

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 20.1, consisting of sections numbered 6.2-2026 through 6.2-2050, relating to debt settlement services providers; civil and criminal penalties.

[H 1553]

Approved

Be it enacted by the General Assembly of Virginia: 1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 20.1, consisting of sections numbered 6.2-2026 through 6.2-2050, as follows:

CHAPTER 20.1.

DEBT SETTLEMENT SERVICES PROVIDERS.

§ 6.2-2026. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Consumer" means an individual residing in the Commonwealth who owes money to one or more creditors, for personal, family, or household purposes, including an individual who owes money jointly with one or more other individuals.

"Credit counselor" means an employee or agent of a licensee who engages in debt settlement services on a consumer's behalf.

"Creditor" includes persons that extend credit to, or persons that service loans made to, consumers.

"Creditor" or "credit-granting organization" does not include (i) doctors, lawyers, or other professionals who receive payment for their services in installments or (ii) persons whose only participation in a credit transaction is to honor a credit card.

"Debt collector" means a person defined as a debt collector under 15 U.S.C. § 1692a of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

"Debt settlement services" means any action or negotiation initiated or taken on behalf of any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of all or a portion of the credit extended by the creditor to the consumer or a reduction of payments, charges, or fees payable by the consumer. For purposes of this chapter, with respect to student loan forgiveness or student loan payment reduction programs established under federal or state law and widely available to similarly situated consumers at no cost, the facilitation of enrollment in or qualification for such programs does not constitute an action or negotiation.

"Duplicate original" means an exact copy with signatures created by the same impression as the original, an exact copy bearing an original signature, or, in the case of an electronic transaction, an electronic version with electronic signatures.

"Electronic signature" means an electronic signature as defined in § 59.1-480.

"Licensee" means a person licensed under this chapter.

"Principal" means any person that, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a person.

§ 6.2-2027. License requirement; exceptions.

A. No person shall engage in the business of providing or offering to provide debt settlement services to any consumer, whether or not the person has an office, facility, agent, or other physical presence in the Commonwealth, unless such person obtains from the Commission a license issued pursuant to this chapter. The provisions of this chapter shall not apply to any bank, savings institution, or credit union or any person licensed to practice law in the Commonwealth.

B. This chapter shall be construed by the Commission to promote sound personal financial advice and management.

C. A person licensed under Chapter 20 (§ 6.2-2000 et seq.) is not required to be licensed under this chapter if, it offers to provide or provides debt settlement services solely in connection with offering to provide or providing debt management plans.

D. A person licensed under this chapter shall not receive money from consumers for transmission to consumers' creditors or engage in the business of providing or offering to provide debt management plans to consumers unless such person is also licensed under Chapter 20 (§ 6.2-2000 et seq.).

§ 6.2-2028. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the Commissioner.

57 B. The application shall include:

58 1. The name and address of the applicant and (i) if the applicant is a partnership, firm, or
59 association, the name and address of each partner or member; (ii) if the applicant is a corporation or
60 limited liability company, the name and address of each director, member, registered agent, and
61 principal; or (iii) if the applicant is a business trust, the name and address of each trustee and
62 beneficiary;

63 2. The name and address of each manager and officer;

64 3. The addresses of the locations of the business to be licensed;

65 4. Financial statements for the applicant;

66 5. A current copy of the applicant's standard debt settlement services agreement;

67 6. Such other information concerning the financial responsibility, background, experience, and
68 activities of the applicant and the persons referred to in this section as the Commissioner may require;

69 7. Any other pertinent information as the Commissioner may require; and

70 8. Payment of an application fee of \$500.

71 C. The application fee shall not be refundable in any event. The fee shall not be abated by
72 surrender, suspension, or revocation of the license.

