

19104315D

## SENATE BILL NO. 1423

Offered January 9, 2019

Prefiled January 8, 2019

*A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 11 a section numbered 11-9.9 and by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:7, relating to confidentiality, nondisparagement, or nondisclosure provisions; communication with law-enforcement agencies; civil penalty.*

Patron—Howell

Referred to Committee for Courts of Justice

**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 Chapter 1 of Title 11 a section numbered 11-9.9 and by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:7 as follows:**

**§ 11-9.9. Unlawful to restrict or deter communications with law-enforcement agencies.**

*Any provision in a contract or a written agreement, whether or not labeled as pertaining to confidentiality, nondisparagement, or nondisclosure, that restricts or deters a person from communicating or cooperating with a federal, state, or local law-enforcement agency is hereby declared to be contrary to the public policy of the Commonwealth and shall be void and unenforceable.*

*Nothing in this section shall void or invalidate a party's right to consideration under a contract or written agreement or require the return of consideration already provided to a party to such contract or written agreement.*

**§ 40.1-28.7:7. Unlawful to restrict or deter communications with law-enforcement agencies; civil penalty.**

*A. As used in this section, "settlement agreement" means an agreement resolving a dispute, including disputes resolved without the filing of a civil action, pertaining to the employment of an employee in the Commonwealth.*

*B. Any provision in an employment contract or a settlement agreement, whether or not labeled as pertaining to confidentiality, nondisparagement, or nondisclosure, that restricts or deters a current or former employee from communicating or cooperating with a federal, state, or local law-enforcement agency is hereby declared to be contrary to the public policy of the Commonwealth and shall be void and unenforceable.*

*C. An employer shall not use a provision prohibited pursuant to subsection B to restrict or deter current or former employees from communicating with a federal, state, or local law-enforcement agency. Any employer that violates the provisions of this section shall be subject to a civil penalty, as determined by the Commissioner, of up to \$12,471, as adjusted pursuant to subsection P of § 40.1-49.4. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund.*

*D. Nothing in this section shall void or invalidate a party's right to consideration under an employment contract or settlement agreement or require the return of consideration already provided to a party to such employment contract or settlement agreement.*

**§ 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";*

INTRODUCED

SB1423

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

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

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

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

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

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

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

82 13a. Failing to provide to a consumer, or failing to use or include in any written document or  
83 material provided to or executed by a consumer, in connection with a consumer transaction any  
84 statement, disclosure, notice, or other information however characterized when the supplier is required  
85 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other  
86 information in connection with the consumer transaction;

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

89 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain  
90 animals by pet dealers which is described in such sections, is a violation of this chapter;

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

92 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
93 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
94 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
95 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
96 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
97 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
98 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
99 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
100 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
101 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
102 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
103 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
104 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
105 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
106 § 46.2-100;

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

112 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
113 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment  
114 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of  
115 receiving overpayments. If the credit balance information is incorporated into statements of account  
116 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

- 121 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et  
122 seq.);
- 123 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et  
124 seq.);
- 125 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
126 (§ 59.1-207.17 et seq.);
- 127 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 128 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
129 (§ 59.1-424 et seq.);
- 130 24. Violating any provision of § 54.1-1505;
- 131 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
132 17.6 (§ 59.1-207.34 et seq.);
- 133 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 134 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 135 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 136 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et  
137 seq.);
- 138 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et  
139 seq.);
- 140 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 141 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 142 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 143 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 144 35. Using the consumer's social security number as the consumer's account number with the supplier,  
145 if the consumer has requested in writing that the supplier use an alternate number not associated with  
146 the consumer's social security number;
- 147 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 148 37. Violating any provision of § 8.01-40.2;
- 149 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 150 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 151 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 152 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46  
153 (§ 59.1-525 et seq.);
- 154 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 155 43. Violating any provision of § 59.1-443.2;
- 156 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 157 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 158 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 159 47. Violating any provision of § 18.2-239;
- 160 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 161 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has  
162 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
163 presumption that a supplier has reason to know a children's product was recalled if notice of the recall  
164 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale  
165 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to  
166 children's products that are used, secondhand or "seconds";
- 167 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 168 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 169 52. Violating any provision of § 8.2-317.1;
- 170 53. Violating subsection A of § 9.1-149.1;
- 171 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential  
172 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective  
173 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in  
174 which defective drywall has been permanently installed or affixed;
- 175 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while  
176 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in  
177 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of  
178 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant  
179 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 180 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 181 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1; and

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

183 59. *Using in any contract or written agreement any provision whether or not labeled as pertaining to*  
184 *confidentiality, nondisparagement, or nondisclosure that restricts or deters a consumer from*  
185 *communicating or cooperating with a federal, state, or local law-enforcement agency. Any such*  
186 *provision is hereby declared to be contrary to the public policy of the Commonwealth and shall be void*  
187 *and unenforceable. The enforcement or attempted enforcement of any such provision is a separate*  
188 *violation of this chapter. As used in this subdivision, "written agreement" includes any agreement*  
189 *resolving a dispute that arises in connection with a consumer transaction, including disputes resolved*  
190 *without the filing of a civil action. Nothing in this subdivision shall be used to void or invalidate a*  
191 *party's right to consideration under a contract or written agreement or require the return of*  
192 *consideration already provided to a party to such contract or written agreement.*

193 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
194 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
195 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
196 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
197 such contract or lease.