

11100545D

HOUSE BILL NO. 1450

Offered January 12, 2011

Prefiled November 22, 2010

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 10.1, consisting of sections numbered 59.1-141.1, 59.1-141.2, and 59.1-141.3, relating to the sale of pressurized gas dusters.

Patron—Crockett-Stark

Referred to Committee on Commerce and Labor

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 in Title 59.1 a chapter numbered 10.1, consisting of sections numbered 59.1-141.1, 59.1-141.2, and 59.1-141.3, as follows:

CHAPTER 10.1.**PRESSURIZED GAS DUSTERS.****§ 59.1-141.1. Definition.**

As used in this chapter, "pressurized gas duster" means a pressurized product labeled for use to remove dust from the surface of electronic equipment, including computer keyboards, and other surfaces, including photographs and photographic film negatives, that cannot be cleaned with water or other liquids, solely by means of mass flow of compressed fluorocarbons, hydrocarbons, or other gas.

§ 59.1-141.2. Sales and displays of pressurized gas dusters.

No person operating a place of business in the Commonwealth wherein pressurized gas dusters are sold or offered for sale shall sell, permit to be sold, offer for sale, or display for sale any pressurized gas duster in open displays, unlocked cases, or other areas that are accessible to the public without the intervention of an employee of such business.

§ 59.1-141.3. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of 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, 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

INTRODUCED

HB1450

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 (§ 6.2-1800 et seq.) of Title 6.2;

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 20 (§ 6.2-2000 et seq.) of Title 6.2;

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 25 (§ 6.2-2500 et seq.) of Title 6.2;

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";

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

155 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2; and

156 52. Violating any provision of § 8.2-317.1; and

157 53. *Violating any provision of Chapter 10.1 (§ 59.1-141.1 et seq.) of this title.*

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