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HOUSE BILL NO. 946

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 46.2-118, 46.2-1232, and 59.1-200 of the Code of Virginia, relating to the regulation of tow truck drivers and towing and recovery operators.

Patrons—Kearney and Kory

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-118, 46.2-1232, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-118. Prohibited acts by tow truck drivers and towing and recovery operators.

A. No tow truck driver shall:

1. Use fraud or deceit in the offering or delivering of towing and recovery services;
2. Conduct his business or offer services in such a manner as to endanger the health and welfare of the public;
3. Use alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Obtain any fee by fraud or misrepresentation;

5. Remove or tow a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or removed at the request of a law-enforcement officer to any location outside the Commonwealth; ~~or~~

6. Remove or tow a trespassing vehicle pursuant to § 46.2-1231 that has been identified by a spotter for towing or removal;

7. Remove or tow a trespassing vehicle pursuant to § 46.2-1231 without the written authorization or presence of the owner of the property from which the vehicle is towed, or his agent, which authorization shall be in addition to any written contract between the tow truck driver and the owner of the property or his agent; or

~~8.~~ 8. Violate, or assist, induce, or cooperate with others to violate, any provision of law related to the offering or delivery of towing and recovery services.

B. No towing and recovery operator shall:

1. Use fraud or deceit in the offering or delivering of towing and recovery services;
2. Conduct his business or offer services in such a manner as to endanger the health and welfare of the public;

3. Use alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Neglect to maintain on record at the towing and recovery operator's principal office a list of all drivers employed by the towing and recovery operator;

5. Obtain any fee by fraud or misrepresentation;

6. Advertise services in any manner that deceives, misleads, or defrauds the public;

7. Advertise or offer services under a name other than one's own name;

8. Fail to accept for payment cash, insurance company check, certified check, money order, or at least one of two commonly used, nationally recognized credit cards, except those towing and recovery operators who have an annual gross income of less than \$10,000 derived from the performance of towing and recovery services shall not be required to accept credit cards, other than when providing police-requested towing as defined in § 46.2-1217, but shall be required to accept personal checks;

9. Fail to display at the towing and recovery operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles;

10. Fail to have readily available at the towing and recovery operator's principal office, at the customer's request, the maximum fees normally charged by the towing and recovery operator for basic services for towing and initial hookup of vehicles;

11. Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for services not rendered;

12. Fail to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service;

13. Willfully invoice payment for any services not stipulated or otherwise incorporated in a contract for services rendered between the towing and recovery operator and any locality or political subdivision of the Commonwealth;

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59 14. Employ a driver required to register as a sex offender as provided in § 9.1-901;

60 15. Remove or tow a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or removed
61 at the request of a law-enforcement officer to any location outside the Commonwealth;

62 *16. Remove or tow a trespassing vehicle pursuant to § 46.2-1231 that has been identified by a*
63 *spotter for towing or removal;*

64 *17. Remove or tow a trespassing vehicle pursuant to § 46.2-1231 without the written authorization or*
65 *presence of the owner of the property from which the vehicle is towed, or his agent, which authorization*
66 *shall be in addition to any written contract between the towing and recovery operator and the owner of*
67 *the property or his agent;*

68 ~~16.~~ 18. Refuse, at the towing and recovery operator's place of business, to make change, up to \$100,
69 for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for
70 towing and storage of the vehicle;

71 ~~17.~~ 19. Violate, or assist, induce, or cooperate with others to violate, any provision of law related to
72 the offering or delivery of towing and recovery services; or

73 ~~18.~~ 20. Fail to provide the owner of a stolen vehicle written notice of his right under law to be
74 reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for
75 criminal charges as required in § 46.2-1209.

76 C. No tow truck driver as defined in § 46.2-116 or towing and recovery operator as defined in
77 § 46.2-100 shall knowingly permit another person to occupy a motor vehicle as defined in § 46.2-100
78 while such motor vehicle is being towed.