73 **§ 6.2-2029. Bond required.**

74 The application for a license shall be accompanied by a bond filed with the Commissioner with
75 corporate surety authorized to execute the bond in the Commonwealth, in the principal amount as
76 determined by the Commission. The amount of the bond shall be not less than \$25,000 nor more than
77 \$350,000. The form of the bond shall be approved by the Commission. The bond shall be continuously
78 maintained thereafter in full force, and the Commission may require the principal amount to be adjusted
79 as it deems necessary. The bond shall be conditioned upon the licensee performing all written
80 agreements with consumers and conducting the licensed business in conformity with this chapter and all
81 applicable law. Any person who may be damaged by noncompliance of the licensee with any condition
82 of the bond may proceed on the bond against the principal or surety thereon, or both, to recover
83 damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

84 **§ 6.2-2030. Investigation of applications.**

85 The Commissioner may make such investigations as he deems necessary to determine if the applicant
86 has complied with all applicable provisions of law and regulations adopted thereunder.

87 **§ 6.2-2031. Qualifications.**

88 A. Upon the filing and investigation of an application for a license, and compliance by the applicant
89 with the provisions of §§ 6.2-2028 and 6.2-2029, the Commission shall issue and deliver to the applicant
90 the license to engage in business under this chapter at the locations specified in the application if it
91 finds that:

92 1. The financial responsibility, character, reputation, experience, and general fitness of the applicant
93 and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the
94 business will be operated efficiently and fairly, in the public interest, and in accordance with law;

95 2. The applicant has made acceptable provision for the avoidance of conflicts of interest;

96 3. The applicant's credit counselors are certified through a bona fide third-party certification
97 provider unaffiliated with the applicant that authenticates the competence of counselors providing
98 consumer assistance;

99 4. No more than one-third of the board of directors or managing members are employees, officers,
100 members, principals, trustees, directors, agents, or other representatives of organizations that grant
101 credit to consumers;

102 5. The applicant has fidelity bond coverage in such principal amount as may be determined by the
103 Commission; and

104 6. The applicant (i) is not the subject of any current material administrative or regulatory
105 proceedings by any governmental authority and (ii) has not received a material adverse determination in
106 any past administrative or regulatory proceedings by any governmental authority.

107 B. For purposes of subdivision A 6, the Commission shall have sole discretion to determine the
108 materiality of any proceedings or determinations.

109 C. If the Commission fails to make such findings, no license shall be issued and the Commissioner
110 shall notify the applicant of the denial and the reasons for such denial.

111 D. A license shall not be issued to a collection agency, or to any creditor or association of creditors,
112 or to any credit-granting organization or association of such organizations.

113 **§ 6.2-2032. Licenses; places of business; changes.**

114 A. Each license shall state the address or addresses at which the business is to be conducted and
115 shall state fully the legal name of the licensee, as well as any fictitious name by which the licensee is
116 operating in the Commonwealth. Each license shall be posted prominently in each place of business of
117 the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No

118 licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth
119 on the license issued by the Commission.

120 B. No licensee shall open an additional office or relocate any place of business without prior
121 approval of the Commission. Applications for such approval shall be made in writing on a form
122 provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable
123 application fee. The application shall be approved unless the Commission finds that the applicant has
124 not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance
125 with law. The application shall be deemed approved if notice to the contrary has not been mailed by the
126 Commission to the applicant within 30 days of the date the application is received by the Commission,
127 but this period may be extended for good cause. After approval, the applicant shall give written notice
128 to the Commissioner within 20 days of the commencement of business at the additional location or
129 relocated place of business.

130 C. Every licensee shall within 20 days notify the Commissioner, in writing, of the closing of any
131 business location and of the name, address, and position of each new senior officer, member, partner,
132 or director and provide such other information with respect to any such change as the Commissioner
133 may reasonably require.

134 D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The
135 surrender, revocation, or suspension of a license shall not affect any preexisting legal right or
136 obligation of such licensee.

137 **§ 6.2-2033. Acquisition of control; application.**

138 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or
139 more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person,
140 licensed to conduct business under this chapter unless such person first:

141 1. Files an application with the Commission in such form as the Commissioner may prescribe from
142 time to time;

143 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
144 the financial responsibility, background, experience, and activities of the applicant, its directors, senior
145 officers, trustees, beneficiaries, principals, and members, and any proposed new directors, senior
146 officers, principals, or members of the licensee; and

147 3. Pays such application fee as the Commission may prescribe.

