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HOUSE BILL NO. 1243

House Amendments in [] - February 9, 2024

A *BILL to amend and reenact §§ 59.1-199 and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 55.1 a chapter numbered 32, consisting of sections numbered 55.1-3200 through 55.1-3206, relating to consumer protections; creation of Unfair Real Estate Service Agreement Act.*

Patron Prior to Engrossment—Delegate Maldonado

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-199 and 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 55.1 a chapter numbered 32, consisting of sections numbered 55.1-3200 through 55.1-3206, as follows:

CHAPTER 32.**UNFAIR REAL ESTATE SERVICE AGREEMENT ACT.****§ 55.1-3200. Definitions.**

For the purposes of this chapter:

"Real estate service agreement" or "service agreement" means an agreement between a service provider and the owner of residential real property or a potential buyer of residential real property to provide services, current or future, in connection with the maintenance of or purchase or sale of residential real property. A "real estate service agreement" includes any memorandum, notice, agreement, or similar document that is used by a service provider to cause a service agreement to be recorded.

"Recording" means the act of adding any documents or data that affects the real property to state or local government records.

"Residential real property" means real property containing from one to four residential dwelling units.

"Service provider" means an individual or entity that provides services through a real estate service agreement. A "service provider" includes any person acting as an agent or designee of a service provider.

§ 55.1-3201. Exemptions.

This chapter shall not apply to:

1. A home warranty or similar product that covers the cost of maintenance of a major home system, such as plumbing, HVAC, or electrical wiring, for a specific period of time;

2. An insurance contract;

3. An option or right of refusal to purchase residential real property;

4. A declaration created in the formation of a common interest community as defined in § 54.1-2345 or any amendment thereto;

5. A maintenance or repair agreement entered into by a property owners' association in a common interest community;

6. A mortgage loan or commitment to make or receive a mortgage loan;

7. An agreement relating to the sale or rental of personal property;

8. Water, sewer, electrical, telephone, cable, or other regulated utility service providers;

9. A property management agreement by which the owner of the real property contracts with a party to provide management services for the maintenance, ownership, operation, or lease of a residential premises; or

10. A mechanic's lien, as established by § 43-1.

§ 55.1-3202. Prohibited terms.

A. No real estate service agreement that is effective and binding for more than one year from the effective date shall:

1. Purport to run with the land or bind future owners of interests in the residential real property identified in the service agreement;

2. Allow the service provider to assign or transfer the right to provide services under the service agreement without notice to and written agreement of all parties to the service agreement; or

3. Purport to create a lien, encumbrance, or other real property security interest on the residential real property identified in the service agreement.

B. Offering a real estate service agreement that violates subsection A to a consumer constitutes a

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59 *prohibited practice under the provisions of § 59.1-200 and shall be subject to the provisions of the*
60 *Virginia Consumer Protection Act (§ 59.1-196 et seq.). Nothing in this subsection shall be construed to*
61 *prevent an individual from pursuing any other remedy available by law.*

62 **§ 55.1-3203. Void and unenforceable.**

63 *A service agreement that violates subsection A of § 55.1-3202 shall be void and unenforceable. No*
64 *service provider has a right to a refund of the consideration paid to the owner, buyer, or tenant in*
65 *connection with a prohibited service agreement.*

66 **§ 55.1-3204. Recording prohibited.**

67 *A. No service provider shall submit a real estate service agreement that violates subsection A of*
68 *§ 55.1-3202 to the circuit court or a state or local agency for recording. Any such submission*
69 *constitutes a prohibited practice under the provisions of § 59.1-200 and shall be subject to the*
70 *provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).*

71 *B. A real estate service agreement that violates subsection A of § 55.1-3202, or a notice or*
72 *memorandum thereof, is void and unenforceable and shall not operate as a lien, encumbrance, or*
73 *security interest. No owner or buyer shall be required to record any document voiding a real estate*
74 *service agreement that is in violation of subsection A of § 55.1-3202, or notice or memorandum thereof,*
75 *recorded in violation of this section.*

76 *C. [Notwithstanding § 17.1-227, the circuit court of any county or city, or the clerk of any such*
77 *court, may deny a request to record a service agreement if it is determined that the service agreement*
78 *violates subsection A of § 55.1-3202.*

79 *D.] Notwithstanding subsection A, no recorded real estate service agreement that is in violation of*
80 *subsection A of § 55.1-3202 may provide actual or constructive notice of a lien arising from the service*
81 *agreement to any party interested in the residential real property identified in the service agreement.*

