

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 of the Code of Virginia is amended and reenacted and that 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.

"Consumer-choice wage access services" means the business of delivering proceeds to a consumer prior to the date on which an obligor is obligated to pay salary, wages, compensation, or other income to that consumer based on the consumer's representations or the provider's reasonable determination of the consumer's earned but unpaid income.

"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.

27 "Earned wage access services" means the business of providing consumer-choice wage access  
28 services or employer-integrated wage access services.

29 "Employer-integrated wage access services" means the business of delivering proceeds to a  
30 consumer prior to the date on which an obligor is obligated to pay salary, wages, compensation, or other  
31 income to that consumer when the provider has verified the earned but unpaid income of the consumer  
32 using earnings or time and attendance data for the relevant pay period provided by the obligor or a service  
33 provider of the obligor.

34 "Licensee" means a provider licensed under this chapter.

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

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

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

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

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

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

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

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

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

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

59 **§ 6.2-2240. License requirement.**

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

63 **§ 6.2-2241. Application for license; form; content; fee.**

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

66 B. The application shall set forth:

67 1. The name and address of the applicant;

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

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

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

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

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

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

81 **§ 6.2-2242. Bond required.**

82 The application for a license shall be accompanied by a bond filed with the Commissioner with  
83 corporate surety authorized to execute such bond in the Commonwealth, in the sum of at least \$10,000,  
84 or such greater sum as the Commission may require, but not to exceed a total of \$100,000. The form of  
85 such bond shall be approved by the Commission. The bond shall be continuously maintained thereafter in  
86 full force. The bond shall be conditioned upon the applicant or licensee performing all written agreements  
87 with consumers relating to earned wage access services and conducting its licensed business in conformity  
88 with this chapter and all other applicable law. Any person who may be damaged by noncompliance of the  
89 licensee with any condition of such bond may proceed on such bond against the principal or surety thereon,  
90 or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the  
91 bond.

92 **§ 6.2-2243. Investigation of applications.**

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

95 **§ 6.2-2244. Qualifications.**

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

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

104 **§ 6.2-2245. Acquisition of control; application.**

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

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

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

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

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

124 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,  
125 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by  
126 this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition  
127 by merger or consolidation, by or with a person affiliated through common ownership with the licensee;  
128 or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or  
129 operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing  
130 an application by this subsection shall send written notice to the Commissioner of such acquisition within  
131 30 days of its closing.

132 **§ 6.2-2246. Retention of books, accounts, and records; responding to Commission.**

133 A. Every licensee shall maintain such books, accounts, and records as the Commission may  
134 reasonably require in order to determine whether the licensee is complying with the provisions of this  
135 chapter and regulations adopted thereunder. Such books, accounts, and records shall be maintained apart  
136 and separate from any other business in which the licensee is involved for a period of at least three years  
137 after final repayment is made on an earned wage access service. To safeguard the privacy of consumers,  
138 records containing personal financial information shall be shredded, incinerated, or otherwise disposed of  
139 in a secure manner. Licensees may arrange for the shredding, incineration, or other disposal of the records  
140 from a business record destruction vendor.

141 B. When the Commission requests a written response, books, records, documentation, or other  
142 information from a licensee in connection with the Commission's investigation, enforcement, or  
143 examination of compliance with applicable laws, the licensee shall deliver a written response as well as  
144 any requested books, records, documentation, or information within the time period specified in the  
145 Commission's request. If no time period is specified, a written response as well as any requested books,  
146 records, documentation, or information shall be delivered by the licensee to the Commission not later than  
147 30 days from the date of such request. In determining the specified time period for responding to the  
148 Commission and when considering a request for an extension of time to respond, the Commission shall  
149 take into consideration the volume and complexity of the requested written response, books, records,  
150 documentation, or information and such other factors as the Commission determines to be relevant under  
151 the circumstances.

152 **§ 6.2-2247. Annual report.**

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

- 157 1. The total number of transactions in which a payment of proceeds was made to consumers.  
158 2. The total number of unique consumers to whom a payment of proceeds was made.

