

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 790

An Act to amend and reenact §§ 54.1-3905, 57-60, and 59.1-200 of the Code of Virginia, to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 10.2, consisting of sections numbered 6.1-363.2 through 6.1-363.26, and to repeal Chapter 10.1 (§ 6.1-363.1) of Title 6.1, relating to nonprofit credit counseling; nonprofit debt counseling; penalty.

[H 471]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3905, 57-60, and 59.1-200 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 10.2, consisting of sections numbered 6.1-363.2 through 6.1-363.26, as follows:

CHAPTER 10.2.

NONPROFIT CREDIT COUNSELING ACT.

§ 6.1-363.2. Definitions.

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

"Bureau" means the Bureau of Financial Institutions.

"Commissioner" means the Commissioner of Financial Institutions.

"Consumer" means an individual 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 Counseling Agency" or "Agency" means any person that provides or offers to provide to consumers credit counseling services, including debt management plans.

"Credit counselor" means an employee or agent of an Agency who designs a debt management plan, provides consumer budget and basic financial planning services, or engages in debt settlement or debt pooling on a consumer's behalf.

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

"Debt management plan" or "DMP" means a program whereby an Agency agrees to engage in debt settlement or debt pooling and distribution services on behalf of a consumer (or multiple consumers if a joint account) with the consumer's creditors, and under which the consumer gives money or control of his funds to such Agency for distribution to the consumer's creditors.

"Debt settlement" means any action or negotiation initiated or taken by or on behalf of any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of a portion of the credit extended by the creditor to the consumer or reduction of payments, charges, or fees payable by the consumer.

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

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

"Licensee" means a person licensed under this chapter.

"Maintenance fee" means a fee paid by a consumer to an Agency for continuing provision of DMP services.

"Nonprofit organization" means a person exempt from taxation under 26 U.S.C. § 501 (c) (3) of the Internal Revenue Code.

"Person" means any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or group of individuals however organized.

"Principal" means any person who, 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.

"Set-up fee" means a fee paid by a consumer to an Agency for the establishment of the DMP.

§ 6.1-363.3. License requirement; exceptions.

A. No person shall engage in the business of providing or offering to provide a DMP to any consumer residing in the Commonwealth, whether or not the person has a location in the Commonwealth, unless such person obtains from the Commission a license issued pursuant to this chapter. However, the provisions of this chapter shall not apply to a 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, and protect against financial loss residents of the Commonwealth who place money or control of their funds or credit into the custody of an Agency for transmission to such residents' creditors, regardless of whether the Agency has any office, facility, agent, or other physical presence in

the Commonwealth.

C. An Agency operating under a license previously issued by the Commission under former Chapter 10.1 (§ 6.1-363.1) of this title may continue to operate in the Commonwealth pursuant to such license; provided, however, that such license shall automatically terminate on the earliest of the following: (i) the date the Commission issues a license to the Agency under this chapter; (ii) the date the Commission denies an application for a license under this chapter, unless such Agency reapplies within 30 days thereafter, provided that only one such reapplication shall be permitted; or (iii) June 30, 2005. An Agency operating under a license previously issued by the Commission under former Chapter 10.1 of this title shall reapply to the Commission for a license under this chapter no later than October 1, 2004.

D. A person licensed under this chapter is not required to also be licensed as a money transmitter under Chapter 12 (§ 6.1-370 et seq.) of this title, provided such person's money transmission activities are limited to providing debt pooling and distribution services in accordance with this chapter.

E. Any person who violates this section is guilty of a Class 1 misdemeanor. Each violation of this section shall constitute a separate offense.

§ 6.1-363.4. 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.

B. The application shall include:

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

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

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

4. Financial statements for the applicant as of the most recent fiscal year;

5. Evidence that the applicant is a nonprofit organization;

6. A current copy of the Agency's standard DMP agreement;

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

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

9. Payment of an application fee of \$500.

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

§ 6.1-363.5. Bond required.

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

§ 6.1-363.6. Investigation of applications.

