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HOUSE BILL NO. 2643

Offered January 12, 2001

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 44, consisting of sections numbered 59.1-510 through 59.1-517, relating to the Virginia Telephone Solicitation Act; penalties.

Patrons—Black and Marshall; Senator: Mims

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 44, consisting of sections numbered 59.1-510 through 59.1-517, as follows:

§ 59.1-200. Prohibited practices.

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

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods which are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or which are "seconds," irregulars, imperfections, 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, imperfections 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 which 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 which are void or unenforceable under any otherwise applicable laws of this Commonwealth, or under federal statutes or regulations;

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

15. Violating any provision of §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, relating to the sale of certain animals by pet dealers which is described in such sections, 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

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

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

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

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

87 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
88 title;

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

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

93 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
94 (§ 59.1-207.17 et seq.) of this title;

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

96 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
97 (§ 59.1-424 et seq.) of this title;

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

99 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
100 17.6 (§ 59.1-207.34 et seq.) of this title;

101 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

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

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

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

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

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

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

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

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

115 35. Violating any provision of the Virginia Telephone Solicitation Act (§ 59.1-510 et seq.).

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

CHAPTER 44.
VIRGINIA TELEPHONE SOLICITATION ACT.

§ 59.1-510. Definitions.

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

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Consumer goods or services" means any real property or any tangible personal property or service, including a loan or extension of credit, that is normally used for personal, family, or household purposes.

"Office" means the Office of Consumer Affairs, Division of Consumer Protection.

"Registered residential subscriber" means a residential subscriber in Virginia who is included on the list maintained by the Office pursuant to § 59.1-512.

"Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person.

"Telephone solicitation" means any voice communication over a telephone line, whether made from a line operator or by other means, made by any person transacting any business in the Commonwealth to any residential subscriber in Virginia for the purpose of (i) soliciting or encouraging the purchase or rental of any consumer goods or services or an extension of credit for such purposes; or (ii) obtaining information that will or may be used for the purpose of soliciting or encouraging the purchase or rental of, or investment in, any consumer goods or services or an extension of credit for such purposes.

"Transacting any business in the Commonwealth" refers to the conduct of telephone solicitations from a location in Virginia or from any other state to a residential subscriber located within Virginia.

"Unwanted telephone solicitation" means any telephone solicitation made to a registered residential subscriber, excluding any telephone solicitation made to a registered residential subscriber (i) with such subscriber's prior express invitation or permission, (ii) in connection with an existing debt or contract of such subscriber, the payment or performance of which has not been completed at the time of such telephone solicitation, or (iii) with whom the telephone solicitor, or an affiliate or subsidiary thereof, has a prior or existing business or personal relationship.

"Telephone solicitor" means any entity operated for profit who makes, or causes to be made, a telephone solicitation.

§ 59.1-511. Identification of telephone solicitor required.

Any telephone solicitor who makes a telephone solicitation to the telephone number of any residential subscriber shall identify himself by his true first and last names and the person or entity on whose behalf he is making the telephone solicitation immediately upon making contact by telephone with a residential subscriber who is the object of the telephone solicitation.

§ 59.1-512. Database of telephone subscribers not wishing to receive unsolicited calls; fees.

A. The Office shall establish and maintain a database consisting of a list of telephone numbers of residential subscribers who have notified the Office that they object to receiving telephone solicitations and have paid the required registration fee. The Office shall commence registering residential subscribers into the database no later than January 1, 2002.

B. Any residential subscriber who objects to receiving telephone solicitations, upon providing the Office with written notice and a fifteen-dollar biennial listing fee, shall be placed on the database to be established and maintained by the Office pursuant to subsection A. Listing on the database indicates that such person does not wish to receive any telephone solicitations. A residential subscriber may renew his listing on the database every two years upon providing the Office with a written renewal notice and a fifteen-dollar fee.

C. The Office shall prepare, for each calendar quarter commencing with the first calendar quarter of 2001, a listing of telephone numbers of the registered residential subscribers. The listing shall be available for distribution after the Office has registered 1,000 residential subscribers. The Office shall provide to any person or entity requesting such a copy of the listing of the telephone numbers of registered residential subscribers, in a paper or electronic format, for the current calendar quarter and the following three calendar quarters, at no cost to the requestor.

D. Any fees paid pursuant to this chapter shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department of Agriculture and Consumer Services for use in the administration of this chapter.

E. If, pursuant to 47 U.S.C. Section 227(c)(3), the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, the Office shall include the part of such single national database that relates to Virginia in the database established under this section.

F. Information contained in the database established under this section shall be used only for the

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182 purpose of compliance with this section or in a proceeding or action under § 59.1-515. Except as
183 provided in this section, information contained in the database shall not otherwise be subject to public
184 inspection or disclosure.

185 § 59.1-513. Making unwanted telephone solicitations prohibited.

186 No telephone solicitor shall make or cause to be made any unwanted telephonic solicitations to the
187 telephone number of any registered residential subscriber whose telephone number is included on the
188 list prepared pursuant to subsection C of § 59.1-512 for such calendar quarter; however, the telephone
189 solicitor may continue to rely upon the most recently prepared quarterly list for thirty days after the end
190 of the preceding calendar quarter.

191 § 59.1-514. Notification to residential subscribers.

192 A. Every provider of local telephone service shall notify its residential subscribers of the provisions
193 of this chapter by displaying such information in the consumer information pages of its local telephone
194 directories.

195 B. The State Corporation Commission is authorized to promulgate regulations for the implementation
196 and enforcement of this section.

197 § 59.1-515. Investigations; enforcement; penalties.

198 A. The Commissioner may:

199 1. Make necessary public or private investigations within or without this Commonwealth to determine
200 any violations of the provisions of this chapter or any rule, regulation, or order issued pursuant to this
201 chapter; and

202 2. Require or permit any person to file a statement in writing, under oath or otherwise as the
203 Commissioner determines, as to all facts and circumstances concerning the matter under investigation.

204 B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may
205 administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena
206 witnesses, compel their attendance, take evidence, and require the production of any matter that is
207 relevant to the investigation, including the existence, description, nature, custody, condition, and location
208 of any books, documents, or other tangible things and the identity and location of persons having
209 knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of
210 material evidence.

211 C. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are
212 subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to
213 ascertain material evidence, shall take place within the City of Richmond.

214 D. If any person fails to obey a subpoena or to answer questions propounded by the Commissioner
215 and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit
216 Court of the City of Richmond for an order compelling compliance.

217 E. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to
218 the provisions of § 59.1-200 and shall be subject to the enforcement provisions of the Virginia
219 Consumer Protection Act (§ 59.1-196 et seq.).

220 § 59.1-516. Regulations.

221 Except as provided in § 59.1-514, the Board is authorized to prescribe reasonable regulations,
222 including any necessary fees, in order to implement the provisions of this chapter. These regulations
223 shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 9-6.14:1 et
224 seq.).

225 § 59.1-517. Jurisdiction over nonresident defendants.

226 A court of this Commonwealth may exercise personal jurisdiction over any nonresident transacting
227 any business in the Commonwealth as to an action or proceeding authorized by this chapter in
228 accordance with the provisions of § 8.01-328.1.