

2012 SESSION

LEGISLATION NOT PREPARED BY DLS
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12104523D

HOUSE BILL NO. 1276

Offered January 20, 2012

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 50, consisting of sections numbered 59.1-550 through 59.1-557, creating the Virginia Private Recreational Club Act.*

Patron—Farrell (By Request)

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 50, consisting of sections numbered 59.1-550 through 59.1-557, as follows:

CHAPTER 50

VIRGINIA PRIVATE RECREATIONAL CLUB ACT

ARTICLE 1

§ 59.1-550. Title.

This chapter shall be known and may be cited as the "Virginia Private Recreational Club Act."

§ 59.1-551. Applicability.

This chapter shall apply to each Private Recreational Club contract executed at least in part in this Commonwealth after July 1, 2012 pertaining to one or more Private Recreational Club(s) or Private Recreational Club facilities located within the Commonwealth, regardless of the whereabouts of the Private Recreational Club operator's principal office.

§ 59.1-552. Definitions.

When used in this chapter, unless the context requires a different meaning, the following shall have the meanings respectively set forth:

"Assessment" means any charge, other than initiation deposits or periodic membership dues, fees and minimum payments specified in a Private Recreational Club contract, which charge is not specifically quantifiable from a review of the Private Recreational Club contract, including assessments for capital improvements or operating deficits of the Private Recreational Club.

"Initiation Deposit" means any predetermined consideration deposited with or provided to a Private Recreational Club operator in one or more installments as a precondition to membership in a Private Recreational Club other than periodic membership dues, fees and minimum payments specified in a Private Recreational Club contract, regardless of whether the initiation deposit is refundable in whole or in part.

"Member" means a person who purchases a membership or other right to use the facilities of a Private Recreational Club.

"Membership fees" and "membership dues" mean payments other than initiation deposits and assessments required from members by the Private Recreational Club contract for the use, enjoyment, support or maintenance of the Private Recreational Facilities about which the Private Recreational Club contract relates.

"Private Recreational Club" means a person that offers members the right to use and enjoy Private Recreational Club facilities in return for membership fees, dues, deposits, assessments or other consideration. A Private Recreational Club shall not include: (i) any private club owned and controlled by its members, through equity ownership or otherwise; (ii) any homeowners' association or similar person of a not for profit nature providing tennis or swimming facilities located in, or directly or indirectly controlled by, a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 70 percent of its membership from residents of such community or subdivision; (iii) organizations whose functions as a recreational club are only incidental to their overall functions and purposes; (iv) any person that is tax-exempt under § 501 (c) (3) of the Internal Revenue Code, as amended; (v) any person that is tax-exempt under Chapter 36 of Title 58.1; (vi) any facility owned or operated by the United States; (vii) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (viii) any nonprofit public or private school, college or university; or (ix) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, or family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Private Recreational Club contract" means any written agreement of at least 36 months duration or

INTRODUCED

HB1276

59 which is not terminable at the sole option of the Private Recreational Club operator within 36 months
60 following the effective date of such agreement, executed in whole or in part within this Commonwealth,
61 which grants to a purchaser a nonexclusive right or license to use the facilities of a Private
62 Recreational Club or any portion thereof on a first come, first serve or reservation basis together with
63 other members. Any such agreement that does not specify a term shall be considered a Private
64 Recreational Club contract for purposes of this chapter.

65 "Private Recreational Club facilities" or "facilities" mean an amenity of a Private Recreational Club
66 set aside or otherwise made available to members of the Private Recreational Club in their use and
67 enjoyment. Facilities may include swimming pools, tennis courts, golf courses, club houses, or
68 recreational buildings, regardless of whether the facilities are owned by, leased by, or otherwise under
69 the control of, the Private Recreational Club.

70 "Private Recreational Club operator" means any person who is in the business of soliciting, offering,
71 advertising, or executing Private Recreational Club contracts.

72 "Purchaser" means a person who enters into a Private Recreational Club contract with the Private
73 Recreational Club operator.

74 § 59.1-553. Severability.

75 If any provision of this chapter or the application thereof to any person or circumstance is held
76 invalid, the invalidity shall not affect the other provisions or applications of this chapter which can be
77 given effect without the invalid provisions or application, and to this end the provisions of this chapter
78 are severable.

79 ARTICLE 2- Protection of Purchasers

80 § 59.1-554. Private Recreational Club operator's disclosure statement.

81 A. A Private Recreational Club operator shall deliver to each purchaser a current Private
82 Recreational Club operator's disclosure statement before execution by the purchaser of the Private
83 Recreational Club contract and no later than the date shown on such contract.

84 B. The Private Recreational Club operator's disclosure statement shall consist of the following:

85 1. A cover page stating:

86 a. The words "Private Recreational Club Operator's Disclosure Statement" printed in boldfaced type
87 of a minimum size of ten points, followed by,

88 b. The name and principal business address of the Private Recreational Club operator followed by,

89 c. A statement that the Private Recreational Club operator is in the business of offering for sale
90 Private Recreational Club contracts, followed by,

91 d. The following, in printed boldfaced type of a minimum size of ten points:

92 **THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN**
93 **THE EXECUTION OF A PRIVATE RECREATIONAL CLUB CONTRACT. THE PRIVATE**
94 **RECREATIONAL CLUB OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF**
95 **THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A PRIVATE RECREATIONAL CLUB**
96 **CONTRACT. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU AS**
97 **A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT**
98 **DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL**
99 **REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE**
100 **ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE PRIVATE RECREATIONAL**
101 **CLUB OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT**
102 **WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.**

103 2. A brief description of the nature of the purchaser's right or license to use the Private Recreational
104 Club and the facilities which are to be available for use by purchasers;

