

HOUSE BILL NO. 1921

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Batten)

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 22.2, consisting of sections numbered 6.2-2239 through 6.2-2262, relating to financial institutions; earned wage access services; licensure requirements; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 is amended and reenacted of the Code of Virginia and the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 22.2, consisting of sections numbered 6.2-2239 through 6.2-2262, as follows:

CHAPTER 22.2.

EARNED WAGE ACCESS SERVICES.

§ 6.2-2239. Definitions.

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

"Consumer" means an individual residing in the Commonwealth.

"Earned but unpaid income" means salary, wages, compensation, or other income that a consumer has represented, and that a provider has reasonably determined, have been earned or have accrued to the benefit of the consumer but have not, at the time of the payment of proceeds, been paid to the consumer by an obligor.

"Earned wage access services" means the business of delivering proceeds to consumers prior to the date on which an obligor is obligated to pay such salary, wages, compensation, or other income to a consumer.

"Licensee" means a provider licensed under this chapter.

27 "Obligor" means an employer or other person who is contractually or legally obligated to pay a
28 consumer income on an hourly, project-based, piecework, or other basis, including where the consumer is
29 acting as an independent contractor. "Obligor" does not include a service provider of an obligor or another
30 third party that has an obligation to make any payment to a consumer based solely on the consumer's
31 agency relationship with the obligor.

32 "Outstanding proceeds" means a payment of proceeds to a consumer by a provider that has not yet
33 been repaid to that provider.

34 "Mandatory payment" means an amount determined by a provider that a consumer is required to
35 pay to the provider as a condition of receiving or repaying proceeds.

36 "Non-mandatory payment" means an amount paid by a consumer or an obligor to a provider that
37 does not meet the definition of a mandatory payment. "Non-mandatory payment" includes the following:

38 1. A fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer, as
39 long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

40 2. An amount paid by an obligor to a provider on a consumer's behalf that entitles the consumer to
41 receive proceeds at no cost to the consumer.

42 3. A subscription or membership fee imposed by a provider for a group of services that include
43 earned wage access services, as long as the provider offers the consumer at least one option to receive
44 proceeds at no cost to the consumer.

45 4. A tip or gratuity paid by a consumer to a provider, as long as the provider offers the consumer
46 at least one option to receive proceeds at no cost to the consumer.

47 "Proceeds" means a payment of funds to a consumer by a provider that is based on earned but
48 unpaid income.

49 "Provider" means a person who is in the business of offering and providing earned wage access
50 services to a consumer.

51 **§ 6.2-2240. License requirement.**

52 No person shall offer or provide earned wage access services, whether or not the person has an
53 office, facility, agent, or other physical presence in the Commonwealth, without having first obtained a
54 license under this chapter from the Commission.

55 **§ 6.2-2241. Application for license; form; content; fee.**

56 A. An application for a license under this chapter shall be made in writing, under oath and on a
57 form provided by the Commissioner.

58 B. The application shall set forth:

59 1. The name and address of the applicant;

60 2. If the applicant is a firm or partnership, the name and address of each member of the firm or
61 partnership;

62 3. If the applicant is a corporation or a limited liability company, the name and address of each
63 officer, director, registered agent, and principal;

64 4. The addresses of the locations of the offices to be approved or a statement that the applicant will
65 offer earned wage access services entirely online; and

66 5. Such other information concerning the financial responsibility, background, experience, and
67 activities of the applicant and its members, officers, directors, and principals as the Commissioner may
68 require.

69 C. The application shall be accompanied by payment of an application fee of \$500 or other
70 reasonable amount that the Commission prescribes by regulation.

71 D. The application fee shall not be refundable in any event. The fee shall not be abated by
72 surrender, suspension, or revocation of the license.

