12102297D

HOUSE BILL NO. 724

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 18.2-216 and 59.1-68.3 of the Code of Virginia, relating to false advertising; liability of real estate brokers and salespersons; exemption.

Patron—Yancey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-216 and 59.1-68.3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-216. Untrue, deceptive or misleading advertising, inducements, writings or documents.

A. Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper or other publications, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact which is untrue, deceptive or misleading, or uses any other method, device or practice which is fraudulent, deceptive or misleading to induce the public to enter into any obligation, shall be guilty of a Class 1 misdemeanor.

B. The actions prohibited in this section, shall be construed as including (i) the advertising in any manner by any person of any goods, wares or merchandise as a bankrupt stock, receiver's stock or trustee's stock, if such stock contains any goods, wares or merchandise put therein subsequent to the date of the purchase by such advertiser of such stock, and if such advertisement of any such stock fail to set forth the fact that such stock contains other goods, wares or merchandise put therein, subsequent to the date of the purchase by such advertiser of such stock in type as large as the type used in any other part of such advertisement, including the caption of the same, it shall be a violation of this section; and (ii) the use of any writing or document which appears to be, but is not in fact a negotiable check, negotiable draft or other negotiable instrument unless the writing clearly and conspicuously, in at least 14-point bold type, bears the phrase "THIS IS NOT A CHECK" printed on its face.

C. The provisions of this section shall not apply to a real estate broker or salesperson licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, who causes to be made, directly or indirectly, an advertisement containing any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading if the information was (i) provided to such broker or salesperson by his client; (ii) obtained from a governmental entity; (iii) obtained from a nongovernmental person or entity that obtained the information from a governmental entity; or (iv) obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which such broker or salesperson relies, and such broker or salesperson did not (a) have actual knowledge that the information was false or (b) act in reckless disregard of the truth.

§ 59.1-68.3. Action for damages or penalty for violation of Article 8, Chapter 6 of Title 18.2 or Chapter 2.1 of Title 59.1; attorney fees.

A. Any person who suffers loss as the result of a violation of Article 8 (§ 18.2-214 et seq.), Chapter 6 of Title 18.2 or Chapter 2.1 (§ 59.1-21.1 et seq.) of Title 59.1 shall be entitled to bring an individual action to recover damages, or $100, whichever is greater. Certified copies of the transcript and exhibits in evidence in any final proceeding in which the Attorney General has obtained a permanent injunction for a violation of Article 8, Chapter 6 of Title 18.2 or Chapter 2.1 of Title 59.1 shall be admissible in evidence in any action brought pursuant to this section by any person claiming damage as a result of the enjoined conduct. Notwithstanding any other provision of law to the contrary, in addition to the damages recovered by the aggrieved party, such person may be awarded reasonable attorney's fees.

B. The provisions of this section shall not apply to a real estate broker or salesperson licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, who causes to be made, directly or indirectly, an advertisement containing any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading if the information was (i) provided to such broker or salesperson by his client; (ii) obtained from a governmental entity; (iii) obtained from a nongovernmental person or

INTRODUCED

9/14/22 22:22

entity that obtained the information from a governmental entity; or (iv) obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which such broker or salesperson relies, and such broker or salesperson did not (a) have actual knowledge that the information was false or (b) act in reckless disregard of the truth.