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SENATE BILL NO. 1217

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on February 16, 2023)

(Patron Prior to Substitute—Senator Mason)

A BILL 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 22.2, consisting of sections numbered 6.2-2239 through 6.2-2262, relating to financial institutions; earned wage access services; licensure requirements; penalties.

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 22.2, consisting of sections numbered 6.2-2239 through 6.2-2262, as follows:

CHAPTER 22.2.

EARNED WAGE ACCESS SERVICES.

§ 6.2-2239. Definitions.

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

"Consumer" means an individual residing in the Commonwealth.

"Consumer-choice wage access services" means the business of delivering proceeds to a consumer prior to the date on which an obligor is obligated to pay salary, wages, compensation, or other income to that consumer based on the consumer's representations or the provider's reasonable determination of the consumer's earned but unpaid income.

"Earned but unpaid income" means salary, wages, compensation, or other income that a consumer has represented, and that a provider has reasonably determined, have been earned or have accrued to the benefit of the consumer but have not, at the time of the payment of proceeds, been paid to the consumer by an obligor.

"Earned wage access services" means the business of providing consumer-choice wage access services or employer-integrated wage access services.

"Employer-integrated wage access services" means the business of delivering proceeds to a consumer prior to the date on which an obligor is obligated to pay salary, wages, compensation, or other income to that consumer when the provider has verified the earned but unpaid income of the consumer using earnings or time and attendance data for the relevant pay period provided by the obligor or a service provider of the obligor.

"Licensee" means a provider licensed under this chapter.

"Obligor" means an employer or other person who is contractually or legally obligated to pay a consumer income on an hourly, project-based, piecework, or other basis, including where the consumer is acting as an independent contractor. "Obligor" does not include a service provider of an obligor or another third party that has an obligation to make any payment to a consumer based solely on the consumer's agency relationship with the obligor.

"Outstanding proceeds" means a payment of proceeds to a consumer by a provider that has not yet been repaid to that provider.

"Mandatory payment" means an amount determined by a provider that a consumer is required to pay to the provider as a condition of receiving or repaying proceeds.

"Non-mandatory payment" means an amount paid by a consumer or an obligor to a provider that does not meet the definition of a mandatory payment. "Non-mandatory payment" includes the following:

1. A fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

2. An amount paid by an obligor to a provider on a consumer's behalf that entitles the consumer to receive proceeds at no cost to the consumer.

3. A subscription or membership fee imposed by a provider for a group of services that include earned wage access services, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

4. A tip or gratuity paid by a consumer to a provider, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

"Proceeds" means a payment of funds to a consumer by a provider that is based on earned but unpaid income.

"Provider" means a person who is in the business of offering and providing earned wage access services to a consumer.

§ 6.2-2240. License requirement.

60 No person shall offer or provide earned wage access services, whether or not the person has an
61 office, facility, agent, or other physical presence in the Commonwealth, without having first obtained a
62 license under this chapter from the Commission.

63 **§ 6.2-2241. Application for license; form; content; fee.**

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

66 B. The application shall set forth:

67 1. The name and address of the applicant;

68 2. If the applicant is a firm or partnership, the name and address of each member of the firm or
69 partnership;

70 3. If the applicant is a corporation or a limited liability company, the name and address of each
71 officer, director, registered agent, and principal;

72 4. The addresses of the locations of the offices to be approved or a statement that the applicant will
73 offer earned wage access services entirely online; and

74 5. Such other information concerning the financial responsibility, background, experience, and
75 activities of the applicant and its members, officers, directors, and principals as the Commissioner may
76 require.

77 C. The application shall be accompanied by payment of an application fee of \$500 or other
78 reasonable amount that the Commission prescribes by regulation.

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

81 **§ 6.2-2242. Bond required.**

82 The application for a license shall be accompanied by a bond filed with the Commissioner with
83 corporate surety authorized to execute such bond in the Commonwealth, in the sum of at least \$10,000,
84 or such greater sum as the Commission may require, but not to exceed a total of \$100,000. The form of
85 such bond shall be approved by the Commission. The bond shall be continuously maintained thereafter
86 in full force. The bond shall be conditioned upon the applicant or licensee performing all written
87 agreements with consumers relating to earned wage access services and conducting its licensed business
88 in conformity with this chapter and all other applicable law. Any person who may be damaged by
89 noncompliance of the licensee with any condition of such bond may proceed on such bond against the
90 principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall
91 not exceed the penal sum of the bond.

