

056699780

SENATE BILL NO. 912

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 59.1-199, 59.1-204, and 59.1-207 of the Code of Virginia, relating to the Virginia Consumer Protection Act.

Patron—Norment

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-199, 59.1-204, and 59.1-207 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-199. Exclusions.

Nothing in this chapter shall apply to:

A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.

B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station, or other advertising media such as outdoor advertising and advertising agencies, in the publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such person knew that the advertisement was of a character prohibited by § 59.1-200.

C. ~~Those aspects~~ Any aspect of a consumer transaction which ~~are~~ arising from the same event or nucleus of facts that is regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

D. Banks, savings institutions, credit unions, small loan companies, public service corporations, mortgage lenders as defined in § 6.1-409, broker-dealers as defined in § 13.1-501, gas suppliers as defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State Corporation Commission or a comparable federal regulating body.

E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter 13 (§ 55-217 et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.

F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

§ 59.1-204. Individual action for damages or penalty.

A. Any person who suffers loss as the result of a violation of this chapter shall be entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was willful, in addition to any award of actual damages, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater award punitive damages in an amount not less than \$100 nor more than \$1,000 against the supplier.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs. However, the award of attorney's fees and court costs shall not exceed an amount equal to twice the actual damages awarded to the person.

C. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is delivered by a supplier to the person claiming loss or to any attorney representing such person, prior to the filing of the supplier's initial responsive pleading in such proceeding. If the cure offer is timely delivered by the supplier, then the supplier may introduce the cure offer into evidence at trial. The supplier shall not be liable for such person's attorney's fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorney's fees and court costs, exceed the value of the cure offer.

§ 59.1-207. Unintentional violations.

In any case arising under this chapter, no liability shall be imposed upon a supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of § 59.1-200 was an act or practice of the manufacturer or distributor to the supplier over which the supplier had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation; however, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to § 59.1-204 B to individuals aggrieved as a result of an unintentional violation of this chapter. However,

INTRODUCED

SB912

59 *the award of attorney's fees and court costs shall not exceed an amount equal to twice the actual*
60 *damages awarded to the person.*