

SENATE BILL NO. 1243

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Surovell)

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-87.1, relating to reproductive health care services; prohibitions on extradition for certain crimes; prohibited practices under Virginia Consumer Protection Act.

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 a section numbered 19.2-87.1 as follows:

§ 19.2-87.1. Extradition of persons charged with certain criminal violations; prohibition.

A. As used in this section, "reproductive health care services" means medical, pharmaceutical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy, contraception, or abortion.

B. Notwithstanding the provisions of this article, no demand for extradition of a person charged with a criminal violation of law of another state shall be recognized by the Governor if such alleged criminal violation involves the provision or receipt of or assistance with reproductive health care services unless the alleged criminal violation would also constitute a criminal offense under the laws of the Commonwealth; however, the Governor may request that the state demanding extradition attest to the factual and legal basis of such alleged violation of the law of another state.

C. The provisions of this section shall not apply when the person who is subject to such demand for extradition by another state was physically present in the demanding state at the time of the commission of the alleged offense and thereafter fled from such state, except that an affirmation under oath by such person that he was a resident of the Commonwealth at the time of the commission of the offense shall create a presumption that he was not present in the demanding state at the time of the commission of such

27 alleged offense. Such presumption may be rebutted by clear and convincing evidence by the demanding
28 state in the circuit court of the jurisdiction where such person subject to such demand is a resident or is
29 being held pending extradition.

30 **§ 59.1-200. Prohibited practices.**

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

- 33 1. Misrepresenting goods or services as those of another;
- 34 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 35 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
36 services, with another;
- 37 4. Misrepresenting geographic origin in connection with goods or services;
- 38 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses,
39 or benefits;
- 40 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or
41 model;
- 42 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
43 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"
44 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
45 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
46 imperfects or "not first class";
- 47 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
48 at the price or upon the terms advertised.

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

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

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

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

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

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

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

70 13a. Failing to provide to a consumer, or failing to use or include in any written document or
71 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
72 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
73 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
74 with the consumer transaction;

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

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

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

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

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

99 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
100 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
101 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
102 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
103 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
104 required;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

213 73. Obtaining, disclosing, selling, or disseminating any personal reproductive or sexual health
214 information without the consent of the consumer, as defined in § 59.1-575. Such personal reproductive or
215 sexual health information shall include information relating to the past, present, or future reproductive or
216 sexual health of an individual, including:

217 a. Efforts to research or obtain reproductive or sexual information services or supplies, including
218 location information that may indicate an attempt to acquire or receive such services or supplies;

219 b. Reproductive or sexual health conditions, status, diseases, or diagnoses, including pregnancy,
220 menstruation, ovulation, ability to conceive a pregnancy, whether an individual is sexually active, and
221 whether such individual is engaging in unprotected sex;

222 c. Reproductive and sexual health-related surgeries or procedures, including termination of a
223 pregnancy;

224 d. Use or purchase of contraceptives, birth control, or other medication related to reproductive
225 health, including abortifacients;

226 e. Bodily functions, vital signs, measurements, or symptoms related to menstruation or pregnancy,
227 including basal temperature, cramps, bodily discharge, or hormone levels;

228 f. Any information about diagnoses or diagnostic testing, treatment, medications, or the use of any
229 product or service relating to the matters described in subdivisions a through e; and

230 g. Any information described in subdivisions a through f that is derived or extrapolated from
231 nonhealth-related information such as proxy, derivative, inferred, emergent, or algorithmic data.

232 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
233 lease solely by reason of the failure of such contract or lease to comply with any other law of the
234 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
235 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
236 contract or lease.

237 #