

HOUSE BILL NO. 736

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute--Delegate Sewell)

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 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603, 59.1-604, and 59.1-605, relating to Veterans' Services Protection Act; prohibited practices; penalty.

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 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603, 59.1-604, and 59.1-605, 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,"

27 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
28 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
29 imperfects or "not first class";

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

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

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

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

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

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

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

53 13a. Failing to provide to a consumer, or failing to use or include in any written document or
54 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
55 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
56 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
57 with the consumer transaction;

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

60 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
61 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

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

77 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the
78 time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
79 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of

80 sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the
81 agreement;

82 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
83 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
84 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
85 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
86 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
87 required;

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

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

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

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

96 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
97 207.17 et seq.);

98 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

99 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
100 424 et seq.);

101 24. Violating any provision of § 54.1-1505;

102 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
103 Chapter 17.6 (§ 59.1-207.34 et seq.);

104 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

105 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

106 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

- 107 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
108 seq.);
- 109 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
110 et seq.);
- 111 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 112 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 113 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 114 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 115 35. Using the consumer's social security number as the consumer's account number with the
116 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
117 with the consumer's social security number;
- 118 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 119 37. Violating any provision of § 8.01-40.2;
- 120 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 121 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 122 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 123 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
124 59.1-525 et seq.);
- 125 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 126 43. Violating any provision of § 59.1-443.2;
- 127 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 128 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 129 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 130 47. Violating any provision of § 18.2-239;
- 131 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 132 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
133 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable

134 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
135 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
136 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
137 products that are used, secondhand or "seconds";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 71. Selling or offering for sale any substance intended for human consumption, orally or by
181 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
182 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
183 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
184 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
185 substance that constitutes a single serving, and (d) the total percentage and milligrams of
186 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
187 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an

188 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
189 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
190 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
191 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
192 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
193 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

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

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

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

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

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

213 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
214 (ii) any kratom product that does not include a label listing all ingredients and with the following guidance:

215 "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to
216 diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the
217 leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

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

221 79. Violating any provision of the Veterans' Services Protection Act (§ 59.1-603 et seq.).

222 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
223 lease solely by reason of the failure of such contract or lease to comply with any other law of the
224 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
225 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
226 contract or lease.

227 CHAPTER 57.

228 VETERANS' SERVICES PROTECTION ACT.

229 **§ 59.1-603. Definitions.**

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

231 "Compensation" means payment of any money, thing of value, or financial benefit.

232 "Person" has the same meaning as provided in § 59.1-198.

233 "Veterans' benefits matter" means the preparation, presentation, or prosecution of any claim
234 affecting any person who has filed or expressed an intent to file a claim for any benefit, program, service,
235 commodity, function, or status that is offered under the laws and regulations administered by the United
236 States Department of Veterans Affairs or the Virginia Department of Veterans Services pertaining to
237 veterans, their dependents, their survivors, and any other individual eligible for such benefits.

238 **§ 59.1-604. Prohibited practices; required disclosures.**

239 A. No person shall receive compensation for preparing, presenting, prosecuting, advising,
240 consulting, or assisting any individual regarding any veterans' benefits matter before the U.S. Department

241 of Veterans Affairs, the U.S. Department of Defense, or the Department of Veterans Services except as
242 permitted under federal law.

243 B. No person shall receive compensation for referring any individual to another person to prepare,
244 present, prosecute, advise, consult, or assist such individual regarding any veterans' benefits matter before
245 the U.S. Department of Veterans Affairs, the U.S. Department of Defense, or the Department of Veterans
246 Services.

247 C. The prohibitions of this chapter shall not apply to an attorney licensed to practice law in any
248 state or territory of the United States or the District of Columbia.

249 **§ 59.1-605. Enforcement; penalties.**

250 Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-
251 200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection
252 Act (§ 59.1-196 et seq.).

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