148 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
149 acquire the interest in the licensee if it finds that the applicant and its directors, senior officers,
150 members, trustees, beneficiaries, and principals, and any proposed new persons having any such status
151 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief
152 that the business will be operated efficiently and fairly, in the public interest, and in accordance with
153 law. The Commission shall grant or deny the application within 60 days from the date a completed
154 application accompanied by the required fee is filed unless the period is extended by the Commissioner
155 reciting the reasons for the extension. If the application is denied, the Commission shall notify the
156 applicant of the denial and the reasons for the denial.

157 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
158 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed
159 by this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, including an
160 acquisition by merger or consolidation, by or with a person affiliated through common ownership with
161 the licensee; or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,
162 survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is
163 exempt from filing an application by this subsection shall send written notice to the Commissioner of
164 such acquisition within 30 days of its closing.

165 **§ 6.2-2034. Retention of books, accounts, and records; responding to Bureau.**

166 A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the
167 Commission may reasonably require in order to determine whether the licensee is complying with the
168 provisions of this chapter and regulations adopted thereunder. Such books, accounts, and records shall
169 be maintained apart and separate from any other business in which the licensee is involved. Such
170 records relating to debt settlement services agreements shall be retained for at least three years after
171 the debt settlement services agreements are terminated. To safeguard the privacy of consumers, records
172 containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a
173 secure manner. Licensees may arrange for the shredding, incineration, or other disposal of the records
174 from a business record destruction vendor.

175 B. When the Bureau requests a written response, books, records, documentation, or other information
176 from a licensee in connection with the Bureau's investigation, enforcement, or examination of
177 compliance with applicable laws, the licensee shall deliver a written response, as well as any requested
178 books, records, documentation, or information within the time period specified in the Bureau's request.

179 If no time period is specified, a written response, as well as any requested books, records,
 180 documentation, or information, shall be delivered by the licensee to the Bureau not later than 30 days
 181 from the date of such request. In determining the specified time period for responding to the Bureau and
 182 when considering a request for an extension of time to respond, the Bureau shall take into consideration
 183 the volume and complexity of the requested written response, books, records, documentation, or
 184 information and such other factors as the Bureau determines to be relevant under the circumstances.

185 **§ 6.2-2035. Annual report.**

186 Each licensee under this chapter shall annually, on or before March 25, file a written report with
 187 the Commissioner containing such information as the Commissioner may require concerning the
 188 licensee's business and operations during the preceding calendar year as to each licensed place of
 189 business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

190 **§ 6.2-2036. Other reporting requirements.**

191 A. Within 15 days following the occurrence of any of the following events, a licensee shall file a
 192 written report with the Commission describing such event and its expected impact on the business of the
 193 licensee:

194 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

195 2. The institution of administrative or regulatory proceedings against the licensee by any
 196 governmental authority;

197 3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees,
 198 beneficiaries, or principals, if known;

199 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees,
 200 beneficiaries, or principals, if known;

201 5. The institution of an action against the licensee under the Virginia Consumer Protection Act
 202 (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or

203 6. Such other event as the Commission may prescribe by regulation.

204 B. Within 30 days of judgment against the licensee in a civil action relating to the debt settlement
 205 services agreement of a consumer, a licensee shall file a written report with the Commission describing
 206 such event and its expected impact on the business of the licensee.

207 C. Within 10 days of receipt of any qualified audit, a licensee shall notify the Commission and
 208 describe what steps are being taken to address concerns raised in the audit.

