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SENATE BILL NO. 1170

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 6.1-430, 6.1-431, and 59.1-199 of the Code of Virginia, relating to the Mortgage Lender and Broker Act; authority of Attorney General; private actions; application of Virginia Consumer Protection Act to mortgage lenders.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-430, 6.1-431, and 59.1-199 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-430. Authority of the Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a mortgage lender or broker licensed under this chapter is in violation, or has violated, any provision of Articles 3 (§ 6.1-330.53 et seq.) through 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 of this title or, § 6.1-422 or § 6.1-422.1, 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 such laws. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

Upon such referral of 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.

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 attorney's fees and costs.

B. The Attorney General shall be authorized to bring an action to enjoin violations of the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., to the extent authorized by §§ 8 and 16 of RESPA, 12 U.S.C. §§ 2607 and 2614.

§ 6.1-431. Private action still maintainable.

Nothing in this ~~article~~ *chapter* shall be construed to preclude any individual or entity who suffers loss as a result of a violation of Articles 3 (§ 6.1-330.53 et seq.) through 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 of this title, § 6.1-422 or 6.1-422.1 from maintaining an action to recover damages or restitution and, as provided by statute, attorney's fees. However, in any matter in which the Attorney General has exercised his authority pursuant to § 6.1-430, an individual action shall not be maintainable if the individual has received damages or restitution pursuant to § 6.1-430.

§ 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 of a consumer transaction which are 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.

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