

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 20.1, consisting of sections numbered 6.2-2026 through 6.2-2050, relating to debt settlement services providers; civil and criminal penalties.

[H 1553]

Approved

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 Title 6.2 a chapter numbered 20.1, consisting of sections numbered 6.2-2026 through 6.2-2050, as follows:

CHAPTER 20.1.

DEBT SETTLEMENT SERVICES PROVIDERS.

§ 6.2-2026. Definitions.

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

"Consumer" means an individual residing in the Commonwealth who owes money to one or more creditors, for personal, family, or household purposes, including an individual who owes money jointly with one or more other individuals.

"Credit counselor" means an employee or agent of a licensee who engages in debt settlement services on a consumer's behalf.

"Creditor" includes persons that extend credit to, or persons that service loans made to, consumers. "Creditor" or "credit-granting organization" does not include (i) doctors, lawyers, or other professionals who receive payment for their services in installments or (ii) persons whose only participation in a credit transaction is to honor a credit card.

"Debt collector" means a person defined as a debt collector under 15 U.S.C. § 1692a of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

"Debt settlement services" means any action or negotiation initiated or taken on behalf of any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of all or a portion of the credit extended by the creditor to the consumer or a reduction of payments, charges, or fees payable by the consumer. For purposes of this chapter, with respect to student loan forgiveness or student loan payment reduction programs established under federal or state law and widely available to similarly situated consumers at no cost, the facilitation of enrollment in or qualification for such programs does not constitute an action or negotiation.

"Duplicate original" means an exact copy with signatures created by the same impression as the original, an exact copy bearing an original signature, or, in the case of an electronic transaction, an electronic version with electronic signatures.

"Electronic signature" means an electronic signature as defined in § 59.1-480.

"Licensee" means a person licensed under this chapter.

"Principal" means any person that, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a person.

§ 6.2-2027. License requirement; exceptions.

A. No person shall engage in the business of providing or offering to provide debt settlement services to any consumer, whether or not the person has an office, facility, agent, or other physical presence in the Commonwealth, unless such person obtains from the Commission a license issued pursuant to this chapter. The provisions of this chapter shall not apply to any bank, savings institution, or credit union or any person licensed to practice law in the Commonwealth.

B. This chapter shall be construed by the Commission to promote sound personal financial advice and management.

C. A person licensed under Chapter 20 (§ 6.2-2000 et seq.) is not required to be licensed under this chapter if, it offers to provide or provides debt settlement services solely in connection with offering to provide or providing debt management plans.

D. A person licensed under this chapter shall not receive money from consumers for transmission to consumers' creditors or engage in the business of providing or offering to provide debt management plans to consumers unless such person is also licensed under Chapter 20 (§ 6.2-2000 et seq.).

§ 6.2-2028. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the Commissioner.

B. The application shall include:

1. The name and address of the applicant and (i) if the applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and address of each trustee and beneficiary;

2. The name and address of each manager and officer;

3. The addresses of the locations of the business to be licensed;

4. Financial statements for the applicant;

5. A current copy of the applicant's standard debt settlement services agreement;

6. Such other information concerning the financial responsibility, background, experience, and activities of the applicant and the persons referred to in this section as the Commissioner may require;

7. Any other pertinent information as the Commissioner may require; and

8. Payment of an application fee of \$500.

C. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

§ 6.2-2029. Bond required.

The application for a license shall be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute the bond in the Commonwealth, in the principal amount as determined by the Commission. The amount of the bond shall be not less than \$25,000 nor more than \$350,000. The form of the bond shall be approved by the Commission. The bond shall be continuously maintained thereafter in full force, and the Commission may require the principal amount to be adjusted as it deems necessary. The bond shall be conditioned upon the licensee performing all written agreements with consumers and conducting the licensed business in conformity with this chapter and all applicable law. Any person who may be damaged by noncompliance of the licensee with any condition of the bond may proceed on the bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

§ 6.2-2030. Investigation of applications.

The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations adopted thereunder.