73 **§ 6.2-2242. Bond required.**

74 The application for a license shall be accompanied by a bond filed with the Commissioner with
75 corporate surety authorized to execute such bond in the Commonwealth, in the sum of at least \$10,000,
76 or such greater sum as the Commission may require, but not to exceed a total of \$100,000. The form of
77 such bond shall be approved by the Commission. The bond shall be continuously maintained thereafter in
78 full force. The bond shall be conditioned upon the applicant or licensee performing all written agreements

79 with consumers relating to earned wage access services and conducting its licensed business in conformity
80 with this chapter and all other applicable law. Any person who may be damaged by noncompliance of the
81 licensee with any condition of such bond may proceed on such bond against the principal or surety thereon,
82 or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the
83 bond.

84 **§ 6.2-2243. Investigation of applications.**

85 The Commissioner may make such investigations as he deems necessary to determine if the
86 applicant has complied with all applicable provisions of law and regulations adopted thereunder.

87 **§ 6.2-2244. Qualifications.**

88 A. Upon the filing and investigation of an application for a license, and compliance by the applicant
89 with the provisions of §§ 6.2-2241 and 6.2-2242, the Commission shall issue and deliver to the applicant
90 the license applied for to engage in business under this chapter if it finds that the financial responsibility,
91 character, reputation, experience, and general fitness of the applicant and its members, senior officers,
92 directors, and principals are such as to warrant belief that the business will be operated efficiently and
93 fairly, in the public interest, and in accordance with law.

94 B. If the Commission fails to make such findings, no license shall be issued and the Commissioner
95 shall notify the applicant of the denial and the reasons for such denial.

96 **§ 6.2-2245. Acquisition of control; application.**

97 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or
98 more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person,
99 licensed to conduct business under this chapter unless such person first:

100 1. Files an application with the Commission in such form as the Commissioner may prescribe from
101 time to time;

102 2. Delivers such other information to the Commissioner as the Commissioner may require
103 concerning the financial responsibility, background, experience, and activities of the applicant, its
104 directors, senior officers, principals, and members, and any proposed new directors, senior officers,
105 principals, or members of the licensee; and

106 3. Pays such application fee as the Commission may prescribe.

107 B. Upon the filing and investigation of an application, the Commission shall permit the applicant
108 to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
109 senior officers, and principals, and any proposed new directors, members, senior officers, and principals
110 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief
111 that the business will be operated efficiently and fairly, in the public interest, and in accordance with law.
112 The Commission shall grant or deny the application within 60 days from the date a completed application
113 accompanied by the required fee is filed unless the period is extended by order of the Commissioner
114 reciting the reasons for the extension. If the application is denied, the Commission shall notify the
115 applicant of the denial and the reasons for the denial.

116 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
117 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by
118 this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition
119 by merger or consolidation, by or with a person affiliated through common ownership with the licensee;
120 or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or
121 operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing
122 an application by this subsection shall send written notice to the Commissioner of such acquisition within
123 30 days of its closing.

124 **§ 6.2-2246. Retention of books, accounts, and records; responding to Commission.**

125 A. Every licensee shall maintain such books, accounts, and records as the Commission may
126 reasonably require in order to determine whether the licensee is complying with the provisions of this
127 chapter and regulations adopted thereunder. Such books, accounts, and records shall be maintained apart
128 and separate from any other business in which the licensee is involved for a period of at least three years.
129 To safeguard the privacy of consumers, records containing personal financial information shall be
130 shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for the
131 shredding, incineration, or other disposal of the records from a business record destruction vendor.

132 B. When the Commission requests a written response, books, records, documentation, or other
133 information from a licensee in connection with the Commission's investigation, enforcement, or
134 examination of compliance with applicable laws, the licensee shall deliver a written response as well as
135 any requested books, records, documentation, or information within the time period specified in the
136 Commission's request. If no time period is specified, a written response as well as any requested books,
137 records, documentation, or information shall be delivered by the licensee to the Commission not later than
138 30 days from the date of such request. In determining the specified time period for responding to the
139 Commission and when considering a request for an extension of time to respond, the Commission shall
140 take into consideration the volume and complexity of the requested written response, books, records,
141 documentation, or information and such other factors as the Commission determines to be relevant under
142 the circumstances.