- 159           3. The total dollar amount of proceeds associated with transactions in subdivision 2.
- 160           4. The total dollar amount of non-mandatory payments to the provider received from consumers.
- 161           5. The total number of transactions in which a payment of proceeds was made to a consumer for  
162 which the provider did not receive payment of any outstanding proceeds.
- 163           6. The total dollar amount of transactions reported pursuant to subdivision 5.
- 164           7. The total number of transactions in which a payment of proceeds was made to a consumer for  
165 which the provider received partial repayment of outstanding proceeds.
- 166           8. The total dollar amount of transactions reported pursuant to subdivision 7 and the total dollar  
167 amount of unpaid, outstanding proceeds attributable to those transactions.
- 168           9. The total number of transactions in which outstanding proceeds were repaid after the original,  
169 scheduled repayment date.
- 170           10. The total dollar amount of transactions reported pursuant to subdivision 9.
- 171           11. The total number of consumer complaints received by the licensee in connection with the  
172 provision of earned wage access services and a list of the reason for each complaint, listed by frequency  
173 of reason for the complaint.

174           **§ 6.2-2248. Other reporting requirements.**

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

- 178           1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
- 179           2. The institution of administrative or regulatory proceedings against the licensee by any  
180 governmental authority related to activities covered under the license;
- 181           3. Any felony indictments of the licensee or any of its members, partners, directors, officers,  
182 trustees, beneficiaries, or principals, if known;
- 183           4. Any felony conviction of the licensee or any of its members, partners, directors, officers,  
184 trustees, beneficiaries, or principals, if known;

185 5. The institution of an action against the licensee under the Virginia Consumer Protection Act (§  
186 59.1-196 et seq.) by the Attorney General or any other governmental authority; or

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

188 **§ 6.2-2249. Investigations; examinations.**

189 The Commission may, by its designated officers and employees, as often as it deems necessary,  
190 investigate and examine the affairs, business, premises, and records of any person licensed or required to  
191 be licensed under this chapter insofar as they pertain to any business for which a license is required by  
192 this chapter. Examinations of licensees shall be conducted once in a five-year period or when the  
193 Commission has reason to believe that the licensee may be engaged in a violation of this chapter. In the  
194 course of such investigations and examinations, the owners, members, officers, directors, partners,  
195 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand  
196 of the person making such investigation or examination, afford full access to all premises, books, records,  
197 and information that the person making such investigation or examination deems necessary. For the  
198 foregoing purposes, the person making such investigation or examination shall have authority to  
199 administer oaths, examine under oath all the aforementioned persons, and compel the production of papers  
200 and objects of all kinds. Nothing in this section shall require the Commission to examine a licensee outside  
201 the Commonwealth, if a licensee provides requested books, records, and information to the Commission  
202 electronically.

203 **§ 6.2-2250. Cease and desist orders.**

204 A. If the Commission determines that any person has violated any provision of this chapter or any  
205 regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person to  
206 cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be  
207 sent by certified mail to the principal place of business of such person or other address authorized under  
208 § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice,  
209 the person or persons named therein may file with the clerk of the Commission a written request for a  
210 hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based  
211 upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's



212 Rules. The Commission may enforce compliance with any order issued under this section by imposition  
213 and collection of such fines and penalties as may be prescribed by law.

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

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

220 **§ 6.2-2251. Applicability of chapter.**

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

225 B. The provisions of this chapter shall apply to providers offering or providing earned wage access  
226 services over the Internet regardless of whether the provider maintains a physical presence in the  
227 Commonwealth.

228 C. If any provision of an earned wage access services contract or agreement violates this chapter,  
229 such provision shall be unenforceable against the consumer.

230 **§ 6.2-2252. Annual fees.**

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

237 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine  
238 or investigate the books and records of a licensee at a location outside the Commonwealth, the licensee

239 shall be liable for and shall pay to the Commission, within 30 days of the presentation of an itemized  
240 statement, the actual travel and reasonable living expenses incurred on account of its examination,  
241 supervision, and regulation or shall pay a reasonable per diem at a rate approved by the Commission.  
242 However, nothing in this subsection shall require the Commission to examine a licensee at a location  
243 outside the Commonwealth if a licensee provides requested books, records, and information to the  
244 Commission electronically.

