

HOUSE BILL NO. 1517

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

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

(Patron Prior to Substitute--Delegate Adams, D.M.)

A BILL to amend and reenact §§ 59.1-200 and 59.1-207.46 of the Code of Virginia, relating to Virginia Consumer Protection Act; automatic renewal or continuous service offers; cancellation reminders; prohibited practices.

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

**1. That §§ 59.1-200 and 59.1-207.46 of the Code of Virginia are amended and reenacted as follows:**

**§ 59.1-200. Prohibited practices.**

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

- 1. Misrepresenting goods or services as those of another;
- 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
- 4. Misrepresenting geographic origin in connection with goods or services;
- 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,

26 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,  
27 imperfects or "not first class";

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

30 In any action brought under this subdivision, the refusal by any person, or any employee, agent,  
31 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
32 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall  
33 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods  
34 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount  
35 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer  
36 did in fact have or reasonably expected to have at least such quantity or amount for sale;

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

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

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

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

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

51 13a. Failing to provide to a consumer, or failing to use or include in any written document or  
52 material provided to or executed by a consumer, in connection with a consumer transaction any statement,

53 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.  
54 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection  
55 with the consumer transaction;

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

58 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,  
59 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

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

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

- 80           16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
- 81 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
- 82 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
- 83 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
- 84 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
- 85 required;
- 86           17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
- 87 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
- 88 agreement;
- 89           18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 90           19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1
- 91 et seq.);
- 92           20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1
- 93 et seq.);
- 94           21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
- 95 207.17 et seq.);
- 96           22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 97           23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
- 98 424 et seq.);
- 99           24. Violating any provision of § 54.1-1505;
- 100           25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
- 101 Chapter 17.6 (§ 59.1-207.34 et seq.);
- 102           26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 103           27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 104           28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 105           29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
- 106 seq.);

- 107 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
- 108 et seq.);
- 109 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 110 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 111 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 112 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 113 35. Using the consumer's social security number as the consumer's account number with the
- 114 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
- 115 with the consumer's social security number;
- 116 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 117 37. Violating any provision of § 8.01-40.2;
- 118 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 119 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 120 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 121 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
- 122 59.1-525 et seq.);
- 123 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 124 43. Violating any provision of § 59.1-443.2;
- 125 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 126 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 127 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 128 47. Violating any provision of § 18.2-239;
- 129 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 130 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
- 131 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 132 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
- 133 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the

134 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's  
135 products that are used, secondhand or "seconds";

136 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);

137 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

138 52. Violating any provision of § 8.2-317.1;

139 53. Violating subsection A of § 9.1-149.1;

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

144 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while  
145 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-  
146 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of  
147 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant  
148 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

196 73. Failing to disclose the total cost of a good or service to a consumer, including any mandatory  
197 fees or charges, prior to entering into an agreement for the sale of any such good or provision of any such  
198 service.

199 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
200 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
201 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
202 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such  
203 contract or lease.

204 **§ 59.1-207.46. Making automatic renewal or continuous service offer to consumer;**  
205 **affirmative consent required; disclosures; prohibited conduct.**

206 A. No supplier making an automatic renewal or continuous service offer to a consumer in the  
207 Commonwealth shall do any of the following:

208 1. Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and  
209 conspicuous manner before the consumer becomes obligated on the automatic renewal or continuous  
210 service offer and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity,  
211 to the request for consent to the offer.



212           2. Charge the consumer's credit or debit card or the consumer's account with a third party for an  
213 automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the  
214 agreement containing the automatic renewal offer terms or continuous service offer terms.

215           3. Fail to provide an acknowledgment that includes the automatic renewal or continuous service  
216 offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of  
217 being retained by the consumer. If the offer includes a free trial, the supplier shall also disclose in the  
218 acknowledgment how to cancel the free trial before the consumer pays or becomes obligated to pay for  
219 the goods or services.

220           B. A supplier making automatic renewal or continuous service offers shall provide a toll-free  
221 telephone number, an electronic mail address, a postal address only when the supplier directly bills the  
222 consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be  
223 described in the acknowledgment specified in subdivision A 3. Each supplier making automatic renewal  
224 or continuous service offers through an online website shall make available a conspicuous online option  
225 to cancel a recurring purchase of a good or service.

226           C. In the case of a material change in the terms of the automatic renewal or continuous service  
227 offer that has been accepted by a consumer in the Commonwealth, the supplier shall provide the consumer  
228 with a clear and conspicuous notice of the material change and provide information regarding how to  
229 cancel in a manner that is capable of being retained by the consumer.

230           D. A supplier making automatic renewal or continuous service offers that include a free trial lasting  
231 more than 30 days shall, within 30 days of the end of any such free trial, notify the consumer of his option  
232 to cancel the free trial before the end of the trial period to avoid an obligation to pay for the goods or  
233 services.

234           E. The requirements of this section shall apply only prior to the completion of the initial order for  
235 the automatic renewal or continuous service, except:

- 236           1. The requirement in subdivision A 3 may be fulfilled after completion of the initial order; and  
237           2. The requirement in subsection C shall be fulfilled prior to implementation of the material  
238 change.

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