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

§ 6.1-363.7. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ 6.1-363.4 and 6.1-363.5, the Commission shall issue and deliver to the applicant the license to engage in business under this chapter at the locations specified in the application if it finds:

1. The applicant is a nonprofit organization;

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

3. That the applicant has made acceptable provision for the avoidance of conflicts of interest;

4. The applicant maintains a separate trust account with an FDIC-insured depository institution for the handling of customers' funds;

5. The applicant's credit counselors are certified through a bona fide third-party certification provider unaffiliated with the applicant that authenticates the competence of counselors providing

consumer assistance;

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

7. The applicant is accredited by the International Standards Organization or the Council on Accreditation or any other organization approved by the Commission; and

8. The applicant has fidelity bond coverage in such principal amount as may be determined by the Commission.

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

C. A license shall not be issued to a collection agency, or to any creditor or association of creditors, or to any credit-granting organization or association of such organizations. For purposes of this chapter the term "creditor or credit-granting organization" does not include doctors, lawyers, or other professionals who receive payment for their services in installments, nor does the term include persons whose only participation in a credit transaction is to honor a credit card.

§ 6.1-363.8. Licenses; places of business; changes.

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious name by which the licensee is operating in the Commonwealth. Each license shall be posted prominently in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth on the license issued by the Commission.

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

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

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

§ 6.1-363.9. Acquisition of control; application.

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

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

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

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

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

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,

survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

§ 6.1-363.10. Retention of books, accounts, and records; responding to Bureau.

A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and rules and regulations adopted in furtherance thereof. Such books, accounts and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to DMPs shall be retained for at least three years after the DMPs are terminated. To safeguard the privacy of consumers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.

B. When the Bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the Bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the Bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the Bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the Bureau and when considering a request for an extension of time to respond, the Bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Bureau determines to be relevant under the circumstances.

§ 6.1-363.11. Annual report.

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

§ 6.1-363.12. Other reporting requirements.

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

1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;
3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;
4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;
5. The institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or
6. Such other event as the Commission may prescribe by regulation.

B. Within 30 days of judgment against the licensee in a civil action relating to the DMP of a consumer who is a resident of the Commonwealth, a licensee shall file a written report with the Commission describing such event and its expected impact upon the business of the licensee. The licensee shall advise the Commission within 30 days of any settlement or the result of any judgment entered.

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

D. Failure to file a report or other information or documents required under this section shall subject the licensee to a fine of \$25 for each day the report is overdue.

§ 6.1-363.13. Investigations; examinations.

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

§ 6.1-363.14. Annual fees.

A. In order to defray the costs of their examination, supervision, and regulation, every licensee under

this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the total assets held in trust by the licensee for Virginia consumers, the total number of DMPs maintained by the licensee in Virginia, total revenues of the licensee from Virginia consumers, the actual cost of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before June 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before July 1 following each assessment.

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

§ 6.1-363.15. Rules and regulations.

The Commission shall promulgate such rules and regulations as it deems appropriate to effect the purposes of this chapter. Before promulgating any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Rules of Practice and Procedure of the Commission.

§ 6.1-363.16. Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each DMP shall be evidenced by an agreement, which shall be maintained in either a hard copy, including a faxed copy, or electronic version and which shall be signed by the consumer and a person authorized by the licensee to sign such agreements and dated the same day the DMP is executed by the consumer. The agreement may be signed by the parties either originally or by electronic signature. The agreement shall set forth, at a minimum: (i) the name and address of both the consumer and the licensee; (ii) a full description of all services to be performed for the consumer by the licensee; (iii) a clear explanation, highlighted in bold type, of the costs to the consumer; (iv) a statement that the DMP agreement can be terminated for any reason by the consumer and that the consumer has no obligation to continue the arrangement unless satisfied with the services provided; (v) a statement that in the event of termination of the agreement, the consumer shall be entitled to a refund of all funds that have not been disbursed to creditors and either (a) all fees paid if terminated within five days of the date the DMP agreement is executed by the consumer or (b) all fees paid less the set-up fee if terminated more than five but less than 31 days after execution by the consumer; (vi) an explanation of the method of dispute resolution under the agreement; (vii) an explanation of the obligations of the consumer and the licensee that are subject to the agreement; (viii) notification of privacy policies in compliance with state and federal laws and regulations; and (ix) a statement that the provision of DMP or debt pooling and distribution services may have a derogatory effect upon the consumer's credit report.

