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**SENATE BILL NO. 27**

Offered January 13, 2010

Prefiled January 4, 2010

*A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.2-317.1, relating to conditioning warranties on returning a registration card; penalties.*

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 Patron—Puller
 

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 Referred to Committee on Commerce and Labor
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.2-317.1, as follows:**

*§ 8.2-317.1. Use of warranty registration cards.*

*A. As used in this section, "warranty registration card" means a card or similar device that is provided to the purchaser of personal, family, or household goods with a statement that the purchaser's return of the warranty registration card shortly after purchase of the goods is a condition precedent to warranty coverage and performance.*

*B. Unless any requirement that the purchaser of personal, family, or household goods return a warranty registration card as a condition precedent to warranty coverage and performance is conspicuously disclosed in any advertising and marketing materials that reference the goods' warranty, a seller may not condition the coverage or performance of a warranty upon the return by the purchaser of a warranty registration card, or provide that the duration of a warranty is dependent upon the return by the purchaser of a warranty registration card.*

*C. This section does not prohibit the use of warranty registration cards where a seller suggests use of the card as one possible means of proof of the date the goods were purchased. Any such suggestion to the purchaser shall include notice that failure to return the card will not affect rights under the warranty, if the purchaser can establish with reasonable certainty the date the goods were purchased.*

*D. A violation of this section constitutes a prohibited practice under the Virginia Consumer Protection Act (§ 59.1-196 et seq.).*

**§ 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, imperfects, 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, imperfects 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**

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SB27

59 installed;

60 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice  
61 or bill for merchandise or services previously ordered;

62 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"  
63 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the  
64 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
65 manufacturing the goods or services advertised or offered for sale;

66 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of  
67 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,  
68 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,  
69 or under federal statutes or regulations;

70 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
71 with a consumer transaction;

72 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain  
73 animals by pet dealers which is described in such sections, is a violation of this chapter;

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

75 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
76 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
77 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
78 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
79 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
80 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
81 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
82 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
83 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
84 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
85 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
86 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
87 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
88 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
89 § 46.2-100;

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

95 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
96 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment  
97 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of  
98 receiving overpayments. If the credit balance information is incorporated into statements of account  
99 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

109 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
110 (§ 59.1-207.17 et seq.) of this title;

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

112 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
113 (§ 59.1-424 et seq.) of this title;

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

115 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
116 17.6 (§ 59.1-207.34 et seq.) of this title;

117 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

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

120 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of

121 this title;

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

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

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

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

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

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

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

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

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

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

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

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

139 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46  
140 (§ 59.1-525 et seq.) of this title;

141 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

142 43. Violating any provision of § 59.1-443.2;

143 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

144 45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1;

145 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

146 47. Violating any provision of § 18.2-239;

147 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

148 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has  
149 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
150 presumption that a supplier has reason to know a children's product was recalled if notice of the recall  
151 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale  
152 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to  
153 children's products that are used, secondhand or "seconds"; ~~and~~

154 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title; *and*

155 51. *Violating any provision of § 8.2-317.1.*

156 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
157 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
158 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
159 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
160 such contract or lease.