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INTRODUCED

HB1022

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4 A BILL to amend and reenact §§ 59.1-207.45 through 59.1-207.49 of the Code of Virginia, relating to  
5 consumer protection; automatic renewal or continuous service offers; disclosure and cancellation.  
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7 Patron—Reaser  
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10 Committee Referral Pending  
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13 Be it enacted by the General Assembly of Virginia:

14 1. That §§ 59.1-207.45 through 59.1-207.49 of the Code of Virginia are amended and reenacted as  
15 follows:

16 § 59.1-207.45. Definitions.

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

18 "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement  
19 is automatically renewed at the end of a definite term for a subsequent term of more than one month.

20 "Automatic renewal offer terms" means the following clear and conspicuous disclosures:

21 1. That the subscription or purchasing agreement will continue until the consumer cancels;

22 2. The description of the cancellation policy that applies to the offer, *including the information necessary*  
23 *to find the simple cancellation mechanism as described in subsection B of § 59.1-207.46*;

24 3. The recurring charges that will be charged to the consumer's credit or debit card or payment account  
25 with a third party as part of the automatic renewal plan or arrangement and that the amount of the charge may  
26 change, if that is the case, and the amount to which the charge will change, if known;

27 4. *Each deadline, by date or frequency, by which the consumer must act to prevent or stop the recurring*  
28 *charges*;

29 5. The length of the automatic renewal term or that the service is continuous, unless the length of the term  
30 is chosen by the consumer; and

31 5. 6. The minimum purchase obligation, if any.

32 "Clear and conspicuous" or "clearly and conspicuously" means *readily noticeable and readily*  
33 *understandable by ordinary consumers, including in the following ways*:

34 1. *For a visual disclosure, "clear and conspicuous" means* in larger type than the surrounding text, or in  
35 *contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of*  
36 *the same size by symbols or other marks, in a manner that clearly calls attention to the language*;

37 2. *In the ease of* 2. *For an audio disclosure, "clear and conspicuous" or "clearly and conspicuously" means* in  
38 *a volume and cadence sufficient to be readily audible and understandable*; and

39 3. *For any communication using an interactive electronic platform, such as a website or mobile*  
40 *application, "clear and conspicuous" means that the disclosure is unavoidable by the consumer, uses diction*  
41 *and syntax understandable to ordinary consumers, and appears in each language that would be reasonably*  
42 *expected to be used by ordinary consumers*.

43 For a disclosure to be considered "clear and conspicuous," it cannot be contradicted or mitigated by, or  
44 inconsistent with, anything else in the communication to consumers. If a seller's representations or sales  
45 practices target a specific audience of consumers, such as individuals of a certain age or background,  
46 requirements for comprehension by ordinary consumers shall be satisfied if met both for the general  
47 audience of consumers and separately for the specific audience of consumers targeted by the seller.

48 "Consumer" means (i) any individual who seeks or acquires, by purchase or lease, any goods, services,  
49 money, or credit for personal, family, or household purposes or (ii) any small business that seeks or acquires,  
50 by purchase or lease, any goods, services, money, or credit for business purposes.

51 "Continuous service" means a plan or arrangement in which a subscription or purchasing agreement  
52 continues until the consumer cancels the service.

53 "Seller" means any person selling, offering, charging for, or otherwise marketing a good or service with  
54 automatic renewal or continuous service features.

55 "Small business" means a business that is at least 51 percent independently owned and controlled by one  
56 or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3 (§ 13.1-301 et  
57 seq.) of Title 13.1 as a nonstock corporation, is at least 51 percent independently controlled by one or more  
58 members, who are U.S. citizens or legal resident aliens and, together with affiliates, has 250 or fewer  
employees or annual gross receipts of \$10 million or less averaged over the previous three years. One or more  
of the individual owners or members shall control both the management and daily business operations of the  
small business.

59       "Supplier" has the same meaning ascribed thereto in § 59.1-198.

60       **§ 59.1-207.46. Making automatic renewal or continuous service offer to consumer; affirmative  
61       consent required; disclosures; prohibited conduct.**

62       A. No ~~supplier~~ seller making an automatic renewal or continuous service offer to a consumer in the  
63       Commonwealth shall do any of the following:

64       1. Prior to the completion of the initial order for the automatic renewal or continuous service, fail to  
65       present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous  
66       manner before the consumer becomes obligated on the automatic renewal or continuous service offer and in  
67       visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for  
68       consent to the offer.

69       2. Prior to the completion of the initial order for the automatic renewal or continuous service, charge the  
70       consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or  
71       continuous service without first obtaining the consumer's affirmative consent to the agreement containing the  
72       automatic renewal offer terms or continuous service offer terms.

73       3. Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer  
74       terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being  
75       retained by the consumer. If the offer includes a free trial, the ~~supplier~~ seller shall also disclose in the  
76       acknowledgment how to cancel the free trial before the consumer pays or becomes obligated to pay for the  
77       goods or services.

78       B. A ~~supplier~~ seller making automatic renewal or continuous service offers shall provide a ~~toll-free~~  
79       telephone number, an electronic mail address, a postal address only when the ~~supplier~~ directly bills the  
80       consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation mechanism that shall  
81       be described in the acknowledgment specified in subdivision A 3. Each ~~supplier~~ making automatic renewal or  
82       continuous service offers through an online website shall make available a conspicuous online option to  
83       cancel a recurring purchase of a good or service meets the standard for "clear and conspicuous," as defined  
84       in § 59.1-207.45, regardless of the medium in which it is presented and is easy for consumers to find.  
85       Regarding providing such simple cancellation mechanism, the following provisions shall apply:

86       1. The cancellation mechanism shall be at least as easy to use as the mechanism the consumer used to  
87       consent to the automatic renewal or continuous service offer.

