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SENATE BILL NO. 954

Offered January 14, 2009

Prefiled January 8, 2009

A BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to prohibited practices under the Virginia Consumer Protection Act; recalled products.

Patron—McDougle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 59.1-200 of the Code of Virginia is amended and reenacted as follows:**

§ 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, imperfections, 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, imperfections 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

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59 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
60 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
61 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
62 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
63 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
64 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
65 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
66 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
67 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
68 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
69 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
70 § 46.2-100;

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

76 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
77 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
78 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
79 receiving overpayments. If the credit balance information is incorporated into statements of account
80 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

86 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
87 seq.) of this title;

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

90 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
91 (§ 59.1-207.17 et seq.) of this title;

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

93 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
94 (§ 59.1-424 et seq.) of this title;

95 24. Violating any provision of § 54.1-1505;

96 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
97 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

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

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

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

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

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

116 37. Violating any provision of § 8.01-40.2;

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

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

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

120 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46

121 (§ 59.1-525 et seq.) of this title;
 122 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
 123 43. Violating any provision of § 59.1-443.2;
 124 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;
 125 45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1;
 126 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115; ~~and~~
 127 47. Violating any provision of § 18.2-239; *and*
 128 48. *Selling, offering for sale, or manufacturing for sale a product recalled by the U.S. Consumer*
 129 *Product Safety Commission.*
 130 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
 131 lease solely by reason of the failure of such contract or lease to comply with any other law of the
 132 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
 133 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
 134 such contract or lease.