143 **§ 6.2-2247. Annual report.**

144 Each licensee under this chapter shall annually, on or before March 25, file a written report with
145 the Commissioner containing such information on earned wage access services as the Commissioner may
146 require concerning the licensee's business and operations during the preceding calendar year. Reports shall
147 be made under oath and shall be in the form prescribed by the Commissioner. Reports shall include:

- 148 1. The total number of transactions in which a payment of proceeds was made to consumers.
- 149 2. The total number of unique consumers to whom a payment of proceeds was made.
- 150 3. The total dollar amount of proceeds associated with transactions in subdivision 2.
- 151 4. The total dollar amount of non-mandatory payments to the provider received from consumers.
- 152 5. The total number of transactions in which a payment of proceeds was made to a consumer for
153 which the provider did not receive payment of any outstanding proceeds.
- 154 6. The total dollar amount of transactions reported pursuant to subdivision 5.
- 155 7. The total number of transactions in which a payment of proceeds was made to a consumer for
156 which the provider received partial repayment of outstanding proceeds.
- 157 8. The total dollar amount of transactions reported pursuant to subdivision 7 and the total dollar
158 amount of unpaid, outstanding proceeds attributable to those transactions.

159 9. The total number of transactions in which outstanding proceeds were repaid after the original,
160 scheduled repayment date.

161 10. The total dollar amount of transactions reported pursuant to subdivision 9.

162 11. The total number of consumer complaints received by the licensee in connection with the
163 provision of earned wage access services and a list of the reason for each complaint, listed by frequency
164 of reason for the complaint.

165 **§ 6.2-2248. Other reporting requirements.**

166 Within 15 days following the occurrence of any of the following events, a licensee shall file a
167 written report with the Commission describing such event and its expected impact upon the business of
168 the licensee:

169 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

170 2. The institution of administrative or regulatory proceedings against the licensee by any
171 governmental authority;

172 3. Any felony indictments of the licensee or any of its members, partners, directors, officers,
173 trustees, beneficiaries, or principals, if known;

174 4. Any felony conviction of the licensee or any of its members, partners, directors, officers,
175 trustees, beneficiaries, or principals, if known;

176 5. The institution of an action against the licensee under the Virginia Consumer Protection Act (§
177 59.1-196 et seq.) by the Attorney General or any other governmental authority; or

178 6. Such other event as the Commission may prescribe by regulation.

179 **§ 6.2-2249. Investigations; examinations.**

180 The Commission may, by its designated officers and employees, as often as it deems necessary,
181 investigate and examine the affairs, business, premises, and records of any person licensed or required to
182 be licensed under this chapter insofar as they pertain to any business for which a license is required by
183 this chapter. Examinations of licensees shall be conducted once in a five-year period or when the
184 Commission has reason to believe that the licensee may be engaged in a violation of this chapter. In the
185 course of such investigations and examinations, the owners, members, officers, directors, partners,

186 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand
187 of the person making such investigation or examination, afford full access to all premises, books, records,
188 and information that the person making such investigation or examination deems necessary. For the
189 foregoing purposes, the person making such investigation or examination shall have authority to
190 administer oaths, examine under oath all the aforementioned persons, and compel the production of papers
191 and objects of all kinds. Nothing in this section shall require the Commission to examine a licensee outside
192 the Commonwealth, if a licensee provides requested books, records, and information to the Commission
193 electronically.

194 **§ 6.2-2250. Cease and desist orders.**

195 A. If the Commission determines that any person has violated any provision of this chapter or any
196 regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person to
197 cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be
198 sent by certified mail to the principal place of business of such person or other address authorized under
199 § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice,
200 the person or persons named therein may file with the clerk of the Commission a written request for a
201 hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based
202 upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's
203 Rules. The Commission may enforce compliance with any order issued under this section by imposition
204 and collection of such fines and penalties as may be prescribed by law.