209 **§ 6.2-2037. Investigations; examinations.**

210 The Commission may, by its designated officers and employees, as often as it deems necessary,
 211 investigate and examine the affairs, business, premises, and records of any person licensed or required
 212 to be licensed under this chapter insofar as they pertain to any business for which a license is required
 213 by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In
 214 the course of such investigations and examinations, the owners, members, officers, directors, partners,
 215 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand
 216 of the person making such investigation or examination, afford full access to all premises, books,
 217 records, and information that the person making such investigation or examination deems necessary.
 218 For the purposes of this section, the person making such investigation or examination shall have
 219 authority to administer oaths, examine under oath all the aforementioned persons, and compel the
 220 production of papers and objects of all kinds.

221 **§ 6.2-2038. Annual fees.**

222 A. To defray the costs of the examination, supervision, and regulation of licensees, every licensee
 223 under this chapter shall pay an annual fee calculated in accordance with a schedule set by the
 224 Commission. The schedule shall bear a reasonable relationship to the total number of agreements to
 225 provide debt settlement services maintained by licensees, to the actual costs of their examinations, and
 226 to other factors relating to their supervision and regulation. All such fees shall be assessed on or before
 227 June 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or
 228 before July 1 following each assessment.

229 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or
 230 investigate the books and records of a licensee under this chapter at a location outside the
 231 Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the
 232 presentation of an itemized statement the actual travel and reasonable living expenses incurred on
 233 account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate
 234 approved by the Commission.

235 **§ 6.2-2039. Regulations.**

236 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this
 237 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content
 238 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's
 239 Rules.

240 **§ 6.2-2040. Licensees providing debt settlement services; prohibited and required business methods.**
 241 *Each licensee engaged in the business of providing or offering to provide debt settlement services to*
 242 *any consumer shall comply with the following requirements:*

243 1. *Each debt settlement services agreement shall be evidenced by a written agreement, which shall*
 244 *be maintained in either a hard copy, including a faxed copy, or electronic version and which shall be*
 245 *signed by the consumer and a person authorized by the licensee to sign such agreements and dated the*
 246 *same day the debt settlement services agreement is executed by the consumer. The agreement may be*
 247 *signed by the parties either originally or by electronic signature. The agreement shall set forth, at a*
 248 *minimum, (i) the name and address of both the consumer and the licensee; (ii) a full description of all*
 249 *services to be performed for the consumer by the licensee; (iii) a clear explanation, highlighted in bold*
 250 *type, of the costs to the consumer; (iv) a statement that the debt settlement services agreement may be*
 251 *terminated for any reason by the consumer and that the consumer has no obligation to continue the*
 252 *arrangement unless satisfied with the services provided; (v) an explanation of the method of dispute*
 253 *resolution under the agreement; (vi) an explanation of the obligations of the consumer and the licensee*
 254 *that are subject to the agreement; and (vii) notification of privacy policies in compliance with state and*
 255 *federal laws and regulations.*

256 2. *A licensee shall give to the consumer a duplicate original of the agreement executed by the*
 257 *consumer and licensee upon full execution.*

258 3. *A licensee shall not request or receive payment or other compensation for any debt settlement*
 259 *services until and unless:*

260 a. *The licensee has negotiated, settled, reduced, or otherwise altered the terms of at least one debt*
 261 *pursuant to a debt settlement services agreement it executed with a consumer; and*

262 b. *The consumer has made at least one payment to a creditor following the licensee's negotiation,*
 263 *settlement, reduction, or other alteration of at least one debt owned by the consumer to that creditor.*

264 4. *Prior to the execution of a debt settlement services agreement with a consumer, a licensee shall*
 265 *disclose to the consumer in writing, and retain a copy of, the following:*

266 a. *The amount of time necessary to achieve the represented results and, to the extent that the*
 267 *services may include a settlement offer to any of the customer's creditors or debt collectors, the time by*
 268 *which the licensee will make a bona fide settlement offer to each of them;*

269 b. *To the extent that the services may include a settlement offer to any of the customer's creditors or*
 270 *debt collectors, the amount of money or the percentage of each outstanding debt that the customer must*
 271 *accumulate before the licensee will make a bona fide settlement offer to each of them; and*

