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HOUSE BILL NO. 2255

Offered January 8, 2003

Prefiled January 8, 2003

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 46, consisting of sections numbered 59.1-525 through 59.1-530, relating to the Personal Goods Sales Act; penalties.

Patron—Watts

Referred to Committee on Commerce and Labor

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 59.1 a chapter numbered 46, consisting of sections numbered 59.1-525 through 59.1-530, 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, 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 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:

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59 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
60 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
61 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
62 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
63 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
64 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card
65 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
66 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
67 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This
68 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,
69 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
70 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
71 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
72 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
73 § 46.2-100;

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

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

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

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

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

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

94 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
95 (§ 59.1-207.17 et seq.) of this title;

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

97 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
98 (§ 59.1-424 et seq.) of this title;

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

100 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
101 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

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

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

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

116 35. *Violating any provision of the Personal Goods Sales Act (§ 59.1-525 et seq.).*

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

such contract or lease.

CHAPTER 45.
PERSONAL GOODS SALES ACT.

§ 59.1-525. Definitions.

"Personal goods" means tangible personal property used primarily for personal, family or household purposes. Personal goods do not include agricultural products.

"Personal goods sale" means a sale of personal goods that have an aggregate estimated value of \$1,000 or more, that is conducted by a person who is (i) not the owner of the personal goods and (ii) compensated by the owner of the personal goods for conducting the sale of the personal goods by a flat fee, commission or portion of the proceeds from such sale. As used herein, the sale of personal goods includes the donation by the seller on behalf of the owner or other disposition of the personal goods.

"Personal goods seller" means a person who is regularly engaged in the business of conducting personal goods sales.

§ 59.1-526. Personal goods sales agreement; inventory of goods.

A. A personal goods seller shall not conduct a personal goods sale unless the personal goods seller and the owner of the personal goods have entered into a written agreement that establishes the terms and conditions of under which the sale will be conducted, including but not limited to the means by which the personal goods seller is to be compensated for conducting the sale. The agreement shall also address the disposition of unsold personal goods, including the donee of goods that are to be donated to a charity.

B. Prior to the commencement of the sale, the personal goods seller and the owner shall execute a separate written instrument that contains (i) an inventory of the personal goods to be sold or donated, which inventory may utilize groupings of individual items as agreed to by the owner, and (ii) the personal goods seller's estimate of the approximate value of the goods listed on the inventory.

§ 59.1-527. Completion of sale.

Within ten days after a personal goods sale has been completed, the personal goods seller shall:

1. Tender to the owner of such goods any payments received by the personal goods seller for the personal goods, less any amount of commission or compensation to the personal goods seller as determined by the agreement between the personal goods seller and the owner; and

2. Present to the buyer a copy of the inventory executed pursuant to subsection B of § 59.1-526, which copy shall indicate whether each item or group of items of personal goods on the inventory was sold or donated; the proceeds received from the sale of each item or group of items sold; the aggregate amount of the proceeds received from the sale of all goods; the name and address of each donee that received a donated item or group of items and the aggregate value of all items donated to the donee; and the amount of commission or compensation to which the personal goods seller is entitled.

§ 59.1-528. Waiver by executor or administrator.

The provisions of this chapter shall not be applicable to a personal goods sale conducted as part of the disposition of the assets of a deceased person if the executor or administrator of the decedent's estate has waived its provisions with respect to the sale of personal goods of such estate.

§ 59.1-529. Scope of chapter.

A. Nothing in this chapter shall be applicable to sales or other activities conducted by any person who is not regularly engaged in the business of conducting personal goods sales.

B. Notwithstanding anything contained herein to the contrary, the provisions of this chapter shall not apply to sales conducted by a person who sells personal goods (i) that are owned by such person or a member of his immediate family, (ii) on behalf of others on an occasional basis, or (ii) as an accommodation for the owner of the personal goods and without compensation for his activities.

C. Activities excluded from the scope of this chapter include, but are not limited to, sales of personal goods:

1. Conducted as fundraisers for the benefit of organizations exempt from income tax pursuant to § 501(c)(3) of the Internal Revenue Code or from the Virginia retail sales and use tax;

2. Generally referred to as neighborhood, garage or yard sales; and

3. Conducted or sponsored by a public or private school or school district.

§ 59.1-530. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title.