205 B. When, in the opinion of the Commission, immediate action is required to protect the public
206 interest, a cease and desist order may be issued without prior hearing. In such cases, the Commission shall
207 make a hearing available to the person on an expedited basis.

208 C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against
209 any person, regardless of whether such person is present in the Commonwealth, who violates any
210 provision of this chapter or regulation thereunder.

211 **§ 6.2-2251. Applicability of chapter.**

212 A. The provisions of this chapter shall not apply to and shall not place any additional requirements
213 or obligations upon (i) a financial institution or (ii) an obligor that offers a portion of salary, wages,
214 compensation, or other income directly to its employees or independent contractors prior to the normally
215 scheduled pay date.

216 B. Proceeds provided to a consumer by a licensee in accordance with this chapter shall not be
217 considered credit, nor shall the provider of those proceeds be considered a creditor. Non-mandatory
218 payments paid to that provider shall not be considered finance charges.

219 **§ 6.2-2252. Annual fees.**

220 A. To defray the costs of examination, supervision, and regulation, every licensee shall pay an
221 annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a
222 reasonable relationship to the business volume of licensees, the actual costs of their examinations, and
223 other factors relating to their supervision and regulation. All such fees shall be assessed on or before
224 September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on
225 or before October 15 following each assessment.

226 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine
227 or investigate the books and records of a licensee at a location outside the Commonwealth, the licensee
228 shall be liable for and shall pay to the Commission, within 30 days of the presentation of an itemized
229 statement, the actual travel and reasonable living expenses incurred on account of its examination,
230 supervision, and regulation or shall pay a reasonable per diem at a rate approved by the Commission.
231 However, nothing in this subsection shall require the Commission to examine a licensee at a location
232 outside the Commonwealth if a licensee provides requested books, records, and information to the
233 Commission electronically.

234 **§ 6.2-2253. Regulations.**

235 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this
236 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content
237 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules.

238 **§ 6.2-2254. Licensee requirements.**

239 A. Any person required to be licensed under this chapter in connection with any provision of
240 earned wage access services to a consumer shall:

241 1. Inform the consumer of the terms and conditions of the earned wage access services;

242 2. Include a statement that the Commission has jurisdiction over the earned wage access services
243 performed by the licensee and provide both a phone number and a website through which consumers can
244 submit complaints about the licensee's earned wage access services to the Commission; and

245 3. Disclose any non-mandatory payments that may be directly imposed by the licensee in
246 connection with the provision of earned wage access services.

247 B. The information and disclosures provided pursuant to subsection A shall be made in advance
248 of providing a consumer with earned wage access services or proceeds and shall be written in a font and
249 using language intended to be easily understood by a layperson. Such disclosures may be delivered in hard
250 copy or electronically and may be included as part of the contract to provide earned wage access services.

251 C. A licensee shall provide proceeds to a consumer via any means mutually agreed upon by the
252 consumer and the licensee.

253 D. In any case in which a licensee will seek repayment of proceeds from the consumer, the licensee
254 shall inform the consumer when the licensee will make its first attempt to seek repayment of the proceeds
255 from the consumer.

256 E. A licensee that seeks repayment of proceeds from a consumer's depository institution account
257 shall comply with applicable National Automated Clearing House Association rules.

258 F. A licensee shall permit a consumer to cancel participation in an earned wage access service at
259 any amount without incurring a charge for doing so.

260 **§ 6.2-2255. Prohibited practices.**

261 A. No person required to be licensed under this chapter shall:

262 1. Compel or attempt to compel repayment by a consumer of outstanding proceeds or non-
263 mandatory payments owed by the that consumer to the provider through (i) a civil action against the
264 consumer in a court of competent jurisdiction, (ii) use of a third party to pursue collection of outstanding

265 proceeds or non-mandatory payments on the provider's behalf. or (iii) sale of outstanding amounts to a
266 third-party collector or debt purchaser.