105 3. The location of each of the Private Recreational Clubs which is to be available for use by
106 purchasers and a brief description of the facilities at each Private Recreational Club which are
107 currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available
108 for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that
109 are or will be available to nonpurchasers and the extent to which nonpurchasers will be afforded that
110 ability to use such facilities shall also be provided;

111 4. As to all memberships offered by the Private Recreational Club operator at each Private
112 Recreational Club:

113 a. The categories of membership offered;

114 b. The types, duration and characteristics of each category of membership, along with a summary of
115 the major privileges, restrictions, and limitations applicable to each category; and

116 c. The circumstances under which a membership may be terminated, by the Private Recreational
117 Club operator or otherwise, any consideration to be provided to members in the event of premature or
118 unanticipated termination, and the amount of surety, escrow, bond or other manner in which the Private
119 Recreational Club operator will ensure such consideration is available;

120 5. A quantification of the specific financial obligations imposed upon the purchaser by the Private

Recreational Club contract, including the initial purchase price, initiation deposit(s), the portions of such initiation deposit(s), if any, that are refundable, the amount and timing of the refundability of the refundable portion of any such deposit and any additional charges which the purchaser may be required to pay;

6. A description of the Private Recreational Club's financial ability to satisfy the obligations of the Private Recreational Club contract;

7. The specific term or duration of the membership being purchased;

8. A description of any liens, defects, or encumbrances affecting the Private Recreational Club and the Private Recreational Club facilities;

9. Any services which the Private Recreational Club operator currently provides, or expenses he pays, which are expected to become the responsibility of the purchasers, including the projected liability which each such service or expense may impose on each purchaser;

10. A brief description of the right to use the Private Recreational Club facilities which is to be transferred to or otherwise afforded each purchaser;

11. The duration of any lease, license, franchise or reciprocal agreement entitling the Private Recreational Club operator or purchasers from him to use the Private Recreational Club facilities, and any provisions in any such agreements which may restrict or limit a purchaser's use of the Private Recreational Club;

12. A copy, whether by way of supplement or otherwise, of the rules, restrictions or covenants regulating the purchaser's use of the Private Recreational Club in Virginia and its facilities which are to be available for use by the purchasers, including a statement of whether and how the rules, restrictions or covenants may be changed;

13. A description of any restraints on the transfer of the Private Recreational Club contract;

14. A description of the policies covering the availability of Private Recreational Club facilities, the availability of reservations and the conditions under which they are made;

15. A description of any grounds for forfeiture of a purchaser's Private Recreational Club contract;

16. A statement of whether the Private Recreational Club operator has the right to withdraw permanently from use all or any portion of any facilities devoted to Private Recreational Club use and, if so, the conditions under which such withdrawal is to be permitted, including the timing and amount of initiation deposits to be returned to purchasers in the event of such withdrawal;

17. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser including a statement concerning whether the purchaser's participation in any reciprocal program is dependent upon the continued affiliation of the Private Recreational Club operator with that reciprocal program and whether the Private Recreational Club operator reserves the right to terminate such affiliation;

C. The Private Recreational Club operator shall promptly amend his Private Recreational Club operator's disclosure statement to reflect any material change in the Private Recreational Club or its facilities.

§ 59.1-555. Refundable Initiation Deposits; Annual Notice.

A. During each calendar year, and no less than once every 18 months, a Private Recreational Club operator shall provide a written notice to each member who is entitled to the return of all or some portion of an Initiation Deposit: (i) the Annual Notice shall clearly describe the manner in which the Private Recreational Club operator is ensuring its ability to satisfy future Initiation Deposit refund obligations, a quantification of the Private Recreational Club operator's cumulative obligation to all members for the refundable portion of Initiation Deposits, a quantification of the total funds then available to satisfy the refundable portion of the Private Recreational Club operator's Initiation Deposits, and a description of the specific measures to be undertaken by the Private Recreational Club operator to address any shortfall in funds available to satisfy its refundable Initiation Deposit obligations; and (ii) the Annual Notice shall specify the date that the refundable portion of any Initiation Deposit is due and payable to such member.

B. A Private Recreational Club operator shall not be required to provide the Annual Notice described in A(i), above, if the Private Recreational Club operator maintains at least 70% of the refundable portion of its cumulative Initiation Deposit obligations to all members in an escrow account labeled and designated solely for that purpose. Such escrow account must be insured by an instrumentality of the federal government and located in Virginia. In such event, at least 70% of the refundable portion of all Initiation Deposits shall be held in escrow until returned to members as provided in the Private Recreational Club contracts.

ARTICLE 3 - Enforcement

§ 59.1-556. Penalties.

A. Any person violating any of the provisions of §§ 59.1-554 or 59.1-555 shall be guilty of a Class 1 misdemeanor. Each violation shall be deemed a separate offense.

182 *B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to*
183 *the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the*
184 *Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.*

185 *ARTICLE 4 - Miscellaneous*

186 *§ 59.1-557. Provisions of this chapter not exclusive.*

187 *The provisions of this chapter are not exclusive and do not relieve the parties or the contracts*
188 *subject thereto from compliance with all other applicable provisions of law.*

189 *§ 59.1-200. Prohibited practices.*

190 *A. The following fraudulent acts or practices committed by a supplier in connection with a consumer*
191 *transaction are hereby declared unlawful:*

192 *52. Violating any provision of § 8.2-317.1;*

193 *53. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential*
194 *dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective*
195 *drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in*
196 *which defective drywall has been permanently installed or affixed; and*

197 *54. Violating any provision of the Virginia Private Recreational Club Act, Chapter 50 (§ 59.1-550 et*
198 *seq.) of this title.*