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SENATE BILL NO. 1249

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 30, 2023)

(Patron Prior to Substitute—Senator Bell)

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.

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;

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,

60 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

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71 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise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

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

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

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

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

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

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

95 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
96 (§ 59.1-207.17 et seq.);

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

98 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
99 (§ 59.1-424 et seq.);

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

101 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
102 17.6 (§ 59.1-207.34 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

121 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

183 (ii) be construed to prohibit any conduct permitted under Article 4.2 of Chapter 34 of Title 54.1 of the
184 Code of Virginia;

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

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

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

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

201 **§ 59.1-466.5. Definitions.**

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

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

205 *"Internet ticketing platform"* means a marketplace or exchange that enables consumers to purchase
206 and sell tickets to events.

207 *"Operator"* means a person or subsidiary thereof that owns, operates, or controls a place of
208 entertainment.

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

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

212 *"Resale"* means the sale of a ticket other than the original sale of a ticket by a primary ticket
213 provider.

214 *"Reseller"* means a person that sells or offers to sell tickets for resale.

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

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

219 **§ 59.1-466.8. Ticket resale; deceptive trade practices prohibited.**

220 No Internet ticketing platform or reseller shall (i) use or display any trademarked or copyrighted
221 URL, title, designation, image, mark, or any other symbol of an operator, rights holder, or primary
222 ticket provider without the consent of such operator, rights holder, or primary ticket provider or (ii) use
223 or display any combination of text, images, website graphics, website display, or website addresses that
224 is substantially similar to the website of an operator in a manner that could reasonably be expected to
225 mislead a potential purchaser.