

1 HOUSE BILL NO. 1519
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee on Labor and Commerce
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Srinivasan)

6 A BILL to amend and reenact §§ 59.1-199 and 59.1-200 of the Code of Virginia, relating to the Virginia
 7 Consumer Protection Act; fees for electronic fund transfers; prohibited.

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

9 **1. That §§ 59.1-199 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:**

10 **§ 59.1-199. Exclusions.**

11 Nothing in this chapter shall apply to:

12 1. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of
 13 the Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official
 14 of the Commonwealth or the United States.

15 2. Acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or
 16 television station, or other advertising media such as outdoor advertising and advertising agencies, in the
 17 publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such
 18 person knew that the advertisement was of a character prohibited by § 59.1-200.

19 ~~3. Those~~ Except as provided in subdivision A 79 of § 59.1-200, those aspects of a consumer
 20 transaction that are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

21 4. Banks, savings institutions, credit unions, small loan companies, public service corporations,
 22 mortgage lenders as defined in § 6.2-1600, broker-dealers as defined in § 13.1-501, gas suppliers as
 23 defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State
 24 Corporation Commission or a comparable federal regulating body.

25 ~~5. Any~~ Except as provided in subdivision A 79 of § 59.1-200, any aspect of a consumer transaction
 26 that is subject to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.) or Chapter 14 (§

27 55.1-1400 et seq.) of Title 55.1, unless the act or practice of a landlord constitutes a misrepresentation or
28 fraudulent act or practice under § 59.1-200.

29 6. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

30 7. Residential home sales between natural persons involving the seller's private residence.

31 **§ 59.1-200. Prohibited practices.**

32 A. The following fraudulent acts or practices committed by a supplier in connection with a
33 consumer transaction are hereby declared unlawful:

34 1. Misrepresenting goods or services as those of another;

35 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

36 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
37 services, with another;

38 4. Misrepresenting geographic origin in connection with goods or services;

39 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses,
40 or benefits;

41 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or
42 model;

43 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
44 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"
45 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
46 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
47 imperfects or "not first class";

48 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
49 at the price or upon the terms advertised.

50 In any action brought under this subdivision, the refusal by any person, or any employee, agent,
51 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
52 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall
53 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods

54 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount
55 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer
56 did in fact have or reasonably expected to have at least such quantity or amount for sale;

57 9. Making false or misleading statements of fact concerning the reasons for, existence of, or
58 amounts of price reductions;

59 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or
60 parts installed;

61 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
62 or bill for merchandise or services previously ordered;

63 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
64 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's
65 business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the
66 goods or services advertised or offered for sale;

67 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
68 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
69 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or
70 under federal statutes or regulations;

71 13a. Failing to provide to a consumer, or failing to use or include in any written document or
72 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
73 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
74 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
75 with the consumer transaction;

76 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in
77 connection with a consumer transaction;

78 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
79 3.2-6516, or 3.2-6519 is a violation of this chapter;

80 16. Failing to disclose all conditions, charges, or fees relating to:

81 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
82 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
83 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
84 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
85 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
86 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for
87 the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the
88 case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund
89 may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not
90 apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for
91 clearance; nor does this subdivision apply to special order purchases where the purchaser has requested
92 the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the
93 store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or
94 lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

95 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the
96 time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
97 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of
98 sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the
99 agreement;

100 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
101 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
102 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
103 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
104 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
105 required;

- 106** 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
107 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
108 agreement;
- 109** 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 110** 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1
111 et seq.);
- 112** 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1
113 et seq.);
- 114** 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
115 207.17 et seq.);
- 116** 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 117** 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
118 424 et seq.);
- 119** 24. Violating any provision of § 54.1-1505;
- 120** 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
121 Chapter 17.6 (§ 59.1-207.34 et seq.);
- 122** 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 123** 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 124** 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 125** 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
126 seq.);
- 127** 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
128 et seq.);
- 129** 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 130** 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 131** 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 132** 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

- 133 35. Using the consumer's social security number as the consumer's account number with the
134 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
135 with the consumer's social security number;
- 136 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 137 37. Violating any provision of § 8.01-40.2;
- 138 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 139 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 140 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 141 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
142 59.1-525 et seq.);
- 143 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 144 43. Violating any provision of § 59.1-443.2;
- 145 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 146 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 147 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 148 47. Violating any provision of § 18.2-239;
- 149 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 150 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
151 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
152 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
153 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
154 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
155 products that are used, secondhand or "seconds";
- 156 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 157 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 158 52. Violating any provision of § 8.2-317.1;
- 159 53. Violating subsection A of § 9.1-149.1;

160 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
161 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
162 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
163 which defective drywall has been permanently installed or affixed;

164 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
165 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-
166 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
167 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
168 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

169 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

170 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

171 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

172 59. Violating any provision of subsection E of § 32.1-126;

173 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession
174 licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

175 61. Violating any provision of § 2.2-2001.5;

176 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;

177 63. Violating any provision of § 6.2-312;

178 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;

179 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;

180 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);

181 67. Knowingly violating any provision of § 8.01-27.5;

182 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option
183 to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30
184 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period
185 to avoid an obligation to pay for the goods or services;

186 69. Selling or offering for sale any substance intended for human consumption, orally or by
187 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
188 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
189 to turn a compound into a different compound by adding or subtracting molecules to or from the original
190 compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S.
191 Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be
192 construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

193 70. Selling or offering for sale to a person younger than 21 years of age any substance intended
194 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
195 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
196 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
197 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

198 71. Selling or offering for sale any substance intended for human consumption, orally or by
199 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
200 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
201 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
202 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
203 substance that constitutes a single serving, and (d) the total percentage and milligrams of
204 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
205 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
206 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
207 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
208 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
209 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
210 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
211 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

212 72. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as
213 defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
214 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;

215 73. Selling or offering for sale any substance intended for human consumption, orally or by
216 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a container
217 or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined
218 in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a
219 manufacturer, processor, packer, or distributor of a product intended for human consumption other than
220 the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or
221 distribute such substance;

222 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not
223 include a label stating that the product is not intended for human consumption. This subdivision shall not
224 (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
225 scheduled in the Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct permitted
226 under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were
227 manufactured prior to July 1, 2023, provided that the person provides documentation of the date of
228 manufacture if requested;

229 75. Violating any provision of § 59.1-466.8;

230 76. Violating subsection F of § 36-96.3:1;

231 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
232 (ii) any kratom product that does not include a label listing all ingredients and with the following guidance:
233 "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to
234 diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the
235 leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

236 78. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45,
237 to a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale
238 of any such good or provision of any such continuous service; and

239 79. Charging any transaction or processing fee or similar surcharge for the use of an electronic
 240 fund transfer, as that term is defined in 12 C.F.R. § 1005.3, for payment for the purchase of a good or
 241 service.

242 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
 243 lease solely by reason of the failure of such contract or lease to comply with any other law of the
 244 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
 245 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
 246 contract or lease.

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