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SENATE BILL NO. 1468

Offered January 16, 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.

Patron—Marsden

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 District 8, which shall not require written authorization if such written contract is in place. Any such

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

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

80 **§ 46.2-1233. Localities may regulate towing fees.**

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

85 Localities in Planning District 8 shall establish by ordinance (i) a hookup and initial towing fee of
 86 \$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
 87 on any Saturday, Sunday, or holiday, an additional fee of \$25 per instance; however, such ordinance
 88 shall also provide that in no event shall more than two such additional fees be charged for towing any
 89 vehicle.

90 **§ 46.2-1233.2. Advisory board.**

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

100 **§ 59.1-200. Prohibited practices.**

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

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

118 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
 119 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
 120 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph

121 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such
122 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or
123 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
124 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

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

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

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

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

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

139 13a. Failing to provide to a consumer, or failing to use or include in any written document or
140 material provided to or executed by a consumer, in connection with a consumer transaction any
141 statement, disclosure, notice, or other information however characterized when the supplier is required
142 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
143 information in connection with the consumer transaction;

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

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

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

149 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
150 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
151 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
152 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
153 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
154 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
155 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
156 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
157 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
158 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
159 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
160 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
161 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
162 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
163 46.2-100;

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

169 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
170 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
171 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
172 receiving overpayments. If the credit balance information is incorporated into statements of account
173 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

181 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et

- 182 seq.) of this title;
- 183 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
- 184 (§ 59.1-207.17 et seq.) of this title;
- 185 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;
- 186 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
- 187 (§ 59.1-424 et seq.) of this title;
- 188 24. Violating any provision of § 54.1-1505;
- 189 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
- 190 17.6 (§ 59.1-207.34 et seq.) of this title;
- 191 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 192 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
- 193 title;
- 194 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
- 195 this title;
- 196 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
- 197 seq.) of this title;
- 198 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
- 199 seq.) of this title;
- 200 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
- 201 title;
- 202 32. Violating any provision of §§ § 46.2-118, 46.2-1217, 46.2-1231 ~~and~~, or 46.2-1233.1 or violating
- 203 any provision of a local ordinance enacted pursuant to § 46.2-1217, 46.2-1232, or 46.2-1233;
- 204 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 205 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 206 35. Using the consumer's social security number as the consumer's account number with the supplier,
- 207 if the consumer has requested in writing that the supplier use an alternate number not associated with
- 208 the consumer's social security number;
- 209 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 210 37. Violating any provision of § 8.01-40.2;
- 211 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 212 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;
- 213 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 214 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
- 215 (§ 59.1-525 et seq.) of this title;
- 216 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
- 217 43. Violating any provision of § 59.1-443.2;
- 218 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;
- 219 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 220 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 221 47. Violating any provision of § 18.2-239;
- 222 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 223 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
- 224 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 225 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
- 226 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
- 227 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
- 228 children's products that are used, secondhand or "seconds";
- 229 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;
- 230 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 231 52. Violating any provision of § 8.2-317.1;
- 232 53. Violating subsection A of § 9.1-149.1; and
- 233 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
- 234 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
- 235 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
- 236 which defective drywall has been permanently installed or affixed.
- 237 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
- 238 lease solely by reason of the failure of such contract or lease to comply with any other law of the
- 239 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
- 240 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
- 241 such contract or lease.