267 2. Impose a mandatory payment or fee on a consumer that directly relates to the provision of earned
268 wage access services.

269 3. Impose a late fee, interest, or any other penalty or charge for failure to repay outstanding
270 proceeds.

271 4. Make the offering of earned wage access services, either in the amount of proceeds a consumer
272 is eligible to request or the frequency with which proceeds are provided to a consumer, contingent on
273 whether the consumer makes any non-mandatory payment or on the size of any non-mandatory payment
274 that the consumer may make to that licensee in connection with the provision of earned wage access
275 services. However, this prohibition shall not be construed to prohibit a non-mandatory payment equal to
276 a percentage of proceeds provided.

277 5. Charge a deferral fee or any other fee in connection with deferring the collection of any
278 outstanding proceeds beyond the original scheduled repayment date.

279 6. Solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the
280 total non-mandatory payments that may be collected.

281 7. Report a consumer's payment or failed repayment of outstanding proceeds to an individual credit
282 reporting agency or debt collector.

283 8. Require a credit score to determine a consumer's eligibility for earned wage access services.

284 9. Provide, sell, or otherwise disclose to a third party, including an obligor, any nonpublic personal
285 information collected from or about a consumer, except as necessary to provide earned wage access
286 services to that consumer, pursuant to a legal process, or in accordance with a consumer's written request.

287 B. Nothing in this section shall preclude a provider from compelling repayment of outstanding
288 amounts obtained through fraudulent means.

289 **§ 6.2-2256. Advertising.**

290 No person licensed or required to be licensed under this chapter shall use or cause to be published
291 any advertisement that (i) contains any false, misleading, or deceptive statement or representation or (ii)
292 identifies the person by any name other than the name set forth on the license issued by the Commission.

293 **§ 6.2-2257. Civil penalties.**

294 The Commission may impose a civil penalty not exceeding \$1,000 upon any person required to be
295 licensed by this chapter who it determines, in proceedings commenced in accordance with the
296 Commission's Rules, has violated any of the provisions of this chapter or regulations adopted thereunder.
297 For the purposes of this section, each separate violation shall be subject to the civil penalty prescribed.

298 **§ 6.2-2258. Criminal penalties.**

299 Any person violating § 6.2-2240 is guilty of a Class 1 misdemeanor. For the purposes of this
300 section, each violation shall constitute a separate offense.

301 **§ 6.2-2259. Suspension or revocation of license.**

302 A. The Commission may suspend or revoke any license issued under this chapter upon any of the
303 following grounds:

304 1. Any ground for denial of a license under this chapter;

305 2. Any violation of the provisions of this chapter or regulations adopted by the Commission
306 pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's
307 business;

308 3. A course of conduct consisting of the failure to perform written agreements with consumers;

309 4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, deceit, false
310 swearing, or theft;

311 5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;

312 6. Entry of a federal or state administrative order against such licensee for violation of any law or
313 any regulation applicable to the conduct of his business;

314 7. Refusal to permit an investigation or examination by the Commission;

315 8. Failure to pay any fee or assessment imposed by this chapter; or

316 9. Failure to comply with any order of the Commission.

317 B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall
318 be deemed acts of the licensee.

319 **§ 6.2-2260. Notice of proposed suspension or revocation.**

320 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds
321 set forth in § 6.2-2259 until it has given the licensee 21 days' notice in writing of the reasons for the
322 proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice
323 shall be sent by certified mail to the principal place of business of the licensee or other address authorized
324 under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14
325 days of mailing the notice, the person named therein may file with the clerk of the Commission a written
326 request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license
327 except based upon findings made at such hearing. The hearing shall be conducted in accordance with the
328 Commission's Rules.

329 **§ 6.2-2261. Authority of Attorney General; referral by Commission to Attorney General.**

330 A. If the Commission determines that a person is in violation, or has violated, any provision of this
331 chapter, the Commission may refer the information to the Attorney General and may request that the
332 Attorney General investigate such violations. With or without such referral, the Attorney General is hereby
333 authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin
334 such violations notwithstanding the existence of an adequate remedy at law.

