

051372301

HOUSE BILL NO. 2123

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 59.1-198 and 59.1-200 of the Code of Virginia, relating to the Virginia Consumer Protection Act; home repair transactions.

Patrons—Eisenberg, Plum, Shuler, Sickles, Spruill, Ward and Ware, O.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-198 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-198. Definitions.

As used in this chapter:

"Business opportunity" means the sale of any products, equipment, supplies or services which are sold to an individual for the purpose of enabling such individual to start a business to be operated out of his residence, but does not include a business opportunity which is subject to the Business Opportunity Sales Act, Chapter 21 (§ 59.1-262 et seq.) of this title.

"Consumer transaction" means:

1. The advertisement, sale, lease, license or offering for sale, lease or license, of goods or services to be used primarily for personal, family or household purposes;

2. Transactions involving the advertisement, offer or sale to an individual of a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged;

3. Transactions involving the advertisement, offer or sale to an individual of goods or services relating to the individual's finding or obtaining employment; ~~and~~

4. A layaway agreement, whereby part or all of the price of goods is payable in one or more payments subsequent to the making of the layaway agreement and the supplier retains possession of the goods and bears the risk of their loss or damage until the goods are paid in full according to the layaway agreement; *and*

5. *A home repair transaction.*

"Cure offer" means a written offer of one or more things of value, including but not limited to the payment of money, that is made by a supplier and that is delivered to a person claiming to have suffered a loss as a result of a consumer transaction or to the attorney for such person. A cure offer shall be reasonably calculated to remedy a loss claimed by the person and it shall include a minimum additional amount equaling 10 percent of the value of the cure offer or \$500, whichever is greater, as compensation for inconvenience, any attorney's or other fees, expenses, or other costs of any kind that such person may incur in relation to such loss; provided, however that the minimum additional amount need not exceed \$4,000.

"Goods" means all real, personal or mixed property, tangible or intangible. For purposes of this chapter, intangible property includes but shall not be limited to "computer information" and "informational rights" in computer information as defined in § 59.1-501.2.

"Home repair transaction" means a transaction in which a person (i) holds himself out to be an architect or professional engineer licensed pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a contractor licensed pursuant to Article 1 (§ 54.1-1100 et seq.) of Chapter 11 of Title 54.1, but is not so licensed and (ii) undertakes for compensation to perform or manage the construction, removal, repair, or improvements to an owner-occupied dwelling pursuant to an agreement with the owner of the dwelling.

"Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

"Services" includes but shall not be limited to (i) work performed in the business or occupation of the supplier, (ii) work performed for the supplier by an agent whose charges or costs for such work are transferred by the supplier to the consumer or purchaser as an element of the consumer transaction, or (iii) the subject of an "access contract" as defined in § 59.1-501.2.

"Supplier" means a seller, lessor or licensor who advertises, solicits or engages in consumer transactions, or a manufacturer, distributor or licensor who advertises and sells, leases or licenses goods or services to be resold, leased or sublicensed by other persons in consumer transactions.

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer

INTRODUCED

HB2123

59 transaction are hereby declared unlawful:

- 60 1. Misrepresenting goods or services as those of another;
- 61 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 62 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
- 63 services, with another;
- 64 4. Misrepresenting geographic origin in connection with goods or services;
- 65 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
- 66 benefits;
- 67 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 68 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
- 69 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
- 70 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
- 71 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
- 72 irregulars, imperfects or "not first class";
- 73 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
- 74 at the price or upon the terms advertised.
- 75 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
- 76 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
- 77 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph
- 78 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such
- 79 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or
- 80 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
- 81 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;
- 82 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts
- 83 of price reductions;
- 84 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
- 85 installed;
- 86 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
- 87 or bill for merchandise or services previously ordered;
- 88 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
- 89 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
- 90 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
- 91 manufacturing the goods or services advertised or offered for sale;
- 92 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
- 93 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
- 94 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
- 95 or under federal statutes or regulations;
- 96 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
- 97 with a consumer transaction;
- 98 15. Violating any provision of §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, relating to the sale of
- 99 certain animals by pet dealers which is described in such sections, is a violation of this chapter;

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

- 101 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
- 102 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
- 103 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
- 104 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
- 105 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
- 106 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
- 107 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
- 108 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
- 109 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
- 110 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
- 111 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
- 112 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
- 113 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
- 114 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
- 115 § 46.2-100;
- 116 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
- 117 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
- 118 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
- 119 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
- 120 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;

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

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1; and

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title; and

42. *Failing, in a home repair transaction, to complete the construction, removal, repair, or improvements to an owner-occupied dwelling (i) within the time period provided in the agreement with the owner of the dwelling or (ii) in a manner that complies with the Uniform Statewide Building Code (§ 36-97 et seq.) or with the terms of the agreement with the owner of the dwelling.*

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.