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**HOUSE BILL NO. 1857**

Offered January 9, 2013

Prefiled January 8, 2013

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 12.1, consisting of sections numbered 59.1-167.4 through 59.1-167.8, relating to certain discriminatory pricing of propane.*

Patron—Orrock

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 12.1, consisting of sections numbered 59.1-167.4 through 59.1-167.8, as follows:

**CHAPTER 12.1.****PROPANE PRICE DISCRIMINATION.****§ 59.1-167.4. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Customer" means an individual who purchases propane at retail for consumption in his residential dwelling for heating, cooling, cooking, and other domestic purposes.

"Dealer" means a retail distributor of propane who delivers propane to a customer's residential dwelling by filling a storage tank at the customer's residential dwelling.

"Ownership status of a storage tank" refers to whether a storage tank is owned by the customer or is owned by the dealer or a third party and leased or licensed to the customer.

"Propane" means propane, propylene, butanes (normal butane and isobutane) and butylenes, and mixtures thereof, or any other material the chemical composition of which is predominantly C<sub>3</sub>H<sub>8</sub>, whether recovered from natural gas or from crude oil, and includes liquefied petroleum gas.

"Storage tank" means a tank, whether above ground or below ground, with a capacity exceeding 100 gallons that is used primarily for the storage of propane to serve a customer's residential dwelling.

**§ 59.1-167.5. Price discrimination based on storage tank ownership status prohibited.**

A. A dealer shall not engage in discriminatory pricing by selling or offering to sell propane to one customer or class of customers at a different price or rate than the price or rate at which the dealer sells or offers to sell propane to another customer or class of customers within the Commonwealth when the difference is attributable to the ownership status of the storage tank into which the propane is delivered. A price difference shall include any scheme of rebates or collateral contracts or any device of any nature that in substance results in the sale of propane at different prices to customers based on the ownership status of the storage tank into which the propane is delivered.

B. Differential pricing in the price or rate charged for propane shall not be prohibited by this section if the difference reflects (i) a difference in the grade, quality, or quantity of propane sold; (ii) a difference in the cost of transporting the propane from the point of distribution to the point of delivery; or (iii) quantity discounts based on actual cost savings that are provided to all like customers.

C. This chapter shall not be construed as regulating the fees or charges charged under, or the terms of, any lease or other agreement under which a dealer or third party leases or licenses a storage tank to a customer.

**§ 59.1-167.6. Removal of storage tank; prohibited charges.**

A. A dealer may not charge a customer for the removal of a storage tank owned by the dealer and located on the customer's property when the customer has discontinued propane delivery service from the dealer and has requested the removal of the tank.

B. The provisions of this section shall apply to contracts for propane delivery services that are entered on or after July 1, 2013.

**§ 59.1-167.7. Enforcement; penalties.**

A. Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.).

B. It shall be the responsibility of any dealer who sells propane to customers or classes of customers at different rates or prices to be able to substantiate the basis for any price or rate differential charged by the dealer. Upon the request of the Attorney General, any attorney for the Commonwealth, the attorney of any county, city, or town, or the Commissioner of the Virginia Department of Agriculture and Consumer Services, a dealer shall provide documentation to substantiate the basis for any

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59 *differential rates or prices utilized by the dealer in any sale or offer governed by this chapter.*

60 **§ 59.1-167.8. Exemptions.**

61 A. *Nothing in this chapter applies to or shall be construed to affect sales of, or offers to sell,*  
62 *propane (i) in a container having a capacity that does not exceed 100 gallons, (ii) for use as fuel to*  
63 *propel a motor vehicle, or (iii) in connection with the provision of non-utility gas service as defined in*  
64 *§ 56-265.4:6.*

65 B. *Nothing in this chapter shall be construed as authorizing any person other than the owner of a*  
66 *storage tank, or person authorized in writing by such owner, to fill or refill a storage tank with propane*  
67 *under circumstances where the filling or refilling is prohibited by § 18.2-494.*

68 **§ 59.1-200. Prohibited practices.**

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

- 71 1. Misrepresenting goods or services as those of another;
- 72 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 73 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or  
74 services, with another;
- 75 4. Misrepresenting geographic origin in connection with goods or services;
- 76 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or  
77 benefits;
- 78 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 79 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,  
80 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first  
81 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods  
82 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"  
83 irregulars, imperfects or "not first class";
- 84 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
85 at the price or upon the terms advertised.

86 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or  
87 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
88 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph  
89 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
90 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
91 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
92 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

93 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts  
94 of price reductions;

95 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
96 installed;

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

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

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

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

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

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

112 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
113 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
114 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
115 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
116 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
117 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
118 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
119 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
120 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision

does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

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

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

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

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

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

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

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

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

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

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

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

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

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

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

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

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

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

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

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

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

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

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

43. Violating any provision of § 59.1-443.2;

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

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

182 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;  
183 47. Violating any provision of § 18.2-239;  
184 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);  
185 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has  
186 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
187 presumption that a supplier has reason to know a children's product was recalled if notice of the recall  
188 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale  
189 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to  
190 children's products that are used, secondhand or "seconds";  
191 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;  
192 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;  
193 52. Violating any provision of § 8.2-317.1; ~~and~~  
194 53. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential  
195 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective  
196 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in  
197 which defective drywall has been permanently installed or affixed; *and*  
198 54. *Violating any provision of Chapter 12.1 (§ 59.1-167.4 et seq.) of this title.*  
199 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
200 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
201 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
202 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
203 such contract or lease.