

HOUSE BILL NO. 1301

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Delegate Kilgore)

A BILL to amend and reenact §§ 59.1-200 and 59.1-526 of the Code of Virginia, relating to Virginia Post-Disaster Anti-Price Gouging Act; definitions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-200 and 59.1-526 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, 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.). For the purposes of this subdivision, "consumer transaction" has the same meaning as
- 122 provided in § 59.1-526;
- 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 or (ii) with respect to a free trial lasting more than 30
164 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period
165 to avoid an obligation to pay for the goods or services;
- 166 69. Selling or offering for sale any substance intended for human consumption, orally or by
167 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
168 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
169 to turn a compound into a different compound by adding or subtracting molecules to or from the original
170 compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S.
171 Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be
172 construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 173 70. Selling or offering for sale to a person younger than 21 years of age any substance intended
174 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
175 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
176 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
177 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 178 71. Selling or offering for sale any substance intended for human consumption, orally or by
179 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
180 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
181 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
182 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
183 substance that constitutes a single serving, and (d) the total percentage and milligrams of
184 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
185 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
186 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International

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

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

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

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

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

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

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

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

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

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

224 **§ 59.1-526. Definitions.**

225 As used in this chapter:

226 "Consumer transaction," "goods," and "services," have the same meanings as are set forth for those
227 terms in § 59.1-198. However, "consumer transaction" also includes transactions involving the
228 advertisement, sale, lease, license, or offering for sale, lease, or license of goods or services to be used for
229 business purposes and the advertisement, sale, lease, license, or contract of employment services to be
230 provided or procured for business purposes.

231 "Disaster" means any "disaster," "emergency," or "major disaster," as those terms are used and
232 defined in § 44-146.16, that results in the declaration of a state of emergency by the Governor or the
233 President of the United States.

234 "Necessary goods and services" means any necessary good or service for which consumer demand
235 does, or is likely to, increase as a consequence of the disaster, and includes water, ice, consumer food
236 items or supplies, property or services for emergency cleanup, emergency supplies, communication
237 supplies and services, medical supplies and services, home heating fuel, building materials and services,
238 tree removal supplies and services, freight, storage services, housing, lodging, transportation, and motor
239 fuels.

240 "Supplier" means a seller, lessor, licensor, or professional who advertises, solicits, or engages in
241 consumer transactions, or a manufacturer, distributor, or licensor who sells, leases, or licenses goods or
242 services to be resold, leased, or sublicensed by other persons in consumer transactions. However, a
243 manufacturer, distributor, or licensor who sells, leases, or licenses agricultural goods or services to be
244 resold, leased, or sublicensed by other persons in consumer transactions shall not be considered a
245 "supplier" unless such manufacturer, distributor, or licensor advertises such agricultural goods or services.

246 "Time of disaster" means the ~~shorter~~ longer of (i) the period of time when a state of emergency
247 declared by the Governor or the President of the United States as the result of a disaster, emergency, or
248 major disaster, as those terms are used and defined in § 44-146.16, is in effect or (ii) 30 days after the
249 occurrence of the disaster, emergency, or major disaster that resulted in the declaration of the state of
250 emergency; however, if the state of emergency is extended or renewed within 30 days after such an
251 occurrence, then such period shall be extended to include the 30 days following the date the state of
252 emergency was extended or renewed.

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