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

3. At the time of execution of the DMP, a licensee shall have a good faith belief that the creditors listed in the DMP will participate in the DMP. A licensee shall advise the consumer of any changes by the creditor in accepting payments under the DMP promptly upon learning of such changes.

4. A licensee shall provide a consumer enrolled in a DMP with periodic statements, no less often than quarterly, accounting for the funds received from the consumer for payments to the consumer's creditors and disbursements made to each such creditor on the consumer's behalf since the last report.

5. A licensee shall not purchase any debt or obligation of a consumer.

6. A licensee shall not lend money or provide credit to any consumer.

7. A licensee shall not obtain a mortgage or any other security interest in the property of a consumer.

8. A licensee shall not operate as a debt collector.

9. A licensee shall not structure an agreement for the consumer that, at the conclusion of the DMP, would knowingly result in negative amortization of any of the consumer's obligations to creditors.

10. A licensee shall not give legal advice to a consumer or perform legal services on behalf of a consumer.

11. A licensee shall have an established practice of disbursing to creditors funds received from a consumer under a DMP within eight business days of receipt. Consumers shall be provided in writing with the disbursement practices of the licensee and the circumstances that would establish an exception to the eight-day practice.

12. A licensee shall maintain appropriate safeguards against conflicts of interest in the conduct of its DMP activities. A licensee shall not employ any person who is employed at the same time by a creditor or collection agency.

13. A licensee shall keep its operating funds separate from the funds entrusted to the licensee by consumers for disbursement to creditors. Consumers' funds shall be kept in a trust account, held in the name of the licensee by an insured depository institution.

14. A licensee shall upon request give a consumer signed, dated receipts for funds received from a consumer under a DMP, or provide a means whereby the consumer may view the status of his account electronically.

15. A licensee shall not obtain any agreement from a consumer (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter.

§ 6.1-363.17. Fees and contributions.

For establishing and maintaining a DMP, a licensee may charge or receive fees or contributions in an amount not to exceed the following: (i) \$75 for a Set-Up Fee; and (ii) a monthly Maintenance Fee of 15 percent of the total amount disbursed, but in no event more than \$60 per month.

§ 6.1-363.18. Additional charges.

In addition to the fees and contributions permitted under § 6.1-364.16, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received, or recovered with respect to a DMP except, with the consumer's advance permission after disclosure of such amounts, reimbursement for (i) the actual cost of obtaining for such consumer one credit report and related credit report information from a credit reporting agency; and (ii) the actual bank charges for automatic account debiting for debt repayment.

§ 6.1-363.19. Advertising.

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

§ 6.1-363.20. Suspension or revocation of license.

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

1. Any ground for denial of a license under this chapter;
2. Any violation of the provisions of this chapter or regulations promulgated by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;
3. A course of conduct consisting of the failure to perform written agreements with borrowers;
4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;
6. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;
7. Refusal to permit an investigation or examination by the Commission;
8. Failure to pay any fee or assessment imposed by this chapter;
9. Failure to comply with any order of the Commission; or
10. Insolvency of the licensee.

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

§ 6.1-363.21. Cease and desist orders.

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

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

C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any person, regardless of whether such person is present in the Commonwealth, who obtains money or funds from a resident of the Commonwealth for transmission to such resident's creditors.

§ 6.1-363.22. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § 6.1-363.20 until it has given the licensee 21 days notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of

the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the Clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure.

§ 6.1-363.23. Fines for violations.

