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SENATE BILL NO. 164

Offered January 10, 2024

Prefiled January 7, 2024

A BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to Virginia Consumer Protection Act; prohibited practices; artificial intelligence disclosure.

Patron—Reeves

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted 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, 3.2-6516,

- 59 or 3.2-6519 is a violation of this chapter;
- 60 16. Failing to disclose all conditions, charges, or fees relating to:
- 61 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
- 62 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
- 63 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not
- 64 permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this
- 65 subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than
- 66 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of
- 67 defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of
- 68 merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be
- 69 delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to
- 70 sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor
- 71 does this subdivision apply to special order purchases where the purchaser has requested the supplier to order
- 72 merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's
- 73 catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor
- 74 vehicles, farm tractors, or motorcycles as defined in § 46.2-100;
- 75 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of
- 76 the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the
- 77 supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure
- 78 shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;
- 79 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5
- 80 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such
- 81 account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving
- 82 overpayments. If the credit balance information is incorporated into statements of account furnished
- 83 consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 84 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
- 85 connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;
- 86 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 87 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.);
- 88 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.);
- 89 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17
- 90 et seq.);
- 91 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 92 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et
- 93 seq.);
- 94 24. Violating any provision of § 54.1-1505;
- 95 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6
- 96 (§ 59.1-207.34 et seq.);
- 97 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 98 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 99 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 100 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.);
- 101 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
- 102 seq.);
- 103 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 104 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 105 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 106 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 107 35. Using the consumer's social security number as the consumer's account number with the supplier, if
- 108 the consumer has requested in writing that the supplier use an alternate number not associated with the
- 109 consumer's social security number;
- 110 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 111 37. Violating any provision of § 8.01-40.2;
- 112 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 113 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 114 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 115 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525
- 116 et seq.);
- 117 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 118 43. Violating any provision of § 59.1-443.2;
- 119 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 120 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

- 121 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 122 47. Violating any provision of § 18.2-239;
- 123 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 124 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
125 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
126 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
127 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
128 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
129 products that are used, secondhand or "seconds";
- 130 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 131 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 132 52. Violating any provision of § 8.2-317.1;
- 133 53. Violating subsection A of § 9.1-149.1;
- 134 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling
135 in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This
136 subdivision shall not apply to the sale or offering for sale of any building or structure in which defective
137 drywall has been permanently installed or affixed;
- 138 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a
139 transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to
140 repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of
141 whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et
142 seq.) of Title 54.1;
- 143 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 144 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 145 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 146 59. Violating any provision of subsection E of § 32.1-126;
- 147 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under
148 Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 149 61. Violating any provision of § 2.2-2001.5;
- 150 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
- 151 63. Violating any provision of § 6.2-312;
- 152 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- 153 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 154 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 155 67. Knowingly violating any provision of § 8.01-27.5;
- 156 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option to cancel
157 a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30 days, notify a
158 consumer of his option to cancel such free trial within 30 days of the end of the trial period to avoid an
159 obligation to pay for the goods or services;
- 160 69. Selling or offering for sale any substance intended for human consumption, orally or by inhalation,
161 that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision, "synthetic
162 derivative" means a chemical compound produced by man through a chemical transformation to turn a
163 compound into a different compound by adding or subtracting molecules to or from the original compound.
164 This subdivision shall not (i) apply to products that are approved for marketing by the U.S. Food and Drug
165 Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit
166 any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 167 70. Selling or offering for sale to a person younger than 21 years of age any substance intended for human
168 consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall not (i) apply
169 to products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the
170 Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter
171 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 172 71. Selling or offering for sale any substance intended for human consumption, orally or by inhalation,
173 that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant packaging, as
174 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
175 inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons younger than 21
176 years of age, (b) all ingredients contained in the substance, (c) the amount of such substance that constitutes a
177 single serving, and (d) the total percentage and milligrams of tetrahydrocannabinol included in the substance
178 and the number of milligrams of tetrahydrocannabinol that are contained in each serving; and (iii)
179 accompanied by a certificate of analysis, produced by an independent laboratory that is accredited pursuant to
180 standard ISO/IEC 17025 of the International Organization of Standardization by a third-party accrediting
181 body, that states the tetrahydrocannabinol concentration of the substance or the tetrahydrocannabinol

182 concentration of the batch from which the substance originates. This subdivision shall not (i) apply to
183 products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the
184 Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter
185 16 (§ 4.1-1600 et seq.) of Title 4.1;

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

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

195 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not include a
196 label stating that the product is not intended for human consumption. This subdivision shall not (i) apply to
197 products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the
198 Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct permitted under Chapter 16
199 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were manufactured prior to July
200 1, 2023, provided that the person provides documentation of the date of manufacture if requested;

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

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

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

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

211 79. *Failing to disclose the use of artificial intelligence technology in the creation of any item that includes*
212 *a videographic or still image intending to depict an actual person or an audio or audio-visual recording*
213 *intending to depict the voice of an actual person where such creator disseminates or sells such item.*

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