

2021 SPECIAL SESSION I

HOUSE SUBSTITUTE

21104435D

HOUSE BILL NO. 2003

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Samirah
on February 4, 2021)

(Patron Prior to Substitute—Delegate Samirah)

A BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to the Consumer Protection Act; prohibited practices; certain advertising related to school quality.

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";

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

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

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

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

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

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

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

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

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

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

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

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign

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

74 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
75 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
77 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
78 the agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

105 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
106 seq.);

107 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

108 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

109 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

110 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

111 35. Using the consumer's social security number as the consumer's account number with the supplier,
112 if the consumer has requested in writing that the supplier use an alternate number not associated with
113 the consumer's social security number;

114 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

115 37. Violating any provision of § 8.01-40.2;

116 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

117 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);

118 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

119 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
120 (§ 59.1-525 et seq.);

121 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);

43. Violating any provision of § 59.1-443.2;
44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
47. Violating any provision of § 18.2-239;
48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";
50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
52. Violating any provision of § 8.2-317.1;
53. Violating subsection A of § 9.1-149.1;
54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;
55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
59. Violating any provision of subsection E of § 32.1-126;
60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
61. Violating any provision of § 2.2-2001.5;
62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
63. (Effective January 1, 2021) Violating any provision of § 6.2-312;
64. (Effective July 1, 2021) Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- and
65. (Effective July 1, 2021) Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- and
66. *Using in any advertising any information regarding the quality of any public or private elementary or secondary school other than information derived from the school quality indicators contained in the School Quality Profiles established by the Department of Education or information derived from the school's website or the website of the school's district, unless such advertising contains a statement, displayed on its face in a conspicuous manner, that such school quality information is not derived from the school quality indicators contained in the School Quality Profiles established by the Department of Education or endorsed by the Department of Education. The provisions of subsection F of § 59.1-199 shall apply to this subdivision.*
- B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.
- 2. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2022 Session of the General Assembly.**
- 3. That the Department of Law's Division of Consumer Counsel (the Division), consistent with its duty established in subdivision B 2 of § 2.2-517 of the Code Virginia, shall make recommendations to the Governor and the General Assembly for any legislation that the Division deems necessary to prevent the misleading or deceiving of consumers by the use of information in advertising regarding the quality of any public or private elementary or secondary school other than information derived from the school quality indicators contained in the School Quality Profiles established by the Department of Education or information derived from the school's website or the website of the school's district. The Division shall make its recommendations to the Governor**

183 and the General Assembly by November 1, 2021.