92 **§ 6.2-2243. Investigation of applications.**

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

95 **§ 6.2-2244. Qualifications.**

96 A. Upon the filing and investigation of an application for a license, and compliance by the applicant
97 with the provisions of §§ 6.2-2241 and 6.2-2242, the Commission shall issue and deliver to the applicant
98 the license applied for to engage in business under this chapter if it finds that the financial
99 responsibility, character, reputation, experience, and general fitness of the applicant and its members,
100 senior officers, directors, and principals are such as to warrant belief that the business will be operated
101 efficiently and fairly, in the public interest, and in accordance with law.

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

104 **§ 6.2-2245. Acquisition of control; application.**

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

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

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

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

115 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
116 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
117 senior officers, and principals, and any proposed new directors, members, senior officers, and principals
118 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief
119 that the business will be operated efficiently and fairly, in the public interest, and in accordance with
120 law. The Commission shall grant or deny the application within 60 days from the date a completed
121 application accompanied by the required fee is filed unless the period is extended by order of 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.

§ 6.2-2246. Retention of books, accounts, and records; responding to Commission.

A. Every licensee shall maintain 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 for a period of at least three years after final repayment is made on an earned wage access service. 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 Commission requests a written response, books, records, documentation, or other information from a licensee in connection with the Commission'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 Commission'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 Commission not later than 30 days from the date of such request. In determining the specified time period for responding to the Commission and when considering a request for an extension of time to respond, the Commission shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Commission determines to be relevant under the circumstances.

§ 6.2-2247. Annual report.

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

1. The total number of transactions in which a payment of proceeds was made to consumers.
2. The total number of unique consumers to whom a payment of proceeds was made.
3. The total dollar amount of proceeds associated with transactions in subdivision 2.
4. The total dollar amount of non-mandatory payments to the provider received from consumers.
5. The total number of transactions in which a payment of proceeds was made to a consumer for which the provider did not receive payment of any outstanding proceeds.
6. The total dollar amount of transactions reported pursuant to subdivision 5.
7. The total number of transactions in which a payment of proceeds was made to a consumer for which the provider received partial repayment of outstanding proceeds.
8. The total dollar amount of transactions reported pursuant to subdivision 7 and the total dollar amount of unpaid, outstanding proceeds attributable to those transactions.
9. The total number of transactions in which outstanding proceeds were repaid after the original, scheduled repayment date.
10. The total dollar amount of transactions reported pursuant to subdivision 9.
11. The total number of consumer complaints received by the licensee in connection with the provision of earned wage access services and a list of the reason for each complaint, listed by frequency of reason for the complaint.

§ 6.2-2248. Other reporting requirements.

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 upon 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 related to activities covered under the license;
3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees,

183 beneficiaries, or principals, if known;

184 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees,
185 beneficiaries, or principals, if known;

186 5. The institution of an action against the licensee under the Virginia Consumer Protection Act
187 (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or

188 6. Such other event as the Commission may prescribe by regulation.

189 **§ 6.2-2249. Investigations; examinations.**

190 The Commission may, by its designated officers and employees, as often as it deems necessary,
191 investigate and examine the affairs, business, premises, and records of any person licensed or required
192 to be licensed under this chapter insofar as they pertain to any business for which a license is required
193 by this chapter. Examinations of licensees shall be conducted once in a five-year period or when the
194 Commission has reason to believe that the licensee may be engaged in a violation of this chapter. In the
195 course of such investigations and examinations, the owners, members, officers, directors, partners,
196 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand
197 of the person making such investigation or examination, afford full access to all premises, books,
198 records, and information that the person making such investigation or examination deems necessary.
199 For the foregoing purposes, the person making such investigation or examination shall have authority to
200 administer oaths, examine under oath all the aforementioned persons, and compel the production of
201 papers and objects of all kinds. Nothing in this section shall require the Commission to examine a
202 licensee outside the Commonwealth, if a licensee provides requested books, records, and information to
203 the Commission electronically.