§ 6.2-2031. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ 6.2-2028 and 6.2-2029, the Commission shall issue and deliver to the applicant the license to engage in business under this chapter at the locations specified in the application if it finds that:

1. The financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law;

2. The applicant has made acceptable provision for the avoidance of conflicts of interest;

3. The applicant's credit counselors are certified through a bona fide third-party certification provider unaffiliated with the applicant that authenticates the competence of counselors providing consumer assistance;

4. No more than one-third of the board of directors or managing members are employees, officers, members, principals, trustees, directors, agents, or other representatives of organizations that grant credit to consumers;

5. The applicant has fidelity bond coverage in such principal amount as may be determined by the Commission; and

6. The applicant (i) is not the subject of any current material administrative or regulatory proceedings by any governmental authority and (ii) has not received a material adverse determination in any past administrative or regulatory proceedings by any governmental authority.

B. For purposes of subdivision A 6, the Commission shall have sole discretion to determine the materiality of any proceedings or determinations.

C. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

D. A license shall not be issued to a collection agency, or to any creditor or association of creditors, or to any credit-granting organization or association of such organizations.

§ 6.2-2032. Licenses; places of business; changes.

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the legal name of the licensee, as well as any fictitious name by which the licensee is operating in the Commonwealth. Each license shall be posted prominently in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No

licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth on the license issued by the Commission.

B. No licensee shall open an additional office or relocate any place of business without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The application shall be approved unless the Commission finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within 30 days of the date the application is received by the Commission, but this period may be extended for good cause. After approval, the applicant shall give written notice to the Commissioner within 20 days of the commencement of business at the additional location or relocated place of business.

C. Every licensee shall within 20 days notify the Commissioner, in writing, of the closing of any business location and of the name, address, and position of each new senior officer, member, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

§ 6.2-2033. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person, licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, trustees, beneficiaries, principals, and members, and any proposed new directors, senior officers, principals, or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant and its directors, senior officers, members, trustees, beneficiaries, and principals, and any proposed new persons having any such status have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee; or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

§ 6.2-2034. Retention of books, accounts, and records; responding to Bureau.

A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the Commission may reasonably require in order to determine whether the licensee is complying with the provisions of this chapter and regulations adopted thereunder. Such books, accounts, and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to debt settlement services agreements shall be retained for at least three years after the debt settlement services agreements are terminated. To safeguard the privacy of consumers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for the shredding, incineration, or other disposal of the records from a business record destruction vendor.

B. When the Bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the Bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response, as well as any requested books, records, documentation, or information within the time period specified in the Bureau's request.

If no time period is specified, a written response, as well as any requested books, records, documentation, or information, shall be delivered by the licensee to the Bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the Bureau and when considering a request for an extension of time to respond, the Bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Bureau determines to be relevant under the circumstances.

§ 6.2-2035. Annual report.

Each licensee under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commissioner may require concerning the licensee's business and operations during the preceding calendar year as to each licensed place of business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

§ 6.2-2036. Other reporting requirements.

A. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the Commission describing such event and its expected impact on the business of the licensee:

1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;
3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;
4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;
5. The institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or
6. Such other event as the Commission may prescribe by regulation.

B. Within 30 days of judgment against the licensee in a civil action relating to the debt settlement services agreement of a consumer, a licensee shall file a written report with the Commission describing such event and its expected impact on the business of the licensee.

C. Within 10 days of receipt of any qualified audit, a licensee shall notify the Commission and describe what steps are being taken to address concerns raised in the audit.

§ 6.2-2037. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any person licensed or required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the purposes of this section, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

§ 6.2-2038. Annual fees.

A. To defray the costs of the examination, supervision, and regulation of licensees, every licensee under this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the total number of agreements to provide debt settlement services maintained by licensees, to the actual costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before June 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before July 1 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee under this chapter at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

§ 6.2-2039. Regulations.

The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules.

§ 6.2-2040. Licensees providing debt settlement services; prohibited and required business methods.

