

SENATE BILL NO. 359

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator VanValkenburg)

A BILL to amend and reenact § 59.1-575 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-577.1, relating to Consumer Data Protection Act; social media platforms; addictive feed.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 59.1-575 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-577.1 as follows:**

**§ 59.1-575. Definitions.**

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

"Addictive feed" means a website, online service, or online or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users of a website, online service, or online or mobile application, either concurrently or sequentially, are recommended, selected, or prioritized for display to a user based, in whole or in part, on information associated with the user or the user's device, unless any of the following conditions are met, alone or in combination with one another:

1. The information is not persistently associated with the user or user's device and does not concern the user's previous interactions with media generated or shared by others;

2. The information is user-selected privacy or accessibility settings, technical information concerning the user's device, or device communications or signals concerning whether the user is a minor;

3. The user expressly and unambiguously requested the specific media or media by the author, creator, or poster of the media, provided that the media is not recommended, selected, or prioritized for display based, in whole or in part, on other information associated with the user or the user's device that is not otherwise permissible under this definition;

27 4. The media are direct, private communications;

28 5. The media recommended, selected, or prioritized for display is exclusively the next media in a  
29 preexisting sequence from the same author, creator, poster, or source; or

30 6. The media are provided for the purpose of interactive gaming, virtual gaming, or educational  
31 entertainment.

32 "Addictive social media platform" means a website, online service, or online or mobile application  
33 that offers or provides users an addictive feed that is not incidental to the provision of such website, online  
34 service, or online or mobile application.

35 "Affiliate" means a legal entity that controls, is controlled by, or is under common control with  
36 another legal entity or shares common branding with another legal entity. For the purposes of this  
37 definition, "control" or "controlled" means (i) ownership of, or the power to vote, more than 50 percent of  
38 the outstanding shares of any class of voting security of a company; (ii) control in any manner over the  
39 election of a majority of the directors or of individuals exercising similar functions; or (iii) the power to  
40 exercise controlling influence over the management of a company.

41 "Authenticate" means verifying through reasonable means that the consumer, entitled to exercise  
42 his consumer rights in § 59.1-577, is the same consumer exercising such consumer rights with respect to  
43 the personal data at issue.

44 "Biometric data" means data generated by automatic measurements of an individual's biological  
45 characteristics, such as a fingerprint, voiceprint, eye retinas, irises, or other unique biological patterns or  
46 characteristics that is used to identify a specific individual. "Biometric data" does not include a physical  
47 or digital photograph, a video or audio recording or data generated therefrom, or information collected,  
48 used, or stored for health care treatment, payment, or operations under HIPAA.

49 "Business associate" means the same meaning as the term established by HIPAA.

50 "Child" means any natural person younger than 13 years of age.

51 "Consent" means a clear affirmative act signifying a consumer's freely given, specific, informed,  
52 and unambiguous agreement to process personal data relating to the consumer. Consent may include a

53 written statement, including a statement written by electronic means, or any other unambiguous  
54 affirmative action.

55 "Consumer" means a natural person who is a resident of the Commonwealth acting only in an  
56 individual or household context. It does not include a natural person acting in a commercial or employment  
57 context.

58 "Controller" means the natural or legal person that, alone or jointly with others, determines the  
59 purpose and means of processing personal data.

60 "Covered entity" means the same as the term is established by HIPAA.

61 "Decisions that produce legal or similarly significant effects concerning a consumer" means a  
62 decision made by the controller that results in the provision or denial by the controller of financial and  
63 lending services, housing, insurance, education enrollment, criminal justice, employment opportunities,  
64 health care services, or access to basic necessities, such as food and water.

65 "De-identified data" means data that cannot reasonably be linked to an identified or identifiable  
66 natural person, or a device linked to such person. A controller that possesses "de-identified data" shall  
67 comply with the requirements of subsection A of § 59.1-581.

68 "Health record" means the same as that term is defined in § 32.1-127.1:03.

69 "Health care provider" means the same as that term is defined in § 32.1-276.3.

70 "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996 (42  
71 U.S.C. § 1320d et seq.).

72 "Identified or identifiable natural person" means a person who can be readily identified, directly  
73 or indirectly.

74 "Institution of higher education" means a public institution and private institution of higher  
75 education, as those terms are defined in § 23.1-100.

76 "Nonprofit organization" means any corporation organized under the Virginia Nonstock  
77 Corporation Act (§ 13.1-801 et seq.) or any organization exempt from taxation under § 501(c)(3),  
78 501(c)(6), or 501(c)(12) of the Internal Revenue Code, any political organization, any organization exempt

79 from taxation under § 501(c)(4) of the Internal Revenue Code that is identified in § 52-41, and any  
80 subsidiary or affiliate of entities organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56.

81 "Parent" means a parent or legal guardian of a child.

82 "Personal data" means any information that is linked or reasonably linkable to an identified or  
83 identifiable natural person. "Personal data" does not include de-identified data or publicly available  
84 information.

85 "Political organization" means a party, committee, association, fund, or other organization,  
86 whether or not incorporated, organized and operated primarily for the purpose of influencing or attempting  
87 to influence the selection, nomination, election, or appointment of any individual to any federal, state, or  
88 local public office or office in a political organization or the election of a presidential/vice-presidential  
89 elector, whether or not such individual or elector is selected, nominated, elected, or appointed.

