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HOUSE BILL NO. 2810

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on January 30, 2003)

(Patron Prior to Substitute—Delegate Athey)

A BILL to amend and reenact §§ 32.1-222, 32.1-224, 32.1-226, and 59.1-200 of the Code of Virginia, relating to the regulation of bedding and upholstered furniture.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-222, 32.1-224, 32.1-226, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-222. Return of improperly tagged items; payment of costs of return; failure to pay costs.

~~The~~ Upon a complaint made to the Commissioner as provided in § 32.1-224, the Commissioner may order the return of any item of bedding or upholstered furniture or any filling material made, remade, renovated, reupholstered, prepared, processed, tagged or not tagged in violation of the provisions of this article to the manufacturer or importer thereof. The manufacturer or importer shall be liable to the person returning such item for the costs of crating, shipping and the invoice price to the purchaser. Failure of a manufacturer or importer to pay such costs to the person returning such item shall be grounds for revocation or suspension of a license issued pursuant to this article.

§ 32.1-224. Administration and enforcement by Commissioner; refusal, suspension or revocation of license or permit.

The Commissioner is charged with the administration and enforcement of this article, *except as otherwise provided in this article. Only upon a complaint made to the Commissioner relating to a violation of this article may the Commissioner inspect the premises of a holder of a license or permit issued by the Commissioner.* The Commissioner may refuse to issue, may suspend or may revoke the license or permit of any person (i) who violates any provision of this article, any regulation of the Board pursuant to this article or any order of the Board or Commissioner or (ii) who is not a resident of ~~this~~ the Commonwealth and fails or refuses to enter an appearance in any circuit court in ~~this~~ the Commonwealth to answer a charge or charges of violation of any provision of this article, regulation of the Board or order of the Board or Commissioner within ~~twenty-five~~ 25 days after service upon him of a notice by certified mail.

§ 32.1-226. Violation a misdemeanor; application of the Virginia Consumer Protection Act.

A. Any person violating any provision of this article or any regulation of the Board adopted pursuant to this article shall be guilty of a Class 2 misdemeanor.

B. *Additionally, any violation of the provisions of this article or regulations of the Board 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.).*

§ 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~~ that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or ~~which~~ that 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

60 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
61 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

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

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

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

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

72 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
73 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
74 or penalties ~~which~~that are void or unenforceable under any otherwise applicable laws of ~~this~~the
75 Commonwealth, or under federal statutes or regulations;

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

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

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

81 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
82 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
83 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
84 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
85 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
86 less than ~~twenty~~20 days after date of purchase, a cash refund or credit to the purchaser's credit card
87 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
88 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
89 and any refund may be delayed for a period of ~~ten~~10 banking days to allow for the check to clear. This
90 subdivision does not apply to sale merchandise ~~which~~that is obviously distressed, out of date, post
91 season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases
92 where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color,
93 or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in
94 connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as
95 defined in § 46.2-100;

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

101 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
102 of ~~five dollars~~\$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
103 overpayment on such account. Suppliers shall give consumers written notice of such credit balances
104 within ~~sixty~~60 days of receiving overpayments. If the credit balance information is incorporated into
105 statements of account furnished consumers by suppliers within such ~~sixty~~60-day period, no separate or
106 additional notice is required;

107 17. If a supplier enters into a written agreement with a consumer to resolve a dispute ~~which~~that
108 arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such
109 an agreement;

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

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

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

116 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
117 (§ 59.1-207.17 et seq.) of this title;

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

119 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
120 (§ 59.1-424 et seq.) of this title;

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

- 122 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
123 17.6 (§ 59.1-207.34 et seq.) of this title;
- 124 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;
- 125 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
126 title;
- 127 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
128 this title;
- 129 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
130 seq.) of this title;
- 131 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
132 seq.) of this title;
- 133 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
134 title;
- 135 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 136 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 137 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 138 35. Using the consumer's social security number as the consumer's account number with the supplier,
139 if the consumer has requested in writing that the supplier use an alternate number not associated with
140 the consumer's social security number; ~~and~~
- 141 36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1; *and*
- 142 37. *Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1.*