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## HOUSE BILL NO. 2135

Offered January 9, 2013

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*A BILL to amend and reenact §§ 59.1-199 and 59.1-200 of the Code of Virginia, relating to the Virginia Consumer Protection Act; exclusions and prohibited practices.*

Patrons—Hugo and Ramadan

Referred to Committee on Commerce and Labor

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

**1. That §§ 59.1-199 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:**

**§ 59.1-199. Exclusions.**

Nothing in this chapter shall apply to:

A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.

B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station, or other advertising media such as *online* or outdoor advertising and advertising agencies, in the publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such person knew *or had reason to know* that the advertisement was of a character prohibited by § 59.1-200.

C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

D. Banks, savings institutions, credit unions, small loan companies, public service corporations, mortgage lenders as defined in § 6.2-1600, broker-dealers as defined in § 13.1-501, gas suppliers as defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State Corporation Commission or a comparable federal regulating body.

E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter 13 (§ 55-217 et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.

F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

**§ 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

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59 of price reductions;

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

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

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

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

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

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

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

77 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
78 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
79 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
80 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
81 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
82 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
83 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
84 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
85 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
86 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
87 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
88 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
89 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
90 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §  
91 46.2-100;

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

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

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

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

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

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

111 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
112 (§ 59.1-207.17 et seq.) of this title;

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

114 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
115 (§ 59.1-424 et seq.) of this title;

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

117 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
118 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

121 title;

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

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

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

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

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

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

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

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

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

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

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

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

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

141 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46  
142 (§ 59.1-525 et seq.) of this title;

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

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

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

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

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

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

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

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

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

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

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

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

163 54. *Using any trademark, service mark, or mark as defined in § 59.1-92.2 in a misleading, deceptive,*  
164 *or fraudulent manner.*

165 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
166 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
167 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
168 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
169 such contract or lease.