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HOUSE BILL NO. 1370

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute--Delegate Delaney)

A BILL to amend and reenact §§ 59.1-200 and 59.1-444.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 35.1 of Title 59.1 a section numbered 59.1-444.4, relating to reporting of medical debt to consumer reporting agencies by certain health care providers; prohibited; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-200 and 59.1-444.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 35.1 of Title 59.1 a section numbered 59.1-444.4 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;

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

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

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

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

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

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

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

50 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
51 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,

52 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or
53 under federal statutes or regulations;

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

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

61 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
62 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

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

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

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

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

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

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

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

97 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
98 207.17 et seq.);

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

100 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
101 424 et seq.);

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

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

- 105 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 106 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 107 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 108 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
- 109 seq.);
- 110 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
- 111 et seq.);
- 112 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 113 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 114 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 115 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 116 35. Using the consumer's social security number as the consumer's account number with the
- 117 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
- 118 with the consumer's social security number;
- 119 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 120 37. Violating any provision of § 8.01-40.2;
- 121 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 122 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 123 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 124 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
- 125 59.1-525 et seq.);
- 126 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 127 43. Violating any provision of § 59.1-443.2;
- 128 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 129 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 130 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 131 47. Violating any provision of § 18.2-239;

- 132 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 133 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
- 134 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 135 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
- 136 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
- 137 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
- 138 products that are used, secondhand or "seconds";
- 139 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 140 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 141 52. Violating any provision of § 8.2-317.1;
- 142 53. Violating subsection A of § 9.1-149.1;
- 143 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
- 144 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
- 145 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
- 146 which defective drywall has been permanently installed or affixed;
- 147 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
- 148 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-
- 149 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
- 150 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
- 151 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 152 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 153 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 154 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 155 59. Violating any provision of subsection E of § 32.1-126;
- 156 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession
- 157 licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 158 61. Violating any provision of § 2.2-2001.5;

- 159 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
- 160 63. Violating any provision of § 6.2-312;
- 161 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- 162 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 163 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 164 67. Knowingly violating any provision of § 8.01-27.5;
- 165 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option
- 166 to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30
- 167 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period
- 168 to avoid an obligation to pay for the goods or services;
- 169 69. Selling or offering for sale any substance intended for human consumption, orally or by
- 170 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
- 171 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
- 172 to turn a compound into a different compound by adding or subtracting molecules to or from the original
- 173 compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S.
- 174 Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be
- 175 construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 176 70. Selling or offering for sale to a person younger than 21 years of age any substance intended
- 177 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
- 178 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
- 179 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
- 180 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 181 71. Selling or offering for sale any substance intended for human consumption, orally or by
- 182 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
- 183 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
- 184 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
- 185 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such

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

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

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

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

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

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

214 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
215 (ii) any kratom product that does not include a label listing all ingredients and with the following guidance:
216 "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to
217 diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the
218 leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

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

222 79. Willfully violating any provision of § 59.1-444.4.

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

228 CHAPTER 35.1.

229 ~~SECURITY FREEZES~~ CONSUMER REPORTING AGENCIES.

230 **§ 59.1-444.1. Definitions.**

231 As used in this chapter:

232 "Collection entity" means any person that purchases debt or collects debt on behalf of another
233 entity.

234 "Consumer" means an individual who is also a resident of ~~this state~~ the Commonwealth.

235 "Consumer report" has the same meaning as provided in § 603(d) of the federal Fair Credit
236 Reporting Act (15 U.S.C. § 1681a(d)).

237 "Consumer reporting agency" has the same meaning as in § 603(f) of the federal Fair Credit
238 Reporting Act (15 U.S.C. § 1681a(f)).

239 "Credit report" means a "consumer report," ~~as defined in § 603(d) of the Fair Credit Reporting Act~~
240 ~~(15 U.S.C. § 1681a(d))~~; provided, however, that for purposes of this chapter, a credit report is limited to
241 information that a consumer reporting agency furnishes to a person that it has reason to believe intends to
242 use the information as a factor in establishing the consumer's eligibility for credit to be used primarily for
243 personal, family, or household purposes.

244 "Health care services" means the furnishing of services for the purpose of preventing, alleviating,
245 curing, or healing human physical illness or injury or a mental or behavioral condition or disorder.

246 "Medical debt" means debt arising from health care services, including products, devices, durable
247 medical equipment, and prescription drugs, and from the provision of transportation to receive health care
248 services. "Medical debt" does not include debt charged to a credit card unless the credit card is issued
249 under an open-end or closed-end credit plan offered specifically for the payment of health care services
250 or health care goods.

251 "Proper identification" means proper identification as defined in 15 U.S.C. § 1681h(a)(1).

252 **§ 59.1-444.4. Reporting of medical debt prohibited; civil penalty.**

253 A. No medical care facility listed in § 32.1-102.1:3, no person licensed or certified by a health
254 regulatory board within the Department of Health Professions, and no emergency medical services agency,
255 as defined in § 32.1-111.1, shall report any portion of a medical debt to a consumer reporting agency.

256 B. No collection entity collecting or attempting to collect a medical debt shall report such
257 collection or attempts to collect to a consumer reporting agency.

258 C. Any willful violation of the provisions of this section shall constitute a prohibited practice
259 pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions
260 of Chapter 17 (§ 59.1-196 et seq.).

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