Each licensee engaged in the business of providing or offering to provide debt settlement services to any consumer shall comply with the following requirements:

1. Each debt settlement services agreement shall be evidenced by a written agreement, which shall be maintained in either a hard copy, including a faxed copy, or electronic version and which shall be signed by the consumer and a person authorized by the licensee to sign such agreements and dated the same day the debt settlement services agreement is executed by the consumer. The agreement may be signed by the parties either originally or by electronic signature. The agreement shall set forth, at a minimum, (i) the name and address of both the consumer and the licensee; (ii) a full description of all services to be performed for the consumer by the licensee; (iii) a clear explanation, highlighted in bold type, of the costs to the consumer; (iv) a statement that the debt settlement services agreement may be terminated for any reason by the consumer and that the consumer has no obligation to continue the arrangement unless satisfied with the services provided; (v) an explanation of the method of dispute resolution under the agreement; (vi) an explanation of the obligations of the consumer and the licensee that are subject to the agreement; and (vii) notification of privacy policies in compliance with state and federal laws and regulations.

2. A licensee shall give to the consumer a duplicate original of the agreement executed by the consumer and licensee upon full execution.

3. A licensee shall not request or receive payment or other compensation for any debt settlement services until and unless:

a. The licensee has negotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a debt settlement services agreement it executed with a consumer; and

b. The consumer has made at least one payment to a creditor following the licensee's negotiation, settlement, reduction, or other alteration of at least one debt owned by the consumer to that creditor.

4. Prior to the execution of a debt settlement services agreement with a consumer, a licensee shall disclose to the consumer in writing, and retain a copy of, the following:

a. The amount of time necessary to achieve the represented results and, to the extent that the services may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the licensee will make a bona fide settlement offer to each of them;

b. To the extent that the services may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the licensee will make a bona fide settlement offer to each of them; and

c. To the extent that any aspect of the debt settlement services relies upon or results in the consumer's failure to make timely payments to creditors or debt collectors, that the use of the debt settlement services will likely adversely affect the consumer's creditworthiness, may result in the consumer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the consumer owes due to the accrual of fees and interest.

5. A licensee shall not require a consumer to execute a power of attorney, as defined in § 64.2-1600, as a condition of receiving debt settlement services.

6. A licensee shall not require a consumer to open an account, as defined in § 6.2-604, as a condition of receiving debt settlement services. A licensee may request that a consumer open an account in connection with its provision of debt settlement services, provided that:

a. The consumer's funds are held in an account at an FDIC-insured financial institution;

b. The consumer owns the funds held in the account and is paid accrued interest on the account, if any;

c. The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt settlement services provider;

d. The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt settlement services provider; and

e. The consumer may withdraw from the debt settlement services at any time without penalty and must receive all funds in the account, other than the fee earned by the debt settlement services provider for completed services, if any, subject to the limitations imposed in § 6.2-2041.

7. A licensee shall not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a creditor, except for educational or counseling services required in connection with a government-sponsored program.

§ 6.2-2041. Fee.

A. For providing debt settlement services, a licensee may charge or receive a fee totaling either (i) no more than 20 percent of the principal amount of the debt enrolled by a consumer into the licensee's service or (ii) no more than 30 percent of the difference between the amount owed by a consumer at the time the licensee settles the debt and the amount to be paid by the consumer to satisfy the debt.

B. If more than one debt is the subject of a debt settlement services agreement, the licensee may only charge or collect that proportion of the total fee allowable under clause (i) of subsection A that equals the proportion of the aggregate debt the individual settled debt represents.

C. A licensee shall not charge or receive any other fee or compensation from a consumer for providing debt settlement services other than the fee provided for in this section.

§ 6.2-2042. Advertising.

No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading, or deceptive statement or representation or (ii) identifies the person by any name other than the name set forth on the license issued by the Commission.

§ 6.2-2043. Suspension or revocation of license.

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

1. Any ground for denial of a license under this chapter;

2. Any violation of the provisions of this chapter or regulations adopted by the Commission thereunder, or a violation of any other law or regulation applicable to the conduct of the licensee's business;

3. A course of conduct consisting of the failure to perform written agreements with consumers;

4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;

6. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;

7. Refusal to permit an investigation or examination by the Commission;

8. Failure to pay any fee or assessment imposed by this chapter;

9. Failure to comply with any order of the Commission; or

10. Insolvency of the licensee.

B. For the purposes of this section, acts of any officer, director, member, trustee, beneficiary, partner, or principal shall be deemed acts of the licensee.