88       2. A seller shall provide a cancellation mechanism through, at a minimum, each of the methods by which  
89       a consumer may initiate an automatic renewal or continuous service offer.

90       3. Compliance with the disclosure requirements of 16 C.F.R. §§ 425.4(a)(4) and 425.6 shall not discharge  
91       a seller's obligations under this chapter.

92       4. No consumer shall be required to interact with a live or virtual agent or representative to effectuate  
93       cancellation unless the seller only initiates automatic renewal or continuous service offers through  
94       interacting with a live or virtual agent or representative.

95       5. For cancellation by telephone call, the seller shall promptly effectuate cancellation requested by a  
96       consumer via a telephone number that is answered or records messages, made available during normal  
97       business hours, and not more costly to use than the method used by the consumer to initiate the automatic  
98       renewal or continuous service offer.

99       6. For cancellation of an automatic renewal or continuous service offer that was initiated in person, in  
100       addition to offering cancellation through a similar in-person method, the seller shall offer a simple  
101       cancellation mechanism through an interactive electronic medium, such as a website or mobile application,  
102       or by telephone call.

103       7. If a seller offers cancellation by telephone call, the seller shall not impose any cost to the consumer for  
104       the cancellation call.

105       C. In the case of a material change in the terms of the automatic renewal or continuous service offer that  
106       has been accepted by a consumer in the Commonwealth, the ~~supplier~~ seller shall, prior to implementation of  
107       the material change, provide the consumer with a clear and conspicuous notice of the material change and  
108       provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

109       D. A ~~supplier~~ seller making automatic renewal or continuous service offers that include a free trial lasting  
110       more than 30 days shall, within 30 days of the end of any such free trial, notify the consumer of his option to  
111       cancel the free trial before the end of the trial period to avoid an obligation to pay for the goods or services.

112       E. A ~~supplier~~ seller making automatic renewal or continuous service offers that will automatically renew  
113       after a period of more than 30 days and extend the automatic renewal or continuous service offer for a period  
114       of more than 12 months shall notify the consumer of his option to cancel the automatic renewal or continuous  
115       service offer no less than 30 days and no more than 60 days before the cancellation deadline or the end of the  
116       current contract term. Such notice shall conspicuously disclose (i) that the automatic renewal or continuous  
117       service offer will automatically renew unless the consumer cancels, (ii) the date by which the consumer must  
118       cancel to avoid automatic renewal or continuous service, (iii) the method by which the consumer may cancel,  
119       and (iv) a copy of the automatic renewal or continuous service offer provisions.

120       F. Each disclosure required under this chapter shall independently meet the standard for "clear and

121 *conspicuous," as defined in § 59.1-207.45, regardless of the medium in which it is presented.*

122 **§ 59.1-207.47. When goods, wares, merchandise, or products deemed a gift.**

123 In any case in which a ~~supplier~~ seller sends any goods, wares, merchandise, or products to a consumer  
 124 under a continuous service agreement or automatic renewal of a purchase without first obtaining the  
 125 consumer's affirmative consent as described in § 59.1-207.46, the goods, wares, merchandise, or products  
 126 shall for all purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same  
 127 in any manner he sees fit without any obligation whatsoever on the consumer's part to the ~~supplier~~ seller,  
 128 including any obligation or responsibility for shipping any goods, wares, merchandise, or products to the  
 129 ~~supplier~~ seller.

130 **§ 59.1-207.48. Exemptions.**

131 This chapter shall not apply to:

132 1. Any service provided by a ~~supplier~~ seller or its affiliate where either the ~~supplier~~ seller or its affiliate is  
 133 doing business pursuant to a franchise issued by a political subdivision of the Commonwealth or a license,  
 134 franchise, certificate, or other authorization issued by the State Corporation Commission to a public service  
 135 company or public utility pursuant to Title 56;

136 2. Any service provided by a ~~supplier~~ seller or its affiliate where either the ~~supplier~~ seller or its affiliate is  
 137 regulated by the State Corporation Commission, the Federal Communications Commission, or the Federal  
 138 Energy Regulatory Commission;

139 3. Alarm company operators that are regulated pursuant to § 15.2-911;

140 4. A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other  
 141 financial institution, licensed under federal or state law; or

142 5. Any home protection company regulated by the State Corporation Commission pursuant to Chapter 26  
 143 (§ 38.2-2600 et seq.) of Title 38.2;

144 6. Any home service contract provider regulated by the Department of Agriculture and Consumer  
 145 Services pursuant to Chapter 33.1 (§ 59.1-434.1 et seq.);

146 7. Any extended service contract provider regulated by the Department of Agriculture and Consumer  
 147 Services pursuant to Chapter 34 (§ 59.1-435 et seq.) or its affiliates;

148 8. 4. Any insurer or entity regulated under Title 38.2 or an affiliate of such insurer or entity; or

149 9. Any health club registered pursuant to the Virginia Health Club Act (59.1-294 et seq.).

150 **§ 59.1-207.49. Enforcement; penalties.**

151 Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and  
 152 shall be subject to the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).  
 153 However, if a supplier makes a good faith effort to comply with the requirements of this chapter, the supplier  
 154 shall not be subject to either a civil penalty under § 59.1-206 or damages under § 59.1-204.