90 "Precise geolocation data" means information derived from technology, including but not limited  
91 to global positioning system level latitude and longitude coordinates or other mechanisms, that directly  
92 identifies the specific location of a natural person with precision and accuracy within a radius of 1,750  
93 feet. "Precise geolocation data" does not include the content of communications or any data generated by  
94 or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

95 "Process" or "processing" means any operation or set of operations performed, whether by manual  
96 or automated means, on personal data or on sets of personal data, such as the collection, use, storage,  
97 disclosure, analysis, deletion, or modification of personal data.

98 "Processor" means a natural or legal entity that processes personal data on behalf of a controller.

99 "Profiling" means any form of automated processing performed on personal data to evaluate,  
100 analyze, or predict personal aspects related to an identified or identifiable natural person's economic  
101 situation, health, personal preferences, interests, reliability, behavior, location, or movements.

102 "Protected health information" means the same as the term is established by HIPAA.

103 "Pseudonymous data" means personal data that cannot be attributed to a specific natural person  
104 without the use of additional information, provided that such additional information is kept separately and

105 is subject to appropriate technical and organizational measures to ensure that the personal data is not  
106 attributed to an identified or identifiable natural person.

107 "Publicly available information" means information that is lawfully made available through  
108 federal, state, or local government records, or information that a business has a reasonable basis to believe  
109 is lawfully made available to the general public through widely distributed media, by the consumer, or by  
110 a person to whom the consumer has disclosed the information, unless the consumer has restricted the  
111 information to a specific audience.

112 "Sale of personal data" means the exchange of personal data for monetary consideration by the  
113 controller to a third party. "Sale of personal data" does not include:

- 114 1. The disclosure of personal data to a processor that processes the personal data on behalf of the  
115 controller;
- 116 2. The disclosure of personal data to a third party for purposes of providing a product or service  
117 requested by the consumer;
- 118 3. The disclosure or transfer of personal data to an affiliate of the controller;
- 119 4. The disclosure of information that the consumer (i) intentionally made available to the general  
120 public via a channel of mass media and (ii) did not restrict to a specific audience; or
- 121 5. The disclosure or transfer of personal data to a third party as an asset that is part of a merger,  
122 acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the  
123 controller's assets.

124 "Sensitive data" means a category of personal data that includes:

- 125 1. Personal data revealing racial or ethnic origin, religious beliefs, mental or physical health  
126 diagnosis, sexual orientation, or citizenship or immigration status;
- 127 2. The processing of genetic or biometric data for the purpose of uniquely identifying a natural  
128 person;
- 129 3. The personal data collected from a known child; or
- 130 4. Precise geolocation data.

131 "Social media platform" means a public or semipublic Internet-based service or application that  
132 has users in the Commonwealth and that meets the following criteria:

133 1. A primary function of the service or application is to connect users in order to allow users to  
134 interact socially with each other within such service or application. No service or application that provides  
135 email or direct messaging services shall be considered to meet this criterion on the basis of that function  
136 alone; and

137 2. The service or application allows users to do all of the following:

138 a. Construct a public or semipublic profile for purposes of signing into and using such service or  
139 application;

140 b. Populate a public list of other users with whom such user shares a social connection within the  
141 system; and

142 c. Create or post content viewable by other users, including content on message boards, in chat  
143 rooms, or through a landing page or main feed that presents the user with content generated by other users.

144 No service or application that consists primarily of news, sports, entertainment, ecommerce, or content  
145 preselected by the provider, or for which any chat, comments, or interactive functionality is incidental to,  
146 directly related to, or dependent on the provision of such content, shall be considered to meet this criterion  
147 on the basis of that function alone.

148 "State agency" means the same as that term is defined in § 2.2-307.

149 "Targeted advertising" means displaying advertisements to a consumer where the advertisement  
150 is selected based on personal data obtained from that consumer's activities over time and across  
151 nonaffiliated websites or online applications to predict such consumer's preferences or interests. "Targeted  
152 advertising" does not include:

153 1. Advertisements based on activities within a controller's own websites or online applications;

154 2. Advertisements based on the context of a consumer's current search query, visit to a website, or  
155 online application;

156 3. Advertisements directed to a consumer in response to the consumer's request for information or  
157 feedback; or

158 4. Processing personal data processed solely for measuring or reporting advertising performance,  
159 reach, or frequency.

160 "Third party" means a natural or legal person, public authority, agency, or body other than the  
161 consumer, controller, processor, or an affiliate of the processor or the controller.

162 "User" means a person not acting as an agent of an operator or processor.

163 **§ 59.1-577.1. Social media platforms; responsibilities and prohibitions related to children.**

164 A. For purposes of this section, "child" or "minor" means any natural person younger than 18 years  
165 of age.

166 B. No person that operates a social media platform shall provide an addictive feed to a user unless  
167 such operator (i) uses commercially reasonable methods to determine that the user is not a minor or (ii)  
168 obtains verifiable parental consent, as defined in 15 U.S.C. § 6501, to provide an addictive feed to the  
169 minor user. Information collected for the purpose of determining a user's age shall not be used for any  
170 purpose other than age determination. For the purposes of this section, the operator of an addictive social  
171 media platform shall treat a user as a minor if the user's device communicates or signals that the user is or  
172 shall be treated as a minor, including through a browser plug-in or privacy setting, device setting, or other  
173 mechanism.

174 B. Nothing in this section shall be construed as requiring the operator of an addictive social media  
175 platform to give a parent who grants verifiable parental consent any additional or special access to or  
176 control over the data or accounts of his child.

177 C. No operator of an addictive social media platform shall withhold, degrade, lower the quality of,  
178 or increase the price of any product, service, or feature to a user due to the operator not being permitted  
179 to provide an addictive feed to such user under subsection B.

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