

HOUSE BILL NO. 1519

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute--Delegate Srinivasan)

A BILL 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.

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

26 8. Agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. §
27 3901 et seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall
28 not be contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act;
29 however, upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights
30 and remedies as to that dispute in order to facilitate a resolution.

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

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

37 **§ 59.1-199. Exclusions.**

38 Nothing in this chapter shall apply to:

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

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

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

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

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

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

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

57 **§ 59.1-200. Prohibited practices.**

58 A. The following fraudulent acts or practices committed by a supplier in connection with a
59 consumer transaction are hereby declared unlawful:

60 1. Misrepresenting goods or services as those of another;

61 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

62 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
63 services, with another;

64 4. Misrepresenting geographic origin in connection with goods or services;

65 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses,
66 or benefits;

67 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or
68 model;

69 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
70 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"
71 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
72 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
73 imperfects or "not first class";

74 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
75 at the price or upon the terms advertised.

76 In any action brought under this subdivision, the refusal by any person, or any employee, agent,
77 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
78 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall

79 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods
80 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount
81 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer
82 did in fact have or reasonably expected to have at least such quantity or amount for sale;

83 9. Making false or misleading statements of fact concerning the reasons for, existence of, or
84 amounts of price reductions;

85 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or
86 parts installed;

87 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
88 or bill for merchandise or services previously ordered;

89 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
90 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's
91 business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the
92 goods or services advertised or offered for sale;

93 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
94 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
95 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or
96 under federal statutes or regulations;

97 13a. Failing to provide to a consumer, or failing to use or include in any written document or
98 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
99 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
100 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
101 with the consumer transaction;

102 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in
103 connection with a consumer transaction;

104 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
105 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

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

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

126 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
127 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
128 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
129 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
130 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
131 required;

- 132** 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
133 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
134 agreement;
- 135** 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 136** 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1
137 et seq.);
- 138** 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1
139 et seq.);
- 140** 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
141 207.17 et seq.);
- 142** 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 143** 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
144 424 et seq.);
- 145** 24. Violating any provision of § 54.1-1505;
- 146** 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
147 Chapter 17.6 (§ 59.1-207.34 et seq.);
- 148** 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 149** 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 150** 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 151** 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
152 seq.);
- 153** 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
154 et seq.);
- 155** 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 156** 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 157** 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 158** 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

- 159 35. Using the consumer's social security number as the consumer's account number with the
- 160 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
- 161 with the consumer's social security number;
- 162 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 163 37. Violating any provision of § 8.01-40.2;
- 164 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 165 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 166 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 167 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
- 168 59.1-525 et seq.);
- 169 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 170 43. Violating any provision of § 59.1-443.2;
- 171 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 172 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 173 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 174 47. Violating any provision of § 18.2-239;
- 175 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 176 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
- 177 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 178 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
- 179 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
- 180 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
- 181 products that are used, secondhand or "seconds";
- 182 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 183 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 184 52. Violating any provision of § 8.2-317.1;
- 185 53. Violating subsection A of § 9.1-149.1;

186 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
187 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
188 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
189 which defective drywall has been permanently installed or affixed;

190 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
191 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-
192 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
193 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
194 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

195 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

196 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

197 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

198 59. Violating any provision of subsection E of § 32.1-126;

199 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession
200 licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

201 61. Violating any provision of § 2.2-2001.5;

202 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;

203 63. Violating any provision of § 6.2-312;

204 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;

205 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;

206 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);

207 67. Knowingly violating any provision of § 8.01-27.5;

208 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option
209 to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30
210 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period
211 to avoid an obligation to pay for the goods or services;

212 69. Selling or offering for sale any substance intended for human consumption, orally or by
213 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
214 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
215 to turn a compound into a different compound by adding or subtracting molecules to or from the original
216 compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S.
217 Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be
218 construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

219 70. Selling or offering for sale to a person younger than 21 years of age any substance intended
220 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
221 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
222 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
223 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

224 71. Selling or offering for sale any substance intended for human consumption, orally or by
225 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
226 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
227 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
228 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
229 substance that constitutes a single serving, and (d) the total percentage and milligrams of
230 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
231 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
232 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
233 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
234 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
235 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
236 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
237 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

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

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

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

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

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

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

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