82 **§ 55.1-3205. Assignment prohibited.**

83 *Assignment or transfer of the right to provide services under a real estate service agreement*
84 *recorded prior to July 1, 2024, that would otherwise be in violation of subsection A of § 55.1-3202, is*
85 *prohibited without notice to and written agreement of all parties to the service agreement.*

86 **§ 55.1-3206. Remedies.**

87 *A. If a real estate service agreement in violation of subsection A of § 55.1-3202 is recorded, any*
88 *person with an interest in the residential real property that is subject to a lien arising from the service*
89 *agreement may bring an action against the service provider in the circuit court of the county where the*
90 *residential real property is located to request a determination that the service agreement is void and*
91 *unenforceable under this chapter.*

92 *B. If a real estate service agreement that violates subsection A of § 55.1-3202 is recorded in the*
93 *Commonwealth, any party with an interest in the residential real property identified in the service*
94 *agreement may recover damages, costs, and reasonable attorney fees that may be proved against the*
95 *service provider. No actual damages, costs, or reasonable attorney fees that are proved against the*
96 *service provider shall be offset by the consideration paid by the service provider to the owner, buyer, or*
97 *tenant in connection with the real estate service agreement.*

98 *C. Nothing in this chapter shall prevent an individual from pursuing any other remedy provided by*
99 *law.*

100 **§ 59.1-199. Exclusions.**

101 *Nothing in this chapter shall apply to:*

102 *1. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of the*
103 *Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official*
104 *of the Commonwealth or the United States.*

105 *2. Acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or*
106 *television station, or other advertising media such as outdoor advertising and advertising agencies, in the*
107 *publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such*
108 *person knew that the advertisement was of a character prohibited by § 59.1-200.*

109 *3. Those aspects of a consumer transaction that are regulated by the Federal Consumer Credit*
110 *Protection Act, 15 U.S.C. § 1601 et seq.*

111 *4. Banks, savings institutions, credit unions, small loan companies, public service corporations,*
112 *mortgage lenders as defined in § 6.2-1600, broker-dealers as defined in § 13.1-501, gas suppliers as*
113 *defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State*
114 *Corporation Commission or a comparable federal regulating body.*

115 *5. Any aspect of a consumer transaction that is subject to the Virginia Residential Landlord and*
116 *Tenant Act (§ 55.1-1200 et seq.) or Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, unless the act or*
117 *practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.*

118 *6. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, unless*
119 *the act or practice of the licensee constitutes a violation of law under the Unfair Real Estate Service*
120 *Agreement Act (§ 55.1-3200 et seq.).*

7. Residential home sales between natural persons involving the seller's private residence.

§ 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

182 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
183 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
184 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
185 § 46.2-100;

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

191 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
192 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
193 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
194 receiving overpayments. If the credit balance information is incorporated into statements of account
195 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

204 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
205 (§ 59.1-207.17 et seq.);

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

207 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
208 (§ 59.1-424 et seq.);

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

210 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
211 17.6 (§ 59.1-207.34 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

231 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
232 (§ 59.1-525 et seq.);

233 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);

234 43. Violating any provision of § 59.1-443.2;

235 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);

236 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

237 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

238 47. Violating any provision of § 18.2-239;

239 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

240 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
241 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
242 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
243 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, in accordance with § 59.1-207.46, (i) make available a conspicuous online option to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period to avoid an obligation to pay for the goods or services;

69. Selling or offering for sale any substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision, "synthetic derivative" means a chemical compound produced by man through a chemical transformation to turn a compound into a different compound by adding or subtracting molecules to or from the original compound. 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 Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

70. 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 Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

71. 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 Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

72. 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;

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

312 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not
313 include a label stating that the product is not intended for human consumption. This subdivision shall
314 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
315 scheduled in the Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct
316 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that
317 were manufactured prior to July 1, 2023, provided that the person provides documentation of the date of
318 manufacture if requested;

319 75. Violating any provision of § 59.1-466.8;

320 76. Violating subsection F of § 36-96.3:1;

321 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
322 (ii) any kratom product that does not include a label listing all ingredients and with the following
323 guidance: "This product may be harmful to your health, has not been evaluated by the FDA, and is not
324 intended to diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means
325 any part of the leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

326 78. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45, to
327 a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale of
328 any such good or provision of any such continuous service; *and*

329 79. *Violating any provision of the Unfair Real Estate Service Agreement Act (§ 55.1-3200 et seq.).*

330 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
331 lease solely by reason of the failure of such contract or lease to comply with any other law of the
332 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
333 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
334 such contract or lease.

335 **2. That, except for the provisions of § 55.1-3205 of the Code of Virginia, as created by this act, the**
336 **provisions of this act shall apply to all service agreements executed or renewed on or after July 1,**
337 **2024.**