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HOUSE BILL NO. 135

Offered January 8, 2020

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A BILL to amend and reenact §§ 59.1-201, 59.1-203, 59.1-205, 59.1-206, 59.1-207 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; assignment of right to receive veteran's benefits.

Patron—Miyares

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-201, 59.1-203, 59.1-205, 59.1-206, 59.1-207 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-200.2 as follows:

§ 59.1-200.2. Prohibited practices; assignment of right to receive veterans' benefits.

A. As used in this section:

"Assignment of right to receive veterans' benefits" means any financial transaction in which a person provides a cash payment to a veteran in consideration for the veteran's assignment of his right to receive future pension or retirement benefits, without regard to whether (i) the person committing such act or practice is a supplier as defined in § 59.1-198, (ii) the act or practice constitutes a consumer transaction as defined in § 59.1-198, or (iii) the transaction is characterized or structured as a loan, assignment, loan secured by assignment, pledge, or other arrangement.

"Pension or retirement benefits" means any periodic benefit payable to a veteran by an agency of the federal government on account of the veteran's service in the Armed Forces of the United States, including any military retirement, pension, or disability benefit payments.

"Veteran" has the meaning ascribed to such term in § 2.2-2000.1.

B. In addition to the provisions of § 59.1-200, any person that advertises, arranges, offers, or enters into any assignment of right to receive veterans' benefits commits an unlawful fraudulent act or practice, prohibited under the provisions of this chapter, if such assignment of right to receive veterans' benefits is prohibited or void under the provisions of 37 U.S.C. § 701 or 38 U.S.C. § 5301(a).

§ 59.1-201. Civil investigative orders.

A. Whenever the attorney for the Commonwealth or the attorney for a county, city, or town has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of § 59.1-200 ~~or~~, 59.1-200.1, or 59.1-200.2, the attorney for the Commonwealth or the attorney for a county, city, or town if, after making a good faith effort to obtain such information, is unable to obtain the data and information necessary to determine whether such violation has occurred, or that it is impractical for him to do so, he may apply to the circuit court within whose jurisdiction the person having information resides, or has its principal place of business, for an investigative order requiring such person to furnish to the attorney for the Commonwealth or attorney for a county, city, or town such data and information as is relevant to the subject matter of the investigation.

B. The circuit courts are empowered to issue investigative orders, authorizing discovery by the same methods and procedures as set forth for civil actions in the Rules of the Supreme Court of Virginia, in connection with investigations of violations of § 59.1-200 ~~or~~, 59.1-200.1, or 59.1-200.2 by the attorney for the Commonwealth or the attorney for a county, city, or town. An application for an investigative order shall identify:

- 1. The specific act or practice alleged to be in violation of § 59.1-200 ~~or~~, 59.1-200.1, or 59.1-200.2;
2. The grounds which shall demonstrate reasonable cause to believe that a violation of § 59.1-200 ~~or~~, 59.1-200.1, or 59.1-200.2 may have occurred, may be occurring or may be about to occur;
3. The category or class of data or information requested in the investigative order; and
4. The reasons why the attorney for the Commonwealth or attorney for a county, city, or town is unable to obtain such data and information, or the reason why it is impractical to do so, without a court order.

C. Within 21 days after the service upon a person of an investigative order, or at any time before the return date specified in such order, whichever is later, such person may file a motion to modify or set aside such investigative order or to seek a protective order as provided by the Rules of the Supreme Court of Virginia. Such motion shall specify the grounds for modifying or setting aside the order, and may be based upon the failure of the application or the order to comply with the requirements of this section, or upon any constitutional or other legal basis or privilege of such person.

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59 D. Where the information requested by an investigative order may be derived or ascertained from the
60 business records of the person upon whom the order is served, or from an examination, audit or
61 inspection of such business records, or from a compilation, abstract or summary thereof, and the burden
62 of deriving or ascertaining the information is substantially the same for the attorney for the
63 Commonwealth or attorney for a county, city, or town as for the person from whom such information is
64 requested, it shall be sufficient for that person to specify the records from which the requested
65 information may be derived or ascertained, and to afford the attorney for the Commonwealth or attorney
66 for the county, city, or town reasonable opportunity to examine, audit or inspect such records and to
67 make copies, compilations, abstracts or summaries thereof.

68 E. It shall be the duty of the attorney for the Commonwealth or attorney for a county, city, or town,
69 his assistants, employees and agents, to maintain the secrecy of all evidence, documents, data and
70 information obtained through the use of investigative orders or obtained as a result of the voluntary act
71 of the person under investigation and it shall be unlawful for any person participating in such
72 investigations to disclose to any other person not participating in such investigation any information so
73 obtained. Any person violating this subsection shall be guilty of a Class 2 misdemeanor and shall be
74 punished in accordance with § 18.2-11. Notwithstanding the foregoing, this section shall not preclude the
75 presentation and disclosure of any information obtained pursuant to this section in any suit or action in
76 any court of this Commonwealth wherein it is alleged that a violation of § 59.1-200 ~~or~~, 59.1-200.1, *or*
77 59.1-200.2 has occurred, is occurring or may occur, nor shall this section prevent the disclosure of any
78 such information by the attorney for the Commonwealth or attorney for a county, city, or town to any
79 federal or state law-enforcement authority that has restrictions governing confidentiality and the use of
80 such information similar to those contained in this subsection; however, such disclosures may only be
81 made as to information obtained after July 1, 1979.

