

27100020D

SENATE BILL NO. 838

Offered January 13, 2027

Prefiled October 2, 2026

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 64, consisting of sections numbered 59.1-627 through 59.1-631, relating to surveillance pricing practices; civil penalties.*

 Patron—Perry

Referred to Committee on Commerce and Labor

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 64, consisting of sections numbered 59.1-627 through 59.1-631, as follows:

CHAPTER 64.**SURVEILLANCE PRICING PRACTICES.****§ 59.1-627. Definitions.**

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

"Algorithm" means a computational process or system that applies one or more sets of rules, including rules generated by a natural person or by a computational process or system, to generate outputs based on inputs or to define a sequence of operations.

"Bona fide custom discount" means a bona fide discount offered by an entity:

1. To a consumer who enrolls in a loyalty, membership, or rewards program, including by signing up for a mailing list, registering for promotional communications, or participating in a promotional event. Such program may offer tiers of bona fide discounts based on a consumer's prior purchase history data;

2. That is based on a consumer's (i) self-identification with a broadly defined class of consumers, including veterans, active duty military personnel, senior citizens, teachers, students, or employees, or (ii) release of information related to his date of birth or anniversary of membership in a loyalty program;

3. Except in the case of an online marketplace, that is based solely on a consumer's prior purchase history, including first-time or subsequent purchases of goods or services or returns, cancellations, or timing or frequency of such purchases, with such specific entity; or

4. In the case of an online marketplace, that is:

a. Based solely on a consumer's prior purchase history, including first-time or subsequent purchases of goods or services or returns, cancellations, or timing or frequency of such purchases, with an independent third-party entity offering the good or service to which the bona fide discount is applied; or

b. Based on a consumer's prior purchase history, including first-time or subsequent purchases of goods or services or returns, cancellations, or timing or frequency of such purchases, collected through the online marketplace to offer a one-time discount from the reference price to new consumers of a particular independent third-party entity on such online marketplace.

"Bona fide custom discount" does not include any reduction in reference price based on personal data other than personal data identified in this definition.

"Bona fide discount" means a genuine reduction in price that is referred to as such to consumers, including generally available reductions in price from the reference price based on bulk purchases or subscriptions. An entity or service provider may reasonably interpret the term "bona fide discount" to mean a genuine reduction from a contemporaneous or recent reference price that is established absent of deceptive and unfair acts or practices as described in this chapter. A "bona fide discount" may include clearly and conspicuously posted promotional periods, end of season sales, flash sales, early bird sales, inventory-based pricing, price matching policies, and rebates to the extent that such discount is generally available without the utilization of personal data.

"Clearly and conspicuously" means the same as that term is defined in § 59.1-207.45.

"Consumer" means a natural person who is a resident of the Commonwealth acting only in an individual or household context.

"Consumer price" means the reference price with adjustments based on bona fide discounts, including sales, coupons, promotions, or other discounts except bona fide custom discounts.

"Consumer transaction" means the same as that term is defined in § 59.1-198.

"Entity" means any natural person, corporation, trust, partnership, or association, or any other legal entity domiciled or doing business in the Commonwealth.

"Independent third-party entity" means any entity that engages in the sale, purchase, payment, storage, shipping, or delivery of goods or services to a consumer through an online marketplace.

"Online marketplace" means an entity that operates a public or semi-public website, online service,

INTRODUCED

SB838

online application, mobile application, or other electronically based or accessed platform through which a consumer engages in the sale, purchase, payment, storage, shipping, or delivery of a good or service and that allows for or enables one or more independent third-party entities to engage in or facilitates such entities' engagement in the sale, purchase, payment, storage, shipping, or delivery of a good or service to a consumer.

"Personal data" means any information that is linked or reasonably linkable to an identified or identifiable consumer or device owned and operated by a consumer. "Personal data" does not include data that is affirmatively and knowingly provided or shared by a consumer and used (i) for the purpose of calculating trip duration and mileage costs associated with a location-based service, such as transportation, delivery, or courier logistics, or (ii) to assess local supply and demand conditions.

