

26107555D

HOUSE BILL NO. 360
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on _____)
(Patron Prior to Substitute—Delegate Cole, J.G.)

A *BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to Virginia Consumer Protection Act; prohibited practices; kratom products.*

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, 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

HOUSE SUBSTITUTE

HB360HC2

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68 sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor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

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

77 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5
78 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such
79 account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving
80 overpayments. If the credit balance information is incorporated into statements of account furnished
81 consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

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

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

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

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

93 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6
94 (§ 59.1-207.34 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

113 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525
114 et seq.). For the purposes of this subdivision, "consumer transaction" has the same meaning as provided in
115 § 59.1-526;

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

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

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

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

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

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

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

184 products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the
 185 Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct permitted under Chapter
 186 16 (§ 4.1-1600 et seq.) of Title 4.1;

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

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

196 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not include a
 197 label stating that the product is not intended for human consumption. This subdivision shall not (i) apply to
 198 products that are approved for marketing by the U.S. Food and Drug Administration and scheduled in the
 199 Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct permitted under Chapter 16
 200 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were manufactured prior to July
 201 1, 2023, provided that the person provides documentation of the date of manufacture if requested;

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

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

204 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age ~~or~~; (ii) any
 205 kratom product that does not include a label listing all ingredients and with the following ~~guidance~~
 206 ~~disclosure~~: "~~This product may be harmful to your health, has not been evaluated by the FDA, and is not~~
 207 ~~intended to diagnose, treat, cure, or prevent any disease~~WARNING: Kratom may cause dependence and
 208 opioid-like withdrawal. Do not use while pregnant. Use may impair judgment. Not for persons younger than
 209 21 years of age."; (iii) any kratom product not stored in an area that is not directly accessible to consumers,
 210 including behind a retail counter or in a locked display case, except for kratom products required to be
 211 refrigerated which may be stored, in accordance with relevant Virginia Alcoholic and Beverage Control
 212 Authority regulations, in the same beverage cooler or refrigerator as wine and beer; (iv) any kratom product
 213 containing any synthesized material, semi-synthetic alkaloid, or synthetic kratom-like compound; (v) any
 214 kratom product containing 7-hydroxymitragynine in an alkaloid fraction exceeding one percent of total
 215 alkaloids in the container or providing more than one milligram of 7-hydroxymitragynine per serving; (vi)
 216 any kratom product adulterated with any dangerous, poisonous, or otherwise deleterious non-kratom
 217 ingredient, including any substance listed as a controlled substance under state or federal law; (vii) any
 218 kratom product that is combustible or intended for vaporization or injection; (viii) any kratom product that is
 219 manufactured, packaged, or marketed in a manner attractive to children; or (ix) any kratom extract product
 220 containing residual solvent levels exceeding applicable statutory or pharmacopeial limits. As used in this
 221 subdivision, "kratom" means any part of the leaf of the plant *Mitragyna speciosa* or any extract thereof;

222 78. Advertising of any ignition interlock system in Virginia by an ignition interlock vendor not approved
 223 by the Commission on the Virginia Alcohol Safety Action Program to operate in Virginia; targeted
 224 advertising of any ignition interlock system to a person before determination of guilt; and any advertising,
 225 whether before or after determination of guilt, without a conspicuous statement that such advertisement is not
 226 affiliated with any government agency. For purposes of this subdivision, "ignition interlock system" has the
 227 same meaning as ascribed to that term in § 18.2-270.1 and "targeted advertising" has the same meaning
 228 ascribed to that term in § 59.1-575 and includes direct mailings to an individual. This provision shall not
 229 apply to ignition interlock service vendor ads, pamphlets, or kiosk advertisements approved by the
 230 Commission on the Virginia Alcohol Safety Action Program and provided at a Commission-approved
 231 location;

232 79. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45, to a
 233 consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale of any
 234 such good or provision of any such continuous service;

235 80. Violating any provision of the Unfair Real Estate Service Agreement Act (§ 55.1-3200 et seq.);

236 81. Selling or offering for sale services as a professional mold remediator to be performed upon any
 237 residential dwelling without holding a mold remediation certification from a nationally or internationally
 238 recognized certifying body for mold remediation, and failing to comply with (i) the U.S. Environmental
 239 Protection Agency's publication on Mold Remediation in Schools and Commercial Buildings, as revised; (ii)
 240 the ANSI/IICRC S520 Standard for Professional Mold Remediation, as revised; or (iii) any other equivalent
 241 ANSI-accredited mold remediation standard, when conducting or offering to conduct mold remediation in the
 242 Commonwealth;

243 82. Willfully violating any provision of § 59.1-444.4;

244 83. Violating any provision of Chapter 23.2 (§ 59.1-293.10 et seq.);

245 84. Selling any food that is required by the FDA to have a nutrition label that does not meet the

246 requirements of 21 C.F.R. Part 101;
247 85. Obtaining, disclosing, selling, or disseminating any personally identifiable reproductive or sexual
248 health information without the consent of the consumer;
249 86. Violating any provision of Chapter 58 (§ 59.1-607 et seq.); and
250 87. (Effective July 1, 2026) Violating any provision of the Medical Debt Protection Act (§ 59.1-611 et
251 seq.).
252 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease
253 solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth
254 or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation
255 of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.