§ 6.2-2044. Cease and desist orders.

A. If the Commission determines that any person has violated any provision of this chapter or any regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's Rules. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

B. When, in the opinion of the Commission, immediate action is required to protect the public interest, a cease and desist order may be issued without prior hearing. In such cases, the Commission shall make a hearing available to the person on an expedited basis.

C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any person, regardless of whether such person is present in the Commonwealth, who violates any provision of this chapter or any regulation adopted hereunder.

§ 6.2-2045. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § 6.2-2043 until it has given the licensee 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except on the basis of findings made at such hearing. The hearing shall be conducted in accordance with the Commission's Rules.

§ 6.2-2046. Civil penalties.

In addition to the authority conferred under §§ 6.2-2043 and 6.2-2044, the Commission may impose a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any of the provisions of this chapter. For the purposes of this section, each separate violation shall be subject to the civil penalty herein prescribed.

In the case of a violation of § 6.2-2027, each debt settlement services agreement entered into shall constitute a separate violation.

§ 6.2-2047. Criminal penalty.

Any person violating subsection A of § 6.2-2027 is guilty of a Class 1 misdemeanor. For purposes of this section, each violation shall constitute a separate offense.

§ 6.2-2048. Private right of action.

Any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any person who is successful in such action shall recover reasonable attorney fees, expert witness fees, and court costs incurred by bringing such action.

§ 6.2-2049. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. With or without such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

B. The Attorney General may also seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to consumers under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

C. In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek reasonable attorney fees and costs.

D. If the Attorney General files an action to enjoin violations of this chapter, the Attorney General shall provide notice of such action to the Commission.

§ 6.2-2050. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 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

423 manufacturing the goods or services advertised or offered for sale;

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

428 13a. Failing to provide to a consumer, or failing to use or include in any written document or
 429 material provided to or executed by a consumer, in connection with a consumer transaction any
 430 statement, disclosure, notice, or other information however characterized when the supplier is required
 431 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
 432 information in connection with the consumer transaction;

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

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

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

438 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
 439 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
 440 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
 441 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
 442 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
 443 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
 444 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
 445 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
 446 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
 447 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
 448 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
 449 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
 450 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
 451 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
 452 § 46.2-100;

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

458 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
 459 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
 460 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
 461 receiving overpayments. If the credit balance information is incorporated into statements of account
 462 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

471 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
 472 (§ 59.1-207.17 et seq.);

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

474 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
 475 (§ 59.1-424 et seq.);

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

477 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
 478 17.6 (§ 59.1-207.34 et seq.);

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

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

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

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

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.);
31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;
36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
37. Violating any provision of § 8.01-40.2;
38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.);
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; ~~and~~
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; *and*
61. *Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2.*
- 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 become effective on July 1, 2021.**
- 3. That the State Corporation Commission shall establish a procedure, to be in effect by March 1, 2021, for any person to apply, prior to July 1, 2021, for a license to be issued pursuant to Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2 of the Code of Virginia, as created by this act, when such chapter becomes effective. In addition, upon the effective date of the first enactment of this act, July 1, 2021, the State Corporation Commission shall monitor settlements by all licensees, specifically looking at the number of settlements made pursuant to this act, the fees charged**

545 pursuant to § 6.2-2041 of the Code of Virginia, as created by this act, and the principal amount to
546 be paid by the consumer to satisfy the debt, and shall report to the Chairs of the House
547 Committee on Labor and Commerce and the Senate Committee on Commerce and Labor by
548 December 1 of each year 2023, 2024, 2025.

549 4. That the provisions of this act may result in a net increase in periods of imprisonment or
550 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
551 necessary appropriation cannot be determined for periods of imprisonment in state adult
552 correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia
553 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to
554 § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be
555 determined for periods of commitment to the custody of the Department of Juvenile Justice.