204 **§ 6.2-2250. Cease and desist orders.**

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

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

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

222 **§ 6.2-2251. Applicability of chapter.**

223 A. The provisions of this chapter shall not apply to and shall not place any additional requirements
224 or obligations upon (i) a financial institution or (ii) an obligor that offers a portion of salary, wages,
225 compensation, or other income directly to its employees or independent contractors prior to the
226 normally scheduled pay date.

227 B. The provisions of this chapter shall apply to providers offering or providing earned wage access
228 services over the Internet regardless of whether the provider maintains a physical presence in the
229 Commonwealth.

230 C. If any provision of an earned wage access services contract or agreement violates this chapter,
231 such provision shall be unenforceable against the consumer.

232 **§ 6.2-2252. Annual fees.**

233 A. To defray the costs of examination, supervision, and regulation, every licensee shall pay an
234 annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a
235 reasonable relationship to the business volume of licensees, the actual costs of their examinations, and
236 other factors relating to their supervision and regulation. All such fees shall be assessed on or before
237 September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer
238 on or before October 15 following each assessment.

239 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or
240 investigate the books and records of a licensee at a location outside the Commonwealth, the licensee
241 shall be liable for and shall pay to the Commission, within 30 days of the presentation of an itemized
242 statement, the actual travel and reasonable living expenses incurred on account of its examination,
243 supervision, and regulation or shall pay a reasonable per diem at a rate approved by the Commission.
244 However, nothing in this subsection shall require the Commission to examine a licensee at a location

outside the Commonwealth if a licensee provides requested books, records, and information to the Commission electronically.

§ 6.2-2253. 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.

§ 6.2-2254. Licensee requirements.

A. Any person required to be licensed under this chapter in connection with any provision of earned wage access services to a consumer shall do all of the following before providing proceeds to a consumer:

1. Inform the consumer of the terms and conditions of the earned wage access services and of any material changes to these terms and conditions;

2. Include a statement and clearly disclose that the Commission has jurisdiction over the earned wage access services performed by the licensee and provide the Commission's phone number and website for the submission of complaints about the licensee's earned wage access services to the Commission;

3. Disclose any non-mandatory payments that may be directly imposed by the licensee in connection with the provision of earned wage access services; and

4. Provide clear instructions for how the consumer may select a no-cost option for receiving proceeds.

B. The information and disclosures provided pursuant to subsection A shall be made in advance of providing a consumer with earned wage access services or proceeds and shall be written in a font and using language intended to be easily understood by a layperson. Such disclosures may be delivered in hard copy or electronically and may be included as part of the contract to provide earned wage access services.

C. A licensee shall provide proceeds on a non-recourse basis pursuant to subdivision A 1 of § 6.2-2255.

D. A licensee shall provide proceeds to a consumer via any means mutually agreed upon by the consumer and the licensee.

E. In any case in which a licensee will seek repayment of proceeds from the consumer, the licensee shall inform the consumer when the licensee will make its first attempt to seek repayment of the proceeds from the consumer.

F. A licensee that seeks to use preauthorized electronic transfers from a consumer's depository institution or other financial account shall comply with applicable National Automated Clearing House Association rules.

G. A licensee shall permit a consumer to cancel participation in an earned wage access service at any amount without incurring a charge for doing so.

§ 6.2-2255. Prohibited practices.

A. No person required to be licensed under this chapter shall:

1. Compel or attempt to compel repayment by a consumer of outstanding proceeds or non-mandatory payments owed by the that consumer to the provider through (i) a civil action against the consumer in a court of competent jurisdiction, (ii) use of a third party to pursue collection of outstanding proceeds or non-mandatory payments on the provider's behalf, or (iii) sale of outstanding amounts to a third-party collector or debt purchaser.

2. Impose a mandatory payment or fee on a consumer that directly relates to the provision of earned wage access services.

