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HOUSE BILL NO. 591

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-200.2, relating to the Virginia Consumer Protection Act; prohibited practices; solicitation in the guise of a billing statement; required disclosures; penalties.

Patron—O'Quinn

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 a section numbered 59.1-200.2 as follows:

§ 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 of price reductions;

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

11. ~~Misrepresenting by the use of~~ Using (i) any written or documentary material that appears to be an invoice or bill for merchandise goods or services previously ordered to make a misrepresentation in connection with a consumer transaction or (ii) a solicitation in the guise of a billing statement in violation of § 59.1-200.2;

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

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

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

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

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

60 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
61 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
62 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
63 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
64 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
65 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
66 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
67 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
68 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
69 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
70 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
71 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
72 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
73 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
74 § 46.2-100;

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

80 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
81 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
82 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
83 receiving overpayments. If the credit balance information is incorporated into statements of account
84 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

94 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
95 (§ 59.1-207.17 et seq.) of this title;

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

97 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
98 (§ 59.1-424 et seq.) of this title;

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

100 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
101 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

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

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

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

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

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

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

- 121 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
 122 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;
 123 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
 124 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
 125 (§ 59.1-525 et seq.) of this title;
 126 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
 127 43. Violating any provision of § 59.1-443.2;
 128 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;
 129 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
 130 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
 131 47. Violating any provision of § 18.2-239;
 132 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
 133 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
 134 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
 135 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
 136 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
 137 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
 138 children's products that are used, secondhand or "seconds";
 139 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;
 140 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
 141 52. Violating any provision of § 8.2-317.1; and
 142 53. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
 143 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
 144 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
 145 which defective drywall has been permanently installed or affixed.
- 146 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
 147 lease solely by reason of the failure of such contract or lease to comply with any other law of the
 148 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
 149 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
 150 such contract or lease.
- 151 **§ 59.1-200.2. Solicitation in the guise of a billing statement.**
- 152 A. As used in this section, unless the context requires a different meaning:
 153 "Document that reasonably could be considered a bill, invoice, or statement of account due for
 154 goods or services" means a document that:
 155 1. Is described as a "bill," "invoice," "statement," "final notice," or similar title;
 156 2. Uses the term "remit" or "pay," or similar wording, with respect to a dollar amount;
 157 3. Purports to impose a late fee or similar penalty for nonpayment; or
 158 4. Refers to a dollar figure as an "amount due," "amount owing," or similar wording.
- 159 "Solicitation in the guise of a billing statement" means a document that reasonably could be
 160 considered a bill, invoice, or statement of account due for goods or services, but in fact is an offer to
 161 sell goods or services to a consumer that were not requested by the consumer. A "solicitation in the
 162 guise of a billing statement" does not include an offer to renew an existing agreement for the purchase
 163 of goods or services, provided that the offer specifies the date on which the existing agreement expires.
- 164 B. The sending to a consumer, through any medium, of a solicitation in the guise of a billing
 165 statement that does not comply with the requirements of subsections C and D constitutes a fraudulent
 166 practice prohibited by this chapter.
- 167 C. A solicitation in the guise of a billing statement shall bear on its face the following disclaimer in
 168 conspicuous boldface capital letters that are of a color prominently contrasting with the background
 169 against which it appears, including all other print on the face of the solicitation, and that are at least
 170 as large, bold, and conspicuous as any other print on the face of the solicitation but not smaller than
 171 30-point type:
 172 "THIS IS NOT A BILL. THIS IS A SOLICITATION FOR THE SALE OF GOODS OR SERVICES.
 173 YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED UNLESS YOU ACCEPT THIS
 174 OFFER."
- 175 For purposes of this subsection, "color prominently contrasting" excludes any color, or any intensity
 176 of an otherwise included color, that does not permit legible reproduction by ordinary office
 177 photocopying equipment used under normal operating conditions and that is not at least as vivid as any
 178 other color on the face of the solicitation in the guise of a billing statement.
- 179 D. The disclaimer required by subsection C:
 180 1. Shall be displayed conspicuously apart from other print on the page immediately below each
 181 portion of the solicitation in the guise of a billing statement that reasonably could be construed to

182 *specify a monetary amount due and payable by the recipient;*

183 *2. Shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its*
184 *conspicuousness or that introduces or modifies the required text, such as "Legal Notice Required by*
185 *Law" or similar wording;*

186 *3. Shall not, by folding or any other means, be made unintelligible or less prominent than any other*
187 *information on the face of the solicitation in the guise of a billing statement; and*

188 *4. Shall, if (i) the solicitation in the guise of a billing statement consists of more than one page or*
189 *(ii) any page of the solicitation in the guise of a billing statement is designed to be separated into*
190 *portions, be displayed in its entirety on the face of each page or portion of a page that reasonably*
191 *could be considered a bill, invoice, or statement of account due.*

192 *E. A violation of this section shall be subject to any and all of the enforcement provisions of this*
193 *chapter.*