"Reference price" means the actual amount a consumer is required to pay for any good or service, including mandatory fees or charges necessary to receive such good or service, that is openly and actively offered to the public in the regular course of business for a reasonably substantial and recent period of time. "Reference price" does not include any taxes or fees imposed by a government.

"Service provider" means any entity that acts on behalf of another entity that is subject to this chapter.

"Surveillance pricing" means pricing set completely or in part by an algorithm that uses personal data to offer different prices to different consumers for the same goods or services. "Surveillance pricing" does not include any price difference between consumers that is based on a bona fide custom discount.

§ 59.1-628. Surveillance pricing prohibited.

A. No entity or service provider shall, in connection with a consumer transaction, advertise, promote, label, or publish a statement, display, image, offer, or announcement with a reference price or consumer price of a good or service to a consumer if such price was set or adjusted using surveillance pricing, whether directly or indirectly.

B. No entity or service provider shall collect, use, sell, retain, share for valuable consideration, or disclose personal data for the purpose of facilitating the setting or adjusting of a reference price or consumer price advertised or displayed to a consumer using surveillance pricing.

§ 59.1-629. Bona fide custom discounts; prohibitions; disclosure.

A. No entity or service provider shall offer a bona fide custom discount unless such discount is offered uniformly to any consumer who meets the disclosed eligibility conditions or criteria.

B. No entity or service provider shall, with respect to a consumer's prior purchase history data:

1. Pair, combine, or cross-reference such data with any other personal data, including data held by an online marketplace related to any other third-party entity and the transaction data of the online marketplace where such online marketplace also offers goods and services, unless such pairing, combining, or cross-referencing is necessary to provide a bona fide custom discount to a particular consumer; or

2. Use such data to set or change the reference price for any good or service to which a bona fide discount may be applied.

C. An entity or service provider shall offer and clearly and conspicuously disclose, if applicable:

1. An available bona fide custom discount to any consumer who meets the disclosed eligibility conditions or criteria for such discount;

2. Such entity or service provider's use of prior purchase history data to provide a bona fide custom discount to a consumer; and

3. The automatic application of a bona fide custom discount.

D. Any consumer's (i) enrollment in a loyalty, membership, or rewards program, including by signing up for a mailing list, registering for promotional communications, or participating in a promotional event; (ii) self-identification with a broadly defined class of consumers, including veterans, active duty military personnel, senior citizens, teachers, students, or employees; or (iii) release of information related to his date of birth or anniversary of membership in a loyalty program shall be made affirmatively and knowingly by the consumer for the purpose of obtaining a bona fide custom discount. No entity or service provider shall derive or infer such information from any other data.

E. Nothing in this chapter shall prevent an entity or a service provider from automatically applying a bona fide custom discount where such entity or service provider has knowledge of a consumer's eligibility for such a discount, provided such entity or service provider does not change the reference price.

F. Nothing in this chapter shall prevent an entity or a service provider from marketing a bona fide discount to a consumer for purposes of attracting a new consumer or reengaging a consumer with such entity or service provider unless such consumer opts out of such communications.

§ 59.1-630. Exclusions.

Nothing in this chapter shall apply to:

1. A person, firm, partnership, association, or corporation, or agent or employee thereof, that is subject to the provisions of Title 38.2.

2. An entity or service provider's collection, maintenance, disclosure, sale, communication, or use of personal data bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living from a consumer reporting agency or furnisher that provides information for use in a consumer report, and from a user of a consumer report, only to the extent

that such activity is regulated by and authorized under the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

3. Pricing required or expressly authorized by federal or state law.

§ 59.1-631. Enforcement; civil penalties.

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

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is engaging in, or is about to engage in any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this subsection.

C. 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 \$5,000 for each violation under this chapter.

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

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.

INTRODUCED

SB838