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SENATE BILL NO. 1243

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-87.1, relating to abortion or other reproductive health care services; prohibitions on extradition for certain crimes; prohibited practices under Virginia Consumer Protection Act.

Patrons—Surovell, Barker, Bell, Boysko, Deeds, Ebbin, Edwards, Favola, Hashmi, Howell, Locke, Lucas, Marsden, Mason, McClellan, McPike, Petersen and Saslaw

Referred to Committee on Education and Health

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 a section numbered 19.2-87.1 as follows:

§ 19.2-87.1. Extradition of persons charged with certain criminal violations; prohibition.

A. As used in this section, "reproductive health care services" means the same as that term is defined in § 8.01-227.01.

B. Notwithstanding the provisions of this article, no demand for extradition of a person charged with a criminal violation of law of another state shall be recognized by the Governor if such alleged criminal violation involves the provision or receipt of or assistance with reproductive health care services unless the alleged criminal violation would also constitute a criminal offense under the laws of the Commonwealth; however, the Governor may request that the state demanding extradition attest to the factual and legal basis of such alleged violation of the law of another state.

The provisions of this section shall not apply when the person who is subject to such demand for extradition by another state was physically present in the demanding state at the time of the commission of the alleged offense and thereafter fled from such state.

§ 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;

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

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

66 13a. Failing to provide to a consumer, or failing to use or include in any written document or
67 material provided to or executed by a consumer, in connection with a consumer transaction any
68 statement, disclosure, notice, or other information however characterized when the supplier is required
69 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
70 information in connection with the consumer transaction;

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

73 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
74 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

76 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
77 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
78 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
79 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
80 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
81 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
82 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
83 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
84 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
85 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
86 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
87 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
88 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
89 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
90 46.2-100;

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

96 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
97 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
98 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
99 receiving overpayments. If the credit balance information is incorporated into statements of account
100 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

109 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
110 (§ 59.1-207.17 et seq.);

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

112 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
113 (§ 59.1-424 et seq.);

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

115 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
116 17.6 (§ 59.1-207.34 et seq.);

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

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

119 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

181 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
182 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
183 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

184 70. Selling or offering for sale any substance intended for human consumption, orally or by
185 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
186 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
187 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to
188 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of
189 such substance that constitutes a single serving, and (d) the total percentage and milligrams of
190 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol
191 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
192 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
193 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
194 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
195 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
196 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
197 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the
198 Code of Virginia;

199 71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined
200 in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
201 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit; ~~and~~

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

209 73. *Obtaining, disclosing, selling, or disseminating any personal reproductive or sexual health*
210 *information without the consent of the consumer, as defined in § 59.1-575. Such personal reproductive*
211 *or sexual health information shall include information relating to the past, present, or future*
212 *reproductive or sexual health of an individual, including:*

213 *a. Efforts to research or obtain reproductive or sexual information services or supplies, including*
214 *location information that may indicate an attempt to acquire or receive such services or supplies;*

215 *b. Reproductive or sexual health conditions, status, diseases, or diagnoses, including pregnancy,*
216 *menstruation, ovulation, ability to conceive a pregnancy, whether an individual is sexually active, and*
217 *whether such individual is engaging in unprotected sex;*

218 *c. Reproductive and sexual health-related surgeries or procedures, including termination of a*
219 *pregnancy;*

220 *d. Use or purchase of contraceptives, birth control, or other medication related to reproductive*
221 *health, including abortifacients;*

222 *e. Bodily functions, vital signs, measurements, or symptoms related to menstruation or pregnancy,*
223 *including basal temperature, cramps, bodily discharge, or hormone levels;*

224 *f. Any information about diagnoses or diagnostic testing, treatment, medications, or the use of any*
225 *product or service relating to the matters described in subdivisions a through e; and*

226 *g. Any information described in subdivisions a through f that is derived or extrapolated from*
227 *nonhealth-related information such as proxy, derivative, inferred, emergent, or algorithmic data.*

228 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
229 lease solely by reason of the failure of such contract or lease to comply with any other law of the
230 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
231 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
232 such contract or lease.