272 c. *To the extent that any aspect of the debt settlement services relies upon or results in the*
 273 *consumer's failure to make timely payments to creditors or debt collectors, that the use of the debt*
 274 *settlement services will likely adversely affect the consumer's creditworthiness, may result in the*
 275 *consumer being subject to collections or sued by creditors or debt collectors, and may increase the*
 276 *amount of money the consumer owes due to the accrual of fees and interest.*

277 5. *A licensee shall not require a consumer to execute a power of attorney, as defined in § 64.2-1600,*
 278 *as a condition of receiving debt settlement services.*

279 6. *A licensee shall not require a consumer to open an account, as defined in § 6.2-604, as a*
 280 *condition of receiving debt settlement services. A licensee may request that a consumer open an account*
 281 *in connection with its provision of debt settlement services, provided that:*

282 a. *The consumer's funds are held in an account at an FDIC-insured financial institution;*

283 b. *The consumer owns the funds held in the account and is paid accrued interest on the account, if*
 284 *any;*

285 c. *The entity administering the account is not owned or controlled by, or in any way affiliated with,*
 286 *the debt settlement services provider;*

287 d. *The entity administering the account does not give or accept any money or other compensation in*
 288 *exchange for referrals of business involving the debt settlement services provider; and*

289 e. *The consumer may withdraw from the debt settlement services at any time without penalty and*
 290 *must receive all funds in the account, other than the fee earned by the debt settlement services provider*
 291 *for completed services, if any, subject to the limitations imposed in § 6.2-2041.*

292 7. *A licensee shall not receive a gift or bonus, premium, reward, or other compensation, directly or*
 293 *indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension*
 294 *of credit or other service from a creditor, except for educational or counseling services required in*
 295 *connection with a government-sponsored program.*

296 **§ 6.2-2041. Fee.**

297 A. *For providing debt settlement services, a licensee may charge or receive a fee totaling either (i)*
 298 *no more than 20 percent of the principal amount of the debt enrolled by a consumer into the licensee's*
 299 *service or (ii) no more than 30 percent of the difference between the amount owed by a consumer at the*
 300 *time the licensee settles the debt and the amount to be paid by the consumer to satisfy the debt.*

301 *B. If more than one debt is the subject of a debt settlement services agreement, the licensee may only*
 302 *charge or collect that proportion of the total fee allowable under clause (i) of subsection A that equals*
 303 *the proportion of the aggregate debt the individual settled debt represents.*

304 *C. A licensee shall not charge or receive any other fee or compensation from a consumer for*
 305 *providing debt settlement services other than the fee provided for in this section.*

306 **§ 6.2-2042. Advertising.**

307 *No person licensed or required to be licensed under this chapter shall use or cause to be published*
 308 *any advertisement that (i) contains any false, misleading, or deceptive statement or representation or (ii)*
 309 *identifies the person by any name other than the name set forth on the license issued by the*
 310 *Commission.*

311 **§ 6.2-2043. Suspension or revocation of license.**

312 *A. The Commission may suspend or revoke any license issued under this chapter upon any of the*
 313 *following grounds:*

314 *1. Any ground for denial of a license under this chapter;*

315 *2. Any violation of the provisions of this chapter or regulations adopted by the Commission*
 316 *thereunder, or a violation of any other law or regulation applicable to the conduct of the licensee's*
 317 *business;*

318 *3. A course of conduct consisting of the failure to perform written agreements with consumers;*

319 *4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;*

320 *5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;*

321 *6. Entry of a federal or state administrative order against such licensee for violation of any law or*
 322 *any regulation applicable to the conduct of his business;*

323 *7. Refusal to permit an investigation or examination by the Commission;*

324 *8. Failure to pay any fee or assessment imposed by this chapter;*

325 *9. Failure to comply with any order of the Commission; or*

326 *10. Insolvency of the licensee.*

327 *B. For the purposes of this section, acts of any officer, director, member, trustee, beneficiary,*
 328 *partner, or principal shall be deemed acts of the licensee.*