245 **§ 6.2-2253. Regulations.**

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

249 **§ 6.2-2254. Licensee requirements.**

250 A. Any person required to be licensed under this chapter in connection with any provision of  
251 earned wage access services to a consumer shall do all of the following before providing proceeds to a  
252 consumer:

253 1. Inform the consumer of the terms and conditions of the earned wage access services and of any  
254 material changes to these terms and conditions;

255 2. Include a statement and clearly disclose that the Commission has jurisdiction over the earned  
256 wage access services performed by the licensee and provide the Commission's phone number and website  
257 for the submission of complaints about the licensee's earned wage access services to the Commission;

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

260 4. Provide clear instructions for how the consumer may select a no-cost option for receiving  
261 proceeds.

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

266 C. A licensee shall provide proceeds on a non-recourse basis pursuant to subdivision A 1 of § 6.2-  
267 2255.

268 D. A licensee shall provide proceeds to a consumer via any means mutually agreed upon by the  
269 consumer and the licensee.

270 E. In any case in which a licensee will seek repayment of proceeds from the consumer, the licensee  
271 shall inform the consumer when the licensee will make its first attempt to seek repayment of the proceeds  
272 from the consumer.

273 F. A licensee that seeks to use preauthorized electronic transfers from a consumer's depository  
274 institution or other financial account shall comply with applicable National Automated Clearing House  
275 Association rules.

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

278 **§ 6.2-2255. Prohibited practices.**

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

280 1. Compel or attempt to compel repayment by a consumer of outstanding proceeds or non-  
281 mandatory payments owed by the that consumer to the provider through (i) a civil action against the  
282 consumer in a court of competent jurisdiction, (ii) use of a third party to pursue collection of outstanding  
283 proceeds or non-mandatory payments on the provider's behalf, or (iii) sale of outstanding amounts to a  
284 third-party collector or debt purchaser.

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

287 3. Seek repayment of proceeds in an amount that exceeds the amount of a consumer's earned but  
288 unpaid income.

289 4. Impose a late fee, interest, or any other penalty or charge for failure to repay outstanding  
290 proceeds.

291 5. Condition the amount of proceeds a consumer is eligible to request or the frequency with which  
292 a customer is eligible to request proceeds on whether the consumer makes any non-mandatory payment

293 or on the size of any non-mandatory payment that the consumer may make to that licensee in connection  
294 with the provision of earned wage access services. However, this prohibition shall not be construed to  
295 prohibit a non-mandatory payment equal to a percentage of proceeds provided.

296 6. Charge a deferral fee or any other fee in connection with deferring the collection of any  
297 outstanding proceeds beyond the original scheduled repayment date.

298 7. Accept credit of any kind as payment from a consumer of outstanding proceeds or non-  
299 mandatory payments.

300 8. Solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the  
301 total non-mandatory payments that may be collected.

302 9. Report a consumer's payment or failed repayment of outstanding proceeds to an individual credit  
303 reporting agency or debt collector.

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

305 11. Provide, sell, or otherwise disclose to a third party, including an obligor, any nonpublic  
306 personal information collected from or about a consumer, except as necessary to provide earned wage  
307 access services to that consumer, pursuant to a legal process, or in accordance with a consumer's written  
308 consent.

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

311 **§ 6.2-2256. Advertising.**

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

315 **§ 6.2-2257. Civil penalties.**

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

320 **§ 6.2-2258. Criminal penalties.**

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

323 **§ 6.2-2259. Suspension or revocation of license.**

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

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

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

330 3. A course of conduct consisting of the failure, without reasonable cause, to perform written  
331 agreements with consumers;

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

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

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

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

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

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

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

342 **§ 6.2-2260. Notice of proposed suspension or revocation.**

343 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds  
344 set forth in § 6.2-2259 until it has given the licensee 21 days' notice in writing of the reasons for the  
345 proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice  
346 shall be sent by certified mail to the principal place of business of the licensee or other address authorized

347 under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14  
348 days of mailing the notice, the person named therein may file with the clerk of the Commission a written  
349 request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license  
350 except based upon findings made at such hearing. The hearing shall be conducted in accordance with the  
351 Commission's Rules.

