

SENATE BILL NO. 388

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute--Senator Pekarsky)

A BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to Virginia Consumer Protection Act; prohibited practices; mandatory fees disclosure.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is 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, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";

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

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

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

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

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

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

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

50 13a. Failing to provide to a consumer, or failing to use or include in any written document or
51 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
52 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.

53 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
54 with the consumer transaction;

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

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

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

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

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

79 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
80 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
81 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
82 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
83 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
84 required;

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

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

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

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

93 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
94 207.17 et seq.);

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

96 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
97 424 et seq.);

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

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

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

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

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

104 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
105 seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 71. Selling or offering for sale any substance intended for human consumption, orally or by
178 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
179 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
180 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
181 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
182 substance that constitutes a single serving, and (d) the total percentage and milligrams of
183 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
184 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
185 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
186 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol

187 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
188 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
189 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
190 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

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

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

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

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

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

210 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
211 (ii) any kratom product that does not include a label listing all ingredients and with the following guidance:
212 "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to

213 diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the
214 leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

215 78. Advertising or displaying a price for goods or services without clearly and conspicuously
216 displaying the total price, which shall include all mandatory fees or charges. As used in this subdivision,
217 "mandatory fees or charges" includes (i) any fee or surcharge that must be paid in order to purchase the
218 good or service being advertised, (ii) any fee or surcharge that is not reasonably avoidable, and (iii) any
219 fee or surcharge for any good or service that a reasonable consumer would expect to be included with the
220 purchase of the good or service being advertised. "Mandatory fees or charges" does not include (a)
221 shipping fees; (b) taxes or fees imposed on the consumer by a government or government-approved entity
222 or assessment fees of a government-created special district or program paid to the government or
223 government-approved entity; (c) fees, surcharges, or other charges for optional or elective goods or
224 services which are not required in order to purchase or utilize the good or services; or (d) any mandatory
225 gratuity imposed by a restaurant or hotel, as those terms are defined in § 35.1-1, that is paid to a tipped
226 employee, as defined in § 40.1-28.9. Compliance by a person providing broadband Internet access service
227 on its own or as part of a bundle, as defined in 47 C.F.R. § 8.1(b), with the broadband consumer label
228 requirements adopted by the Federal Communications Commission in FCC 22-86 on November 13, 2022,
229 codified in 47 C.F.R. § 8.1(a), shall be deemed compliant with this subdivision. It shall not be a violation
230 of this subdivision for any supplier to (1) reduce the total price that was advertised or displayed or (2)
231 advertise or display a price for goods and services in compliance with specific state or federal laws
232 applicable to such supplier. The provisions of this subdivision shall be preempted by 49 U.S.C § 41713;
233 and

234 79. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45,
235 to a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale
236 of any such good or provision of any such continuous service.

237 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
238 lease solely by reason of the failure of such contract or lease to comply with any other law of the
239 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation

240 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
241 contract or lease.

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