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HOUSE BILL NO. 1960

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend and reenact §§ 46.2-119, 46.2-1232, 46.2-1233, 46.2-1233.2, and 59.1-200 of the Code of Virginia, relating to tow truck drivers and towing and recovery operators; requirements; civil penalties.*

Patrons—Hugo and Kory

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-119, 46.2-1232, 46.2-1233, 46.2-1233.2, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-119. Complaints against tow truck drivers or towing and recovery operators; enforcement by the Office of the Attorney General; civil penalty.

A. Any consumer aggrieved by the actions of a (i) tow truck driver for an alleged violation of subsection A of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1 or (ii) towing and recovery operator for an alleged violation of subsection B of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1 may file a complaint with the Division of Consumer Counsel of the Office of the Attorney General for appropriate action in accordance with this section and any other applicable law.

B. The Attorney General may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages or intent be proved to establish a violation. The standard of proof at trial shall be a preponderance of the evidence. The circuit court may issue temporary or permanent injunctions to restrain and prevent violations of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1.

C. In any action brought under this section, the Attorney General may recover damages and such other relief allowed by law, including restitution on behalf of consumers injured by violations of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1, as well as costs and reasonable expenses incurred by the Commonwealth in investigating and preparing the case, including attorney fees.

D. Any tow truck driver who violates subsection A of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1, or any ordinance adopted therefrom, or any ordinance adopted pursuant to § 46.2-1233, or any towing or recovery operator who violates subsection B of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1, or any ordinance adopted therefrom, or any ordinance adopted pursuant to § 46.2-1233, is subject to a civil penalty of \$100. Such penalty shall be collected by the appropriate circuit court, and the proceeds shall be deposited into the Literary Fund.

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

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

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

C. Any such local ordinance may also require towing and recovery operators to (i) obtain and retain photographs or other documentary evidence substantiating the reason for the removal; (ii) post signs at their main place of business and at any other location where towed vehicles may be reclaimed conspicuously indicating (a) the maximum charges allowed by local ordinance, if any, for all their fees for towing, recovery, and storage services and (b) the name and business telephone number of the local official, if any, responsible for handling consumer complaints; (iii) obtain at the time the vehicle is towed, verbal approval of an agent designated in the local ordinance who is available at all times; and (iv) obtain, at the time the vehicle is towed, if such towing is performed during the normal business hours of the owner of the property from which the vehicle is being towed, the written authorization of the owner of the property from which the vehicle is towed, or his agent. Such written authorization, if required, shall be in addition to any written contract between the towing and recovery operator and the owner of the property or his agent, *except for vehicles being towed from a locality within Planning*

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59 *District 8, which shall not require written authorization if such written contract is in place. Any such*
60 *written contract governing a property located within Planning District 8 shall clearly state the terms on*
61 *which towing and recovery operators may monitor private lots on behalf of property owners. For the*
62 *purposes of this subsection, "agent" shall not include any person who either (a) is related by blood or*
63 *marriage to the towing and recovery operator or (b) has a financial interest in the towing and recovery*
64 *operator's business.*

65 D. Any such ordinance adopted by a locality within Planning District 8 may require towing
66 companies that tow vehicles from the county, city, or town adopting the ordinance to other localities,
67 provided that the stored or released location is within the Commonwealth of Virginia and within 10
68 miles of the point of origin of the actual towing, (i) to obtain from the locality from which such
69 vehicles are towed a permit to do so and (ii) to submit to an inspection of such towing company's
70 facilities to ensure that the company meets all the locality's requirements, regardless of whether such
71 facilities are located within the locality or elsewhere. The locality may impose and collect reasonable
72 fees for the issuance and administration of permits as provided for in this subsection. Such ordinance
73 may also provide grounds for revocation, suspension, or modification of any permit issued under this
74 subsection, subject to notice to the permittee of the revocation, suspension, or modification and an
75 opportunity for the permittee to have a hearing before the governing body of the locality or its
76 designated agent to challenge the revocation, suspension, or modification. *Any tow truck driver who*
77 *removes or tows a vehicle, pursuant to any such ordinance, that is occupied by an unattended*
78 *companion animal as defined in § 3.2-6500 shall, upon such removal, immediately notify the animal*
79 *control office of the locality in which the vehicle is being removed or towed. Nothing in this subsection*
80 *shall be applicable to public safety towing.*

81 **§ 46.2-1233. Localities may regulate towing fees.**

82 The governing body of any locality may by ordinance set reasonable limits on fees charged for the
83 removal of motor vehicles, trailers, and parts thereof left on private property in violation of § 46.2-1231,
84 and for the removal of trespassing vehicles under § 46.2-1215, taking into consideration the fair market
85 value of such removal.

86 Localities in Planning District 8 shall establish by ordinance (i) a hookup and initial towing fee of
87 ~~\$135~~ \$150 and (ii) for towing a vehicle between ~~seven o'clock~~ 7:00 p.m. and ~~eight o'clock~~ 8:00 a.m. or
88 on any Saturday, Sunday, or holiday, an additional fee of \$25 per instance; however, such ordinance
89 shall also provide that in no event shall more than two such additional fees be charged for towing any
90 vehicle.

91 **§ 46.2-1233.2. Advisory board.**

92 Prior to adopting or amending any ordinance pursuant to § 46.2-1232 or § 46.2-1233, the local
93 governing body shall appoint an advisory board to advise the governing body with regard to the
94 appropriate provisions of the ordinance. ~~Voting members~~ *Members* of the advisory board shall *only*
95 consist of an equal number of representatives of local law-enforcement agencies and representatives of
96 licensed towing and recovery operators, and one member of the general public. Any such advisory board
97 shall meet at least once per year at the call of the chairman of the advisory board, who shall be elected
98 annually from among the ~~voting~~ members of the advisory board by a majority vote. *The chairman of*
99 *any such advisory board for any locality within Planning District 8 shall be a representative of a*
100 *licensed towing and recovery operator.*

101 **§ 59.1-200. Prohibited practices.**

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

- 104 1. Misrepresenting goods or services as those of another;
- 105 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 106 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
107 services, with another;
- 108 4. Misrepresenting geographic origin in connection with goods or services;
- 109 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
110 benefits;
- 111 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 112 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
113 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
114 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
115 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
116 irregulars, imperfects or "not first class";
- 117 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
118 at the price or upon the terms advertised.

119 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
120 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;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

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;

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

184 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
185 (§ 59.1-207.17 et seq.) of this title;

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

187 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
188 (§ 59.1-424 et seq.) of this title;

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

190 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
191 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

203 32. Violating any provision of §§ § 46.2-118, 46.2-1217, 46.2-1231 ~~and~~, or 46.2-1233.1 or violating
204 any provision of a local ordinance enacted pursuant to § 46.2-1217, 46.2-1232, or 46.2-1233;

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

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

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

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

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

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

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

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

215 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
216 (§ 59.1-525 et seq.) of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

238 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
239 lease solely by reason of the failure of such contract or lease to comply with any other law of the
240 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
241 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
242 such contract or lease.