$7,500 for each violation under this chapter.

D. The Attorney General may recover reasonable expenses incurred in investigating and preparing a case, including attorney fees, in any action initiated under this chapter.

E. Nothing in this chapter shall be construed as providing the basis for, or be subject to, a private right of action for violations of this chapter or under any other law.