3. Seek repayment of proceeds in an amount that exceeds the amount of a consumer's earned but unpaid income.

4. Impose a late fee, interest, or any other penalty or charge for failure to repay outstanding proceeds.

5. Condition the amount of proceeds a consumer is eligible to request or the frequency with which a customer is eligible to request proceeds on whether the consumer makes any non-mandatory payment or on the size of any non-mandatory payment that the consumer may make to that licensee in connection with the provision of earned wage access services. However, this prohibition shall not be construed to prohibit a non-mandatory payment equal to a percentage of proceeds provided.

6. Charge a deferral fee or any other fee in connection with deferring the collection of any outstanding proceeds beyond the original scheduled repayment date.

7. Accept credit of any kind as payment from a consumer of outstanding proceeds or non-mandatory payments.

8. Solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the

306 total non-mandatory payments that may be collected.

307 9. Report a consumer's payment or failed repayment of outstanding proceeds to an individual credit
308 reporting agency or debt collector.

309 10. Require a credit score to determine a consumer's eligibility for earned wage access services.

310 11. Provide, sell, or otherwise disclose to a third party, including an obligor, any nonpublic personal
311 information collected from or about a consumer, except as necessary to provide earned wage access
312 services to that consumer, pursuant to a legal process, or in accordance with a consumer's written
313 consent.

314 B. Nothing in this section shall preclude a provider from compelling repayment of outstanding
315 amounts obtained through fraudulent means.

316 **§ 6.2-2256. Advertising.**

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

321 **§ 6.2-2257. Civil penalties.**

322 The Commission may impose a civil penalty not exceeding \$1,000 upon any person required to be
323 licensed by this chapter who it determines, in proceedings commenced in accordance with the
324 Commission's Rules, has violated any of the provisions of this chapter or regulations adopted
325 thereunder. For the purposes of this section, each separate violation shall be subject to the civil penalty
326 prescribed.

327 **§ 6.2-2258. Criminal penalties.**

328 Any person violating § 6.2-2240 is guilty of a Class 1 misdemeanor. For the purposes of this section,
329 each violation shall constitute a separate offense.

330 **§ 6.2-2259. Suspension or revocation of license.**

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

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

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

337 3. A course of conduct consisting of the failure, without reasonable cause, to perform written
338 agreements with consumers;

339 4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, deceit, false swearing,
340 or theft;

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

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

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

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

346 9. Failure to comply with any order of the Commission.

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

349 **§ 6.2-2260. Notice of proposed suspension or revocation.**

350 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set
351 forth in § 6.2-2259 until it has given the licensee 21 days' notice in writing of the reasons for the
352 proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice
353 shall be sent by certified mail to the principal place of business of the licensee or other address
354 authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action.
355 Within 14 days of mailing the notice, the person named therein may file with the clerk of the
356 Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend
357 or revoke the license except based upon findings made at such hearing. The hearing shall be conducted
358 in accordance with the Commission's Rules.

359 **§ 6.2-2261. Authority of Attorney General; referral by Commission to Attorney General.**

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

365 B. The Attorney General may also seek, and the circuit court may order or decree, damages and
366 such other relief allowed by law, including restitution to the extent available to consumers under
367 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 section, 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.

§ 6.2-2262. 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 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 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does

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

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

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

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

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

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

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

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

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

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

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et 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;
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. Violating any provision of § 6.2-312;
64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
67. Knowingly violating any provision of § 8.01-27.5;
68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good or service as required by § 59.1-207.46;
69. Selling or offering for sale to a person younger than 21 years of age any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;
70. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such substance that constitutes a single serving, and (d) the total percentage and milligrams of tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the substance originates. This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;
71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit; and

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

559 73. *Violating any provision of Chapter 22.2 (§ 6.2-2239 et seq.) of Title 6.2.*

560 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
561 lease solely by reason of the failure of such contract or lease to comply with any other law of the
562 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
563 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
564 such contract or lease.

565 **2. That any person required to be licensed by the State Corporation Commission to engage in**
566 **earned wage access services on the effective date of the first enactment of this act shall submit an**
567 **application for licensure no later than October 1, 2024.**

568 **3. That the provisions of the first enactment of this act shall become effective on January 1, 2025.**