A. In addition to the authority conferred under §§ 6.1-363.20 and 6.1-363.21, the Commission may impose a fine or penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission, has violated any of the provisions of this chapter. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case of a violation of § 6.1-363.3, each DMP entered into shall constitute a separate violation.

B. The Commission shall have jurisdiction to impose fines upon any person, regardless of whether such person is present in the Commonwealth, who obtains money or funds from a resident of the Commonwealth for transmission to such resident's creditors.

§ 6.1-363.24. Private right of action.

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

§ 6.1-363.25. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

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

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

§ 6.1-363.26. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter 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.).

§ 54.1-3905. Furnishing advice and services for compensation in connection with certain debt-pooling plans deemed practicing law.

The furnishing of advice or services for compensation to a debtor in connection with a debt-pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors, except as authorized for ~~nonprofit agencies pursuant to § 6.1-363.1~~ persons licensed pursuant to § 6.1-363.7, shall be deemed to be practicing law. Any person or agency not so authorized or who is not a member of the Virginia State Bar who furnishes or offers to furnish such advice or services for compensation shall be in violation of this section. However, it shall not constitute the practice of law merely to make or undertake to make payments to creditors on behalf of debtors, provided any person or agency that does so does not also negotiate with creditors, undertake to negotiate with creditors, or hold itself out as undertaking to negotiate with creditors on behalf of one or more debtors. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

§ 57-60. Exemptions.

A. The following persons shall be exempt from the registration requirements of § 57-49, but shall otherwise be subject to the provisions of this chapter:

1. Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association, or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

2. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried on

by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of \$5,000, it shall, within 30 days after the date it has received total contributions in excess of \$5,000, register with and report to the Commissioner as required by this chapter.

4. Organizations that solicit only within the membership of the organization by the members thereof.

5. Organizations that have no office within the Commonwealth, that solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and that have a chapter, branch, or affiliate within the Commonwealth that has registered with the Commissioner.

6. Organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7.

7. Health care institutions defined herein as any facilities that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified health centers; (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and any supporting organization that exists solely to support any such health care institutions. For the purposes of clause (iv), "delivery of health care services without charge" includes the delivery of dental, medical or other health services where a reasonable minimum fee is charged to cover administrative costs.

8. Civic organizations as defined herein.

9. Nonprofit debt counseling agencies licensed pursuant to ~~§ 6.1-363.1~~ *Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1.*

10. Agencies designated by the Virginia Department for the Aging pursuant to subdivision A 6 of § 2.2-703 as area agencies on aging.

11. Labor unions, labor associations and labor organizations that have been granted tax-exempt status under § 501 (c) (5) of the Internal Revenue Code.

12. Trade associations that have been granted tax-exempt status under § 501 (c) (6) of the Internal Revenue Code.

B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under the charitable solicitations ordinance, if any, of each such city and county. No organization shall be exempt under this subsection if, during its next preceding fiscal year, more than 10 percent of its gross receipts were paid to any person or combination of persons, located outside the boundaries of such cities and counties, other than for the purchase of real property, or tangible personal property or personal services to be used within such localities. An organization that is otherwise qualified for exemption under this subsection that solicits by means of a local publication, or radio or television station, shall not be disqualified solely because the circulation or range of such medium extends beyond the boundaries of such cities or counties.

C. No charitable or civic organization shall be exempt under this section unless it submits to the Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. Parent organizations may file consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be exempt from the registration provisions of this chapter. If the organization is exempted, the Commissioner shall issue a letter of exemption, which may be exhibited to the public. A registration fee of \$10 shall be required of every organization requesting an exemption after June 30, 1984. The letter of exemption shall remain in effect as long as the organization continues to solicit in accordance with its claim for exemption.

D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any of its local chapters.

§ 59.1-200. Prohibited practices.

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

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

seq.) of this title;

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

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

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

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

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

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

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

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

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

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

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

37. Violating any provision of § 8.01-40.2; ~~and~~

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1; *and*

39. *Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1.*

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

2. That Chapter 10.1 (§ 6.1-363.1) of Title 6.1 of the Code of Virginia is repealed.