2022 SESSION

VIRGINIA ACTS OF ASSEMBLY -- CHAPTER

*An Act to amend and reenact §§ **19.2-368.5:2** and **59.1-200** of the Code of Virginia, relating to stay of debt collection activities by health care providers; prohibited practice under Virginia Consumer Protection Act.*

[S 297]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ **19.2-368.5:2** and **59.1-200** of the Code of Virginia are amended and reenacted as follows:

§ **19.2-368.5:2**. Effect of filing a claim; stay of debt collection activities by health care providers.

A. Whenever a person files a claim under this chapter, all health care providers, as defined in § **8.01-581.1** that have been given notice of a pending claim, shall refrain from all debt collection activities relating to medical treatment received by the person in connection with such claim until an award is made on the claim or until a claim is determined to be noncompensable pursuant to § **19.2-368.11:1**. The statute of limitations for collection of such debt shall be tolled during the period in which the applicable health care provider is required to refrain from debt collection activities hereunder.

B. For the purpose of this section, "debt collection activities" means repeatedly calling or writing to the claimant and threatening either to turn the matter over to a debt collection agency or to an attorney for collection, enforcement or filing of other process. The term shall not include routine billing or inquiries about the status of the claim.

*C. Notwithstanding the provisions of § **59.1-199**, any violation of the provisions of this section shall constitute a prohibited practice in accordance with § **59.1-200** and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ **59.1-196** et seq.).*

D. If a health care provider has referred such a debt to any third party for billing or collection prior to receiving notice of a claim under this chapter, the health care provider shall notify that third party of the requirements of this section. The health care provider must notify the third party within three business days using one of the normal methods by which it communicates with that third party. If the health care provider fails to notify the debt collector of the pending claim, after the health care provider has been notified in one of the aforementioned manners, then the debt collector shall not be liable under this section.

§ **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 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";

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; ~~and~~

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

*67. Violating any provision of § **19.2-368.5:2**.*

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.