329 **§ 6.2-2044. Cease and desist orders.**

330 *A. If the Commission determines that any person has violated any provision of this chapter or any*
 331 *regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person*
 332 *to cease and desist from such practices and to comply with the provisions of this chapter. The notice*
 333 *shall be sent by certified mail to the principal place of business of such person or other address*
 334 *authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of*
 335 *mailing the notice, the person or persons named therein may file with the clerk of the Commission a*
 336 *written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and*
 337 *desist order except based upon findings made at such hearing. Such hearing shall be conducted in*
 338 *accordance with the Commission's Rules. The Commission may enforce compliance with any order*
 339 *issued under this section by imposition and collection of such fines and penalties as may be prescribed*
 340 *by law.*

341 *B. When, in the opinion of the Commission, immediate action is required to protect the public*
 342 *interest, a cease and desist order may be issued without prior hearing. In such cases, the Commission*
 343 *shall make a hearing available to the person on an expedited basis.*

344 *C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any*
 345 *person, regardless of whether such person is present in the Commonwealth, who violates any provision*
 346 *of this chapter or any regulation adopted hereunder.*

347 **§ 6.2-2045. Notice of proposed suspension or revocation.**

348 *The Commission shall not revoke or suspend the license of any person licensed under this chapter*
 349 *upon any of the grounds set forth in § 6.2-2043 until it has given the licensee 21 days' notice in writing*
 350 *of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and*
 351 *be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or*
 352 *other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the*
 353 *contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file*
 354 *with the clerk of the Commission a written request for a hearing. If a hearing is requested, the*
 355 *Commission shall not suspend or revoke the license except on the basis of findings made at such*
 356 *hearing. The hearing shall be conducted in accordance with the Commission's Rules.*

357 **§ 6.2-2046. Civil penalties.**

358 *In addition to the authority conferred under §§ 6.2-2043 and 6.2-2044, the Commission may impose*
 359 *a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in*
 360 *accordance with the Commission's Rules, has violated any of the provisions of this chapter. For the*
 361 *purposes of this section, each separate violation shall be subject to the civil penalty herein prescribed.*

362 *In the case of a violation of § 6.2-2027, each debt settlement services agreement entered into shall*
 363 *constitute a separate violation.*

364 **§ 6.2-2047. Criminal penalty.**

365 *Any person violating subsection A of § 6.2-2027 is guilty of a Class 1 misdemeanor. For purposes of*
 366 *this section, each violation shall constitute a separate offense.*

367 **§ 6.2-2048. Private right of action.**

368 *Any person who suffers loss by reason of a violation of any provision of this chapter may bring a*
 369 *civil action to enforce such provision. Any person who is successful in such action shall recover*
 370 *reasonable attorney fees, expert witness fees, and court costs incurred by bringing such action.*

371 **§ 6.2-2049. Authority of Attorney General; referral by Commission to Attorney General.**

372 *A. If the Commission determines that a person is in violation, or has violated, any provision of this*
 373 *chapter, the Commission may refer the information to the Attorney General and may request that the*
 374 *Attorney General investigate such violations. With or without such referral, the Attorney General is*
 375 *hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may*
 376 *enjoin such violations notwithstanding the existence of an adequate remedy at law.*

377 *B. The Attorney General may also seek, and the circuit court may order or decree, damages and*
 378 *such other relief allowed by law, including restitution to the extent available to consumers under*
 379 *applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of*
 380 *the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.*

381 *C. In any action brought by the Attorney General by virtue of the authority granted in this provision,*
 382 *the Attorney General shall be entitled to seek reasonable attorney fees and costs.*

383 *D. If the Attorney General files an action to enjoin violations of this chapter, the Attorney General*
 384 *shall provide notice of such action to the Commission.*

385 **§ 6.2-2050. Violation of the Virginia Consumer Protection Act.**

386 *Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance*
 387 *with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia*
 388 *Consumer Protection Act (§ 59.1-196 et seq.).*

389 **§ 59.1-200. Prohibited practices.**

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

392 *1. Misrepresenting goods or services as those of another;*

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

394 *3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or*
 395 *services, with another;*

