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SENATE BILL NO. 1169

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 2, 2009)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact § 59.1-200.1 of the Code of Virginia, relating to prohibited practices under the Virginia Consumer Protection Act; foreclosure rescue.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200.1 of the Code of Virginia is amended and reenacted as follows:

§ 59.1-200.1. Prohibited practices; foreclosure rescue.

A. In addition to the provisions of § 59.1-200, the following fraudulent acts or practices committed by a supplier, as defined in § 59.1-198, in a consumer transaction involving residential real property owned and occupied as the primary dwelling unit of the owner, are prohibited:

1. The supplier of service to avoid or prevent foreclosure is to be paid charges or receives a fee (i) prior to the full and complete performance of the services it has agreed to perform, if the transaction does not involve the sale or transfer of residential real property, or (ii) prior to the settlement on a the sale or transfer of such residential real property, regardless of whether the fee is charged or collected as part of the transaction involving a if the transaction involves the sale or transfer of such residential real property;

2. The supplier of such services (i) fails to make payments under the mortgage or deed of trust that is a lien on such residential real property as the payments become due, where the supplier has agreed to do so, regardless of whether the purchaser is obligated on the loan, and (ii) applies rents received from such dwellings for his own use;

3. The supplier of such services represents to the seller of such residential real property that the seller has an option to repurchase such residential real property, after the supplier of such services takes legal or equitable title to such residential real property, unless there is a written contract providing such option to repurchase on terms and at a price stated in such contract; or

4. The supplier advertises or offers such services as are prohibited by this section.

B. This section shall not apply to any mortgage lender or servicer regularly engaged in making or servicing mortgage loans that is subject to the supervisory authority of the State Corporation Commission, a comparable regulatory authority of another state, or a federal banking agency.

C. ~~Any~~ In connection with any consumer transaction covered by subsection A, any provision in an agreement with between the supplier of such services and the owner of such residential real property that requires the owner to submit to mandatory arbitration shall be null and void, and notwithstanding any such provisions, the owner of such residential real property shall have the rights and remedies under this chapter.

SENATE SUBSTITUTE

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