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SENATE BILL NO. 1249

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 59.1-200 and 59.1-466.5 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 38.2 of Title 59.1 a section numbered 59.1-466.8, relating to ticket resale; deceptive trade practices and required disclosures.

Patron—Bell

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-200 and 59.1-466.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 38.2 of Title 59.1 a section numbered 59.1-466.8 as follows:

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

- 1. Misrepresenting goods or services as those of another;
- 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;

4. Misrepresenting geographic origin in connection with goods or services;

5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;

6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";

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

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

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

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

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

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

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

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

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- 59 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
60 with a consumer transaction;
- 61 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
62 3.2-6516, or 3.2-6519 is a violation of this chapter;
- 63 16. Failing to disclose all conditions, charges, or fees relating to:
- 64 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
65 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
66 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
67 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
68 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
69 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
70 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
71 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
72 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
73 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
74 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
75 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
76 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
77 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
78 46.2-100;
- 79 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
80 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
81 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
82 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
83 the agreement;
- 84 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
85 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
86 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
87 receiving overpayments. If the credit balance information is incorporated into statements of account
88 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 89 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
90 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
91 agreement;
- 92 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 93 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
94 seq.);
- 95 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
96 seq.);
- 97 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
98 (§ 59.1-207.17 et seq.);
- 99 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 100 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
101 (§ 59.1-424 et seq.);
- 102 24. Violating any provision of § 54.1-1505;
- 103 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
104 17.6 (§ 59.1-207.34 et seq.);
- 105 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 106 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 107 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 108 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
109 seq.);
- 110 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
111 seq.);
- 112 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 113 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 114 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 115 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 116 35. Using the consumer's social security number as the consumer's account number with the supplier,
117 if the consumer has requested in writing that the supplier use an alternate number not associated with
118 the consumer's social security number;
- 119 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 120 37. Violating any provision of § 8.01-40.2;

- 121 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 122 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 123 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 124 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
- 125 (§ 59.1-525 et seq.);
- 126 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 127 43. Violating any provision of § 59.1-443.2;
- 128 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 129 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 130 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 131 47. Violating any provision of § 18.2-239;
- 132 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 133 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
- 134 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 135 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
- 136 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
- 137 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
- 138 children's products that are used, secondhand or "seconds";
- 139 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 140 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 141 52. Violating any provision of § 8.2-317.1;
- 142 53. Violating subsection A of § 9.1-149.1;
- 143 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
- 144 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
- 145 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
- 146 which defective drywall has been permanently installed or affixed;
- 147 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
- 148 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
- 149 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
- 150 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
- 151 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 152 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 153 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 154 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 155 59. Violating any provision of subsection E of § 32.1-126;
- 156 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
- 157 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 158 61. Violating any provision of § 2.2-2001.5;
- 159 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
- 160 63. Violating any provision of § 6.2-312;
- 161 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- 162 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 163 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 164 67. Knowingly violating any provision of § 8.01-27.5;
- 165 68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good
- 166 or service as required by § 59.1-207.46;
- 167 69. Selling or offering for sale to a person younger than 21 years of age any substance intended for
- 168 human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
- 169 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
- 170 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
- 171 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;
- 172 70. Selling or offering for sale any substance intended for human consumption, orally or by
- 173 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
- 174 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
- 175 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to
- 176 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of
- 177 such substance that constitutes a single serving, and (d) the total percentage and milligrams of
- 178 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol
- 179 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
- 180 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
- 181 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol

182 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
 183 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
 184 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
 185 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the
 186 Code of Virginia;

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

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

197 73. *Violating any provision of § 59.1-466.8.*

198 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
 199 lease solely by reason of the failure of such contract or lease to comply with any other law of the
 200 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
 201 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
 202 such contract or lease.

203 **§ 59.1-466.5. Definitions.**

204 As used in this chapter, "~~event~~" *unless the context requires a different meaning:*

205 "*Authorized person*" means a person that is responsible for directing, financing, managing,
 206 participating in, promoting, organizing, or sponsoring, or that is otherwise directly involved in, the
 207 staging or presentation of an event or the affiliate agent of any such person.

208 "*Event*" means any professional concert, *live entertainment event*, professional sporting or athletic
 209 event, or professional theatrical production, open to the public for which tickets are ordinarily sold.

210 "*Operator*" means a person that owns, operates, or controls a place of entertainment. "*Operator*"
 211 includes an agent or employee of the operator and the primary ticket provider.

212 "*Primary ticket provider*" means a provider of ticketing services, or an agent of such provider, that
 213 engages in the original sale of tickets for an event.

214 "*Purchaser*" means an individual who purchases a ticket to an event.

215 "*Resale*" or "*resell*" means the sale of a ticket other than the original sale of a ticket by a primary
 216 ticket provider.

217 "*Reseller*" means a person that sells or offers to sell tickets for resale or that operates a platform or
 218 exchange for advertising, listing, or selling resale tickets, including a person that operates a platform or
 219 exchange for original ticket sales that also engages in the purchase and resale of tickets either on
 220 behalf of an operator or on its own behalf.

221 "*Rights holder*" means any person or entity that has the initial ownership rights to sell a ticket to an
 222 event for which tickets for entry by the public are required and does not include a primary ticket
 223 provider unless the primary ticket provider is also the rights holder.

224 "*URL*" means the Uniform Resource Locator associated with an online website.

225 **§ 59.1-466.8. Ticket resale; deceptive trade practices and required disclosures.**

226 A. No person shall, in the course of his business or occupation, use or cause to be used any website
 227 that displays (i) a trademarked or copyrighted URL, title, designation, image, mark, or any other symbol
 228 of an operator or rights holder without the consent of such operator or rights holder or (ii) any
 229 combination of text, images, web designs, or website addresses that is similar to the website of an
 230 operator or rights holder.

231 B. A reseller that sells or offers to sell an event ticket that is neither owned by the reseller, under
 232 contract or any other agreement to be transferred to the reseller, nor in the reseller's possession at the
 233 time of sale shall clearly and conspicuously disclose to the purchaser prior to the resale of the ticket:

234 1. Whether the reseller has possession or constructive possession of the ticket at the time of the
 235 resale transaction;

236 2. Whether the reseller has been sanctioned to resell tickets to the event by the operator or an
 237 authorized person associated with the event;

238 3. Whether the reseller is the primary ticket provider for the event;

239 4. Whether the ticket has been made available to the public by the rights holder, including through a
 240 presale, fan club presale, or any other promotional presale event;

241 5. An approximate delivery date for the ticket purchased; and

242 6. The number of tickets that are guaranteed to be grouped together, including any designation by
 243 the venue of an assigned seating zone, section number, or seat number, or a disclosure that specific

244 seats cannot be guaranteed because the tickets are not owned by the reseller, in the possession of the
245 reseller, or under contract or any other type of agreement to be transferred to the reseller.
246 C. A reseller shall guarantee a full refund of an event ticket purchased for resale and any associated
247 fees to a purchaser within 10 days of the event for which the ticket was purchased if:
248 1. The reseller is unsuccessful in securing the ticket;
249 2. The event is canceled;
250 3. The ticket does not or would not grant the purchaser admission to the event;
251 4. The ticket is counterfeit;
252 5. The ticket fails to conform to its description as advertised to the purchaser by the reseller; or
253 6. The ticket is void due to the application of a term or condition of the original sale, including a
254 term or condition that restricts resale in a subscription or season ticket package agreement as a
255 condition of purchase.