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

397 *5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or*
 398 *benefits;*

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

400 *7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,*
 401 *blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first*
 402 *class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods*
 403 *are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"*
 404 *irregulars, imperfects or "not first class";*

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

407 *In any action brought under this subdivision, the refusal by any person, or any employee, agent, or*
 408 *servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms*
 409 *advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph*
 410 *shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such*
 411 *goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or*
 412 *amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement*
 413 *or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;*

414 *9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts*
 415 *of price reductions;*

416 *10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts*
 417 *installed;*

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

420 *12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"*
 421 *"wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the*
 422 *supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in*

423 manufacturing the goods or services advertised or offered for sale;

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

428 13a. Failing to provide to a consumer, or failing to use or include in any written document or
429 material provided to or executed by a consumer, in connection with a consumer transaction any
430 statement, disclosure, notice, or other information however characterized when the supplier is required
431 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
432 information in connection with the consumer transaction;

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

435 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain
436 animals by pet dealers which is described in such sections, is a violation of this chapter;

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

438 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
439 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
440 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
441 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
442 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
443 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
444 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
445 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
446 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
447 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
448 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
449 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
450 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
451 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
452 § 46.2-100;

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

458 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
459 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
460 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
461 receiving overpayments. If the credit balance information is incorporated into statements of account
462 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

471 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
472 (§ 59.1-207.17 et seq.);

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

474 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
475 (§ 59.1-424 et seq.);

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

477 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
478 17.6 (§ 59.1-207.34 et seq.);

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

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

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

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

- 484 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
485 seq.);
- 486 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 487 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 488 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 489 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 490 35. Using the consumer's social security number as the consumer's account number with the supplier,
491 if the consumer has requested in writing that the supplier use an alternate number not associated with
492 the consumer's social security number;
- 493 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 494 37. Violating any provision of § 8.01-40.2;
- 495 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 496 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 497 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 498 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
499 (§ 59.1-525 et seq.);
- 500 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 501 43. Violating any provision of § 59.1-443.2;
- 502 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 503 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 504 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 505 47. Violating any provision of § 18.2-239;
- 506 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 507 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
508 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
509 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
510 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
511 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
512 children's products that are used, secondhand or "seconds";
- 513 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 514 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 515 52. Violating any provision of § 8.2-317.1;
- 516 53. Violating subsection A of § 9.1-149.1;
- 517 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
518 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
519 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
520 which defective drywall has been permanently installed or affixed;
- 521 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
522 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
523 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
524 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
525 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 526 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 527 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 528 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 529 59. Violating any provision of subsection E of § 32.1-126; and
- 530 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
531 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; and
- 532 61. *Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2.*
- 533 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
534 lease solely by reason of the failure of such contract or lease to comply with any other law of the
535 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
536 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
537 such contract or lease.
- 538 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2021.**
- 539 **3. That the State Corporation Commission shall establish a procedure, to be in effect by March 1,**
540 **2021, for any person to apply, prior to July 1, 2021, for a license to be issued pursuant to Chapter**
541 **20.1 (§ 6.2-2026 et seq.) of Title 6.2 of the Code of Virginia, as created by this act, when such**
542 **chapter becomes effective. In addition, upon the effective date of the first enactment of this act,**
543 **July 1, 2021, the State Corporation Commission shall monitor settlements by all licensees,**
544 **specifically looking at the number of settlements made pursuant to this act, the fees charged**

545 pursuant to § 6.2-2041 of the Code of Virginia, as created by this act, and the principal amount to
546 be paid by the consumer to satisfy the debt, and shall report to the Chairs of the House
547 Committee on Labor and Commerce and the Senate Committee on Commerce and Labor by
548 December 1 of each year 2023, 2024, 2025.

549 4. That the provisions of this act may result in a net increase in periods of imprisonment or
550 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
551 necessary appropriation cannot be determined for periods of imprisonment in state adult
552 correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia
553 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to
554 § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be
555 determined for periods of commitment to the custody of the Department of Juvenile Justice.