335 B. The Attorney General may also seek, and the circuit court may order or decree, damages and
336 such other relief allowed by law, including restitution to the extent available to consumers under applicable
337 law. Persons entitled to any relief as authorized by this section shall be identified by order of the court
338 within 180 days from the date of the order permanently enjoining the unlawful act or practice.

339 C. In any action brought by the Attorney General by virtue of the authority granted in this section,
340 the Attorney General shall be entitled to seek reasonable attorney fees and costs.

341 D. If the Attorney General files an action to enjoin violations of this chapter, the Attorney General
342 shall provide notice of such action to the Commission.

343 **§ 6.2-2262. Violation of the Virginia Consumer Protection Act.**

344 Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance
345 with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer
346 Protection Act (§ 59.1-196 et seq.).

347 **§ 59.1-200. Prohibited practices.**

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

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

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

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

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

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

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

359 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
360 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"
361 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
362 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
363 imperfects or "not first class";

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

366 In any action brought under this subdivision, the refusal by any person, or any employee, agent,
367 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
368 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall
369 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods
370 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount

371 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer
372 did in fact have or reasonably expected to have at least such quantity or amount for sale;

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

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

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

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

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

387 13a. Failing to provide to a consumer, or failing to use or include in any written document or
388 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
389 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
390 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
391 with the consumer transaction;

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

394 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
395 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

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

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

416 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
417 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
418 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
419 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
420 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
421 required;

- 422 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
423 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
424 agreement;
- 425 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 426 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1
427 et seq.);
- 428 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1
429 et seq.);
- 430 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
431 207.17 et seq.);
- 432 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 433 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
434 424 et seq.);
- 435 24. Violating any provision of § 54.1-1505;
- 436 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
437 Chapter 17.6 (§ 59.1-207.34 et seq.);
- 438 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 439 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 440 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 441 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
442 seq.);
- 443 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
444 et seq.);
- 445 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 446 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 447 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 448 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

- 449 35. Using the consumer's social security number as the consumer's account number with the
- 450 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
- 451 with the consumer's social security number;
- 452 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 453 37. Violating any provision of § 8.01-40.2;
- 454 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 455 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 456 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 457 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
- 458 59.1-525 et seq.);
- 459 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 460 43. Violating any provision of § 59.1-443.2;
- 461 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 462 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 463 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 464 47. Violating any provision of § 18.2-239;
- 465 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 466 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
- 467 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 468 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
- 469 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
- 470 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
- 471 products that are used, secondhand or "seconds";
- 472 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 473 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 474 52. Violating any provision of § 8.2-317.1;
- 475 53. Violating subsection A of § 9.1-149.1;

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

480 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
481 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-
482 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
483 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
484 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

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

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

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

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

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

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

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

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

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

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

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

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

498 68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good
499 or service as required by § 59.1-207.46;

500 69. Selling or offering for sale to a person younger than 21 years of age any substance intended
501 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
502 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and

503 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
504 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

505 70. Selling or offering for sale any substance intended for human consumption, orally or by
506 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
507 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
508 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
509 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
510 substance that constitutes a single serving, and (d) the total percentage and milligrams of
511 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
512 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
513 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
514 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
515 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
516 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
517 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
518 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the
519 Code of Virginia;

520 71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as
521 defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
522 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;~~and~~

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

530 73. Violating any provision of Chapter 22.2 (§ 6.2-2239 et seq.) of Title 6.2.

531 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
532 lease solely by reason of the failure of such contract or lease to comply with any other law of the
533 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
534 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
535 contract or lease.

536 **2. That any person required to be licensed by the State Corporation Commission to engage in earned**
537 **wage access services on the effective date of the first enactment of this act shall submit an application**
538 **for licensure no later than October 1, 2024.**

539 **3. That the provisions of the first enactment of this act shall become effective on January 1, 2025.**

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