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SENATE BILL NO. 769

Offered January 8, 2025

Prefiled December 18, 2024

A BILL to amend and reenact § 59.1-578 of the Code of Virginia, relating to Consumer Data Protection Act; controller privacy notice; cookies; consumer consent.

Patron—McDougle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-578 of the Code of Virginia is amended and reenacted as follows:

§ 59.1-578. Data controller responsibilities; transparency.

A. A controller shall:

1. Limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to the purposes for which such data is processed, as disclosed to the consumer;

2. Except as otherwise provided in this chapter, not process personal data for purposes that are neither reasonably necessary to nor compatible with the disclosed purposes for which such personal data is processed, as disclosed to the consumer, unless the controller obtains the consumer's consent;

3. Establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data. Such data security practices shall be appropriate to the volume and nature of the personal data at issue;

4. Not process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers. A controller shall not discriminate against a consumer for exercising any of the consumer rights contained in this chapter, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods and services to the consumer. However, nothing in this subdivision shall be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised his right to opt out pursuant to § 59.1-577 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program; and

5. Not process sensitive data concerning a consumer without obtaining the consumer's consent, or, in the case of the processing of sensitive data concerning a known child, without processing such data in accordance with the federal Children's Online Privacy Protection Act (15 U.S.C. § 6501 et seq.).

B. Any provision of a contract or agreement of any kind that purports to waive or limit in any way consumer rights pursuant to § 59.1-577 shall be deemed contrary to public policy and shall be void and unenforceable.

C. Controllers shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:

1. The categories of personal data processed by the controller;

2. The purpose for processing personal data;

3. How consumers may exercise their consumer rights pursuant § 59.1-577, including how a consumer may appeal a controller's decision with regard to the consumer's request;

4. The categories of personal data that the controller shares with third parties, if any; and

5. The categories of third parties, if any, with whom the controller shares personal data.

Such privacy notice shall also include a method by which a consumer may opt out of the automatic placement of a data file, commonly referred to as a "cookie," on the consumer's computer or web browser and a disclosure of the purposes for which such data files are used. Controllers shall not use such data files, except those that are strictly necessary, without the prior express consent of the consumer and shall not prevent access to their services if such consent is not granted. Controllers shall document and store proof of such consent and make available to consumers an easily accessible method by which they may withdraw such consent.

D. If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose such processing, as well as the manner in which a consumer may exercise the right to opt out of such processing.

E. A controller shall establish, and shall describe in a privacy notice, one or more secure and reliable means for consumers to submit a request to exercise their consumer rights under this chapter. Such means shall take into account the ways in which consumers normally interact with the controller, the need for secure

59 and reliable communication of such requests, and the ability of the controller to authenticate the identity of
60 the consumer making the request. Controllers shall not require a consumer to create a new account in order to
61 exercise consumer rights pursuant to § 59.1-577 but may require a consumer to use an existing account.

62 F. 1. Subject to the consent requirement established by subdivision 3, no controller shall process any
63 personal data collected from a known child:

64 a. For the purposes of (i) targeted advertising, (ii) the sale of such personal data, or (iii) profiling in
65 furtherance of decisions that produce legal or similarly significant effects concerning a consumer;

66 b. Unless such processing is reasonably necessary to provide the online service, product, or feature;

67 c. For any processing purpose other than the processing purpose that the controller disclosed at the time
68 such controller collected such personal data or that is reasonably necessary for and compatible with such
69 disclosed purpose; or

70 d. For longer than is reasonably necessary to provide the online service, product, or feature.

71 2. Subject to the consent requirement established by subdivision 3, no controller shall collect precise
72 geolocation data from a known child unless (i) such precise geolocation data is reasonably necessary for the
73 controller to provide an online service, product, or feature and, if such data is necessary to provide such
74 online service, product, or feature, such controller shall only collect such data for the time necessary to
75 provide such online service, product, or feature and (ii) the controller provides to the known child a signal
76 indicating that such controller is collecting such precise geolocation data, which signal shall be available to
77 such known child for the entire duration of such collection.

78 3. No controller shall engage in the activities described in subdivisions 1 or 2 unless the controller obtains
79 consent from the child's parent or legal guardian in accordance with the federal Children's Online Privacy
80 Protection Act (15 U.S.C. § 6501 et seq.).