352 **§ 6.2-2261. Authority of Attorney General; referral by Commission to Attorney General.**

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

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

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

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

366 **§ 6.2-2262. Violation of the Virginia Consumer Protection Act.**

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

370 **§ 59.1-200. Prohibited practices.**

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

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

- 374 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 375 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or  
376 services, with another;
- 377 4. Misrepresenting geographic origin in connection with goods or services;
- 378 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses,  
379 or benefits;
- 380 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or  
381 model;
- 382 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,  
383 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"  
384 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,  
385 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,  
386 imperfects or "not first class";
- 387 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
388 at the price or upon the terms advertised.
- 389 In any action brought under this subdivision, the refusal by any person, or any employee, agent,  
390 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
391 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall  
392 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods  
393 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount  
394 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer  
395 did in fact have or reasonably expected to have at least such quantity or amount for sale;
- 396 9. Making false or misleading statements of fact concerning the reasons for, existence of, or  
397 amounts of price reductions;
- 398 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or  
399 parts installed;

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

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

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

410 13a. Failing to provide to a consumer, or failing to use or include in any written document or  
411 material provided to or executed by a consumer, in connection with a consumer transaction any statement,  
412 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.  
413 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection  
414 with the consumer transaction;

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

417 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,  
418 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

420 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
421 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
422 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
423 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
424 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
425 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for  
426 the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the



427 case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund  
428 may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not  
429 apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for  
430 clearance; nor does this subdivision apply to special order purchases where the purchaser has requested  
431 the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the  
432 store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or  
433 lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

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

439           16a. Failing to provide written notice to a consumer of an existing open-end credit balance in  
440 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's  
441 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within  
442 60 days of receiving overpayments. If the credit balance information is incorporated into statements of  
443 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is  
444 required;

445           17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in  
446 connection with a consumer transaction, failing to adhere to the terms and conditions of such an  
447 agreement;

448           18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

449           19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1  
450 et seq.);

451           20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1  
452 et seq.);

- 453 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-  
454 207.17 et seq.);
- 455 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 456 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-  
457 424 et seq.);
- 458 24. Violating any provision of § 54.1-1505;
- 459 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,  
460 Chapter 17.6 (§ 59.1-207.34 et seq.);
- 461 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 462 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 463 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 464 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et  
465 seq.);
- 466 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40  
467 et seq.);
- 468 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 469 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 470 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 471 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 472 35. Using the consumer's social security number as the consumer's account number with the  
473 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated  
474 with the consumer's social security number;
- 475 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 476 37. Violating any provision of § 8.01-40.2;
- 477 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 478 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 479 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

- 480 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§  
481 59.1-525 et seq.);
- 482 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 483 43. Violating any provision of § 59.1-443.2;
- 484 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 485 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 486 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 487 47. Violating any provision of § 18.2-239;
- 488 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 489 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or  
490 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
491 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has  
492 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the  
493 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's  
494 products that are used, secondhand or "seconds";
- 495 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 496 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 497 52. Violating any provision of § 8.2-317.1;
- 498 53. Violating subsection A of § 9.1-149.1;
- 499 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential  
500 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective  
501 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in  
502 which defective drywall has been permanently installed or affixed;
- 503 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while  
504 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-  
505 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of

506 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant  
507 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

523 69. Selling or offering for sale to a person younger than 21 years of age any substance intended  
524 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall  
525 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and  
526 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct  
527 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

528 70. Selling or offering for sale any substance intended for human consumption, orally or by  
529 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant  
530 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less  
531 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons  
532 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such

533 substance that constitutes a single serving, and (d) the total percentage and milligrams of  
534 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that  
535 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an  
536 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International  
537 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol  
538 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the  
539 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by  
540 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or  
541 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the  
542 Code of Virginia;

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

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

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

554 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
555 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
556 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
557 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such  
558 contract or lease.

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

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

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