

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 55.1-1208, 59.1-199, and 59.1-200 of the Code of Virginia, relating to fees for electronic fund transfers; prohibited.

[H 1519]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1208, 59.1-199, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1208. Prohibited provisions in rental agreements; prohibited fees.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forgo rights or remedies under this chapter;

2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's attorney fees except as provided in this chapter;

5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or any associated costs;

6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation;

7. Agrees to the payment of a security deposit, insurance premiums for damage insurance, and insurance premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of two months' periodic rent; or

8. Agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall not be contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act; however, upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights and remedies as to that dispute in order to facilitate a resolution.

B. *No landlord shall charge the tenant any transaction or processing fee or similar surcharge for the use of an electronic fund transfer, as that term is defined in 12 C.F.R. § 1005.3, for the payment of a security deposit, rent, or any other amounts payable.*

C. Any provision prohibited by ~~subsection A~~ *this section* that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by him and reasonable attorney fees.

§ 59.1-199. Exclusions.

Nothing in this chapter shall apply to:

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

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

3. ~~Those~~ *Except as provided in subdivision A 79 of § 59.1-200, those* aspects of a consumer transaction that are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

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

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

6. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

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

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

§ 46.2-100;

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

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

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

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

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

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

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

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

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

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

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

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

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

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

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

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

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

37. Violating any provision of § 8.01-40.2;

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

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

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";

- 179 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 180 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 181 52. Violating any provision of § 8.2-317.1;
- 182 53. Violating subsection A of § 9.1-149.1;
- 183 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
184 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
185 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
186 which defective drywall has been permanently installed or affixed;
- 187 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
188 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
189 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
190 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
191 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 192 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 193 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 194 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 195 59. Violating any provision of subsection E of § 32.1-126;
- 196 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
197 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 198 61. Violating any provision of § 2.2-2001.5;
- 199 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
- 200 63. Violating any provision of § 6.2-312;
- 201 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
- 202 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 203 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 204 67. Knowingly violating any provision of § 8.01-27.5;
- 205 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option to
206 cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30
207 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial
208 period to avoid an obligation to pay for the goods or services;
- 209 69. Selling or offering for sale any substance intended for human consumption, orally or by
210 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
211 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
212 to turn a compound into a different compound by adding or subtracting molecules to or from the
213 original compound. This subdivision shall not (i) apply to products that are approved for marketing by
214 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
215 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 216 70. Selling or offering for sale to a person younger than 21 years of age any substance intended for
217 human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
218 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
219 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
220 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 221 71. Selling or offering for sale any substance intended for human consumption, orally or by
222 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
223 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
224 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to
225 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of
226 such substance that constitutes a single serving, and (d) the total percentage and milligrams of
227 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol
228 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
229 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
230 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
231 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
232 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
233 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
234 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 235 72. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined
236 in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
237 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;
- 238 73. Selling or offering for sale any substance intended for human consumption, orally or by
239 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a

container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor of a product intended for human consumption other than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or distribute such substance;

74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not include a label stating that the product is not intended for human consumption. 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.), (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were manufactured prior to July 1, 2023, provided that the person provides documentation of the date of manufacture if requested;

75. Violating any provision of § 59.1-466.8;

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

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

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

79. *Charging any transaction or processing fee or similar surcharge to a consumer for the use of an electronic fund transfer, as that term is defined in 12 C.F.R. § 1005.3, for payment for the purchase of a good or service. The provisions of this subdivision shall not apply (i) to the withdrawal of funds from an automated teller machine or (ii) in cases where the service is to expedite an electronic fund transfer.*

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