

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by*  
3 *adding in Title 59.1 a chapter numbered 17.8, consisting of sections numbered 59.1-207.45 through*  
4 *59.1-207.49, relating to automatic renewal offers and continuous service offers; charging accounts*  
5 *for ongoing shipments of a product or ongoing deliveries of a service; penalties.*

6 [H 911]  
7 Approved

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

9 **1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia**  
10 **is amended by adding in Title 59.1 a chapter numbered 17.8, consisting of sections numbered**  
11 **59.1-207.45 through 59.1-207.49, as follows:**

12 **§ 59.1-200. Prohibited practices.**

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

- 15 1. Misrepresenting goods or services as those of another;
- 16 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 17 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or  
18 services, with another;

- 19 4. Misrepresenting geographic origin in connection with goods or services;
- 20 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or  
21 benefits;

- 22 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

- 23 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,  
24 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first  
25 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods  
26 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"  
27 irregulars, 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, or  
31 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  
33 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
34 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
35 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
36 or offer 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 amounts  
38 of price reductions;

- 39 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
40 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  
45 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
46 manufacturing the 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,  
50 or 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  
53 statement, disclosure, notice, or other information however characterized when the supplier is required  
54 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other  
55 information in connection with the consumer transaction;

- 56 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection

57 with a consumer transaction;

58 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain  
59 animals by pet dealers which is described in such sections, 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  
67 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
68 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
69 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
70 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
71 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
72 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
73 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
74 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
75 § 46.2-100;

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

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

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

94 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
95 (§ 59.1-207.17 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  
98 (§ 59.1-424 et seq.);

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

100 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
101 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 et  
108 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 supplier,  
114 if the consumer has requested in writing that the supplier use an alternate number not associated with  
115 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 has
- 131 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
- 133 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
- 134 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
- 135 children's 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
- 146 § 44-146.16 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; ~~and~~
- 149 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.); *and*
- 150 57. *Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.).*
- 151 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
- 152 lease solely by reason of the failure of such contract or lease to comply with any other law of the
- 153 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
- 154 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
- 155 such contract or lease.

CHAPTER 17.8.

AUTOMATIC RENEWAL OFFERS AND CONTINUOUS SERVICE OFFERS.

§ 59.1-207.45. *Definitions.*

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

*"Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.*

*"Automatic renewal offer terms" means the following clear and conspicuous disclosures:*

- 1. *That the subscription or purchasing agreement will continue until the consumer cancels;*
- 2. *The description of the cancellation policy that applies to the offer;*
- 3. *The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;*
- 4. *The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and*
- 5. *The minimum purchase obligation, if any.*

*"Clear and conspicuous" or "clearly and conspicuously" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" or "clearly and conspicuously" means in a volume and cadence sufficient to be readily audible and understandable.*

*"Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.*

*"Continuous service" means a plan or arrangement in which a subscription or purchasing agreement*

179 continues until the consumer cancels the service.

180 "Supplier" has the same meaning ascribed thereto in § 59.1-198.

181 **§ 59.1-207.46. Making automatic renewal or continuous service offer to consumer; affirmative**  
182 **consent required; disclosures; prohibited conduct.**

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

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

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

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

197 B. A supplier making automatic renewal or continuous service offers shall provide a toll-free  
198 telephone number, an electronic mail address, a postal address only when the supplier directly bills the  
199 consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be  
200 described in the acknowledgment specified in subdivision A 3.

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

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

207 1. The requirement in subdivision A 3 may be fulfilled after completion of the initial order; and

208 2. The requirement in subsection C shall be fulfilled prior to implementation of the material change.

209 **§ 59.1-207.47. When goods, wares, merchandise, or products deemed a gift.**

210 In any case in which a supplier sends any goods, wares, merchandise, or products to a consumer  
211 under a continuous service agreement or automatic renewal of a purchase without first obtaining the  
212 consumer's affirmative consent as described in § 59.1-207.46, the goods, wares, merchandise, or  
213 products shall for all purposes be deemed an unconditional gift to the consumer, who may use or  
214 dispose of the same in any manner he sees fit without any obligation whatsoever on the consumer's part  
215 to the supplier, including any obligation or responsibility for shipping any goods, wares, merchandise,  
216 or products to the supplier.

217 **§ 59.1-207.48. Exemptions.**

218 This chapter shall not apply to:

219 1. Any service provided by a supplier or its affiliate where either the supplier or its affiliate is doing  
220 business pursuant to a franchise issued by a political subdivision of the Commonwealth or a license,  
221 franchise, certificate, or other authorization issued by the State Corporation Commission to a public  
222 service company or public utility pursuant to Title 56;

223 2. Any service provided by a supplier or its affiliate where either the supplier or its affiliate is  
224 regulated by the State Corporation Commission, the Federal Communications Commission, or the  
225 Federal Energy Regulatory Commission;

226 3. Alarm company operators that are regulated pursuant to § 15.2-911;

227 4. A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other  
228 financial institution, licensed under federal or state law;

229 5. Any home protection company regulated by the State Corporation Commission pursuant to  
230 Chapter 26 (§ 38.2-2600 et seq.) of Title 38.2;

231 6. Any home service contract provider regulated by the Department of Agriculture and Consumer  
232 Services pursuant to Chapter 33.1 (§ 59.1-434.1 et seq.); or

233 7. Any health club registered pursuant to the Virginia Health Club Act (59.1-294 et seq.).

234 **§ 59.1-207.49. Enforcement; penalties.**

235 Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200  
236 and shall be subject to the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196  
237 et seq.). However, if a supplier makes a good faith effort to comply with the requirements of this  
238 chapter, the supplier shall not be subject to either a civil penalty under § 59.1-206 or damages under  
239 § 59.1-204.

240 2. That the provisions of this act shall become effective on January 1, 2019.

**ENROLLED**

HB911ER