82 F. Upon the failure of a person without lawful excuse to obey an investigative order under this
83 section, the attorney for the Commonwealth or attorney for the county, city, or town may initiate
84 contempt proceedings in the circuit court that issued the order to hold such person in contempt.

85 G. No information, facts or data obtained through an investigative order shall be admissible in any
86 civil or criminal proceeding other than for the enforcement of this chapter and the remedies provided
87 herein.

88 **§ 59.1-203. Restraining prohibited acts.**

89 A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney
90 for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought
91 in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to
92 enjoin any violation of § 59.1-200 ~~or~~, 59.1-200.1, *or* 59.1-200.2. The circuit court having jurisdiction
93 may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action
94 under this section, it shall not be necessary that damages be proved.

95 B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county,
96 city, or town determines that a person subject to the provisions of this chapter intends to depart from
97 this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or
98 on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall,
99 before initiating any legal proceedings as provided in this section, give notice in writing that such
100 proceedings are contemplated, and allow such person a reasonable opportunity to appear before said
101 attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as
102 provided in § 59.1-202.

103 C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and
104 prevent violations of § 59.1-200 ~~or~~, 59.1-200.1, *or* 59.1-200.2.

105 D. The Commissioner of the Department of Agriculture and Consumer Services, or his duly
106 authorized representative, shall have the power to inquire into possible violations of subdivisions A 18,
107 28, 29, 31, 39, and 41, as it relates to motor fuels, of § 59.1-200 and § 59.1-335.12, and, if necessary, to
108 request, but not to require, an appropriate legal official to bring an action to enjoin such violation.

109 **§ 59.1-205. Additional relief.**

110 The circuit court may make such additional orders or decrees as may be necessary to restore to any
111 identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may
112 have been acquired from such person by means of any act or practice declared to be unlawful in
113 § 59.1-200 ~~or~~, 59.1-200.1, *or* 59.1-200.2, provided, that such person shall be identified by order of the
114 court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

115 **§ 59.1-206. Civil penalties; attorney's fees.**

116 A. In any action brought under this chapter, if the court finds that a person has willfully engaged in
117 an act or practice in violation of § 59.1-200 ~~or~~, 59.1-200.1, *or* 59.1-200.2, the Attorney General, the
118 attorney for the Commonwealth, or the attorney for the county, city, or town may recover for the
119 Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. For
120 purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney

121 General, the attorney for the Commonwealth, or the attorney for the county, city, or town notifies the
122 alleged violator by certified mail that an act or practice is a violation of § 59.1-200 ~~or~~, 59.1-200.1, *or*
123 *59.1-200.2*, and the alleged violator, after receipt of said notice, continues to engage in the act or
124 practice.

125 B. Any person who willfully violates the terms of an assurance of voluntary compliance or an
126 injunction issued under § 59.1-203 shall forfeit and pay to the Literary Fund a civil penalty of not more
127 than \$5,000 per violation. For purposes of this section, the circuit court issuing an injunction shall retain
128 jurisdiction, and the cause shall be continued, and in such cases the Attorney General, the attorney for
129 the Commonwealth, or the attorney for the county, city, or town may petition for recovery of civil
130 penalties.

131 C. In any action pursuant to subsection A or B and in addition to any other amount awarded, the
132 Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may
133 recover any applicable civil penalty or penalties, costs, reasonable expenses incurred by the state or local
134 agency in investigating and preparing the case not to exceed \$1,000 per violation, and attorney's fees.
135 Such civil penalty or penalties, costs, reasonable expenses, and attorney's fees shall be paid into the
136 general fund of the Commonwealth or of the county, city, or town which such attorney represented.

137 D. Nothing in this section shall be construed as limiting the power of the court to punish as
138 contempt the violation of any order issued by the court, or as limiting the power of the court to enter
139 other orders under § 59.1-203 or 59.1-205.

140 E. The right of trial by jury as provided by law shall be preserved in actions brought under this
141 section.

142 **§ 59.1-207. Unintentional violations.**

143 In any case arising under this chapter, no liability shall be imposed upon a supplier who shows by a
144 preponderance of the evidence that (i) the act or practice alleged to be in violation of § 59.1-200 ~~or~~,
145 59.1-200.1, *or 59.1-200.2* was an act or practice of the manufacturer or distributor to the supplier over
146 which the supplier had no control or (ii) the alleged violation resulted from a bona fide error
147 notwithstanding the maintenance of procedures reasonably adopted to avoid a violation; however,
148 nothing in this section shall prevent the court from ordering restitution and payment of reasonable
149 attorney's fees and court costs pursuant to *subsection B of § 59.1-204* ~~B~~ to individuals aggrieved as a
150 result of an unintentional violation of this chapter.