79 D. For purposes of this section, "spotter" means an individual whose primary task is to report the
80 presence of unauthorized parked vehicles for the purpose of towing or removal.

81 **§ 46.2-1232. Localities may regulate removal or immobilization of trespassing vehicles.**

82 A. The governing body of any county, city, or town may by ordinance regulate the removal of
83 trespassing vehicles from property by or at the direction of the owner, operator, lessee, or authorized
84 agent in charge of the property. In the event that a vehicle is towed from one locality and stored in or
85 released from a location in another locality, the local ordinance, if any, of the locality from which the
86 vehicle was towed shall apply.

87 B. No local ordinance adopted under authority of this section shall require that any towing and
88 recovery business also operate as or provide services as a vehicle repair facility or body shop, filling
89 station, or any business other than a towing and recovery business.

90 C. Any such local ordinance may also require towing and recovery operators to (i) obtain and retain
91 photographs or other documentary evidence substantiating the reason for the removal; (ii) post signs at
92 their main place of business and at any other location where towed vehicles may be reclaimed
93 conspicuously indicating (a) the maximum charges allowed by local ordinance, if any, for all their fees
94 for towing, recovery, and storage services and (b) the name and business telephone number of the local
95 official, if any, responsible for handling consumer complaints; *or* (iii) obtain at the time the vehicle is
96 towed; verbal approval of an agent designated in the local ordinance who is available at all times; ~~and~~
97 ~~(iv).~~ *Such local ordinance shall require towing and recovery operators to obtain;* at the time the vehicle
98 is towed; if such towing is performed during the normal business hours of the owner of the property
99 from which the vehicle is being towed; the written authorization *or presence* of the owner of the
100 property from which the vehicle is towed, or his agent. Such written authorization, if required, shall be
101 in addition to any written contract between the towing and recovery operator and the owner of the
102 property or his agent. For the purposes of this subsection, "agent" shall not include any person who
103 either (a) is related by blood or marriage to the towing and recovery operator or (b) has a financial
104 interest in the towing and recovery operator's business.

105 D. Any such ordinance adopted by a locality within Planning District 8 may require towing
106 companies that tow vehicles from the county, city, or town adopting the ordinance to other localities,
107 provided that the stored or released location is within the Commonwealth of Virginia and within 10
108 miles of the point of origin of the actual towing, (i) to obtain from the locality from which such
109 vehicles are towed a permit to do so and (ii) to submit to an inspection of such towing company's
110 facilities to ensure that the company meets all the locality's requirements, regardless of whether such
111 facilities are located within the locality or elsewhere. The locality may impose and collect reasonable
112 fees for the issuance and administration of permits as provided for in this subsection. Such ordinance
113 may also provide grounds for revocation, suspension, or modification of any permit issued under this
114 subsection, subject to notice to the permittee of the revocation, suspension, or modification and an
115 opportunity for the permittee to have a hearing before the governing body of the locality or its
116 designated agent to challenge the revocation, suspension, or modification. Nothing in this subsection
117 shall be applicable to public safety towing.

118 **§ 59.1-200. Prohibited practices.**

119 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
120 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 any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;
 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;
 16. Failing to disclose all conditions, charges, or fees relating to:
 - a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any 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 Club 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 §§ 46.2-118, 46.2-1217, 46.2-1231, and 46.2-1233.1 *or violating any provision of a local ordinance enacted pursuant to § 46.2-1217, 46.2-1232, or 46.2-1233*;

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;

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

47. Violating any provision of § 18.2-239;

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

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

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

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

244 52. Violating any provision of § 8.2-317.1;

245 53. Violating subsection A of § 9.1-149.1; and

246 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
247 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
248 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
249 which defective drywall has been permanently installed or affixed.

250 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
251 lease solely by reason of the failure of such contract or lease to comply with any other law of the
252 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
253 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
254 such contract or lease.