

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 522

An Act to amend and reenact §§ 59.1-9.3, 59.1-9.7, and 59.1-9.11 through 59.1-9.15 of the Code of Virginia, relating to Virginia Antitrust Act; disgorgement and other forms of equitable monetary relief.

[H 1546]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-9.3, 59.1-9.7, and 59.1-9.11 through 59.1-9.15 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-9.3. Definitions.

When used in this chapter, *unless the context requires a different meaning*:

(a) ~~The term "person"~~ *"Commodity" includes any kind of real or personal property.*

"Person" includes, unless the context otherwise requires, any natural person; any trust or association of persons, formal or otherwise; or any corporation, partnership, company, or other legal or commercial entity.

(b) ~~The terms "trade"~~ *"Service" includes any activity that is performed in whole or in part for the purpose of financial gain, including personal service, rental, leasing, or licensing for use.*

"Trade or commerce," "trade," and or "commerce," include includes all economic activity involving or relating to any commodity, service, or business activity.

(c) ~~The term "commodity" includes any kind of real or personal property.~~

(d) ~~The term "service" includes any activity that is performed in whole or in part for the purpose of financial gain, including but not limited to personal service, rental, leasing or licensing for use.~~

§ 59.1-9.7. Discriminatory practices unlawful; proof; payment or acceptance of certain commissions, etc., unlawful.

(a) A. It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities or services of like grade and quality, where either or any of the purchasers involved in such commerce are in competition, where such commodities or services are sold for use, consumption or resale within the Commonwealth and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them; provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the different methods or quantities in which such commodities or services are to such purchasers sold or delivered; and provided further, that nothing herein contained shall prevent persons engaged in selling commodities or services in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and provided further, that nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) B. Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section; provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) C. It is unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares or merchandise.

(d) D. It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products, commodities or services manufactured, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such

products, commodities or services.

(e) *E.* It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) *F.* It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price that is prohibited by this section.

§ 59.1-9.11. Penalty for flagrant violations.

In any action or proceeding brought under *subsection A of § 59.1-9.15* (a) the court may assess for the benefit of the Commonwealth a civil penalty of not more than \$100,000 for each willful or flagrant violation of this chapter. No civil penalty shall be imposed in connection with any violation for which any fine or penalty is imposed pursuant to federal law.

§ 59.1-9.12. Personal suit for injunction or actual damages.

(a) *A.* Any person threatened with injury or damage to his business or property by reason of a violation of this chapter may institute an action or proceeding for injunctive relief, *disgorgement, and other forms of equitable monetary relief as the court deems appropriate* when and under the same conditions and principles as injunctive relief is granted in other cases.

(b) *B.* Any person injured in his business or property by reason of a violation of this chapter may recover the actual damages sustained, and, as determined by the court, the costs of suit and reasonable attorney's attorney fees. If the trier of facts finds that the violation is willful or flagrant, it may increase damages to an amount not in excess of three times the actual damages sustained.

§ 59.1-9.13. Effect of conviction in other proceedings.

A final judgment or decree to the effect that a defendant has violated this chapter, other than a consent judgment or decree entered before any testimony has been taken, in an action or proceeding brought under *subsection A of § 59.1-9.15* (a) is prima facie evidence against that defendant in any other action or proceeding against him brought under § 59.1-9.12 or *subsection B of § 59.1-9.15* (b) as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto.

§ 59.1-9.14. Limitation of actions.

(a) *A.* An action under *subsection A of § 59.1-9.15* (a) to recover a civil penalty is barred if it is not commenced within four years after the cause of action accrues.

(b) *B.* An action under *subsection B of § 59.1-9.12* (b) or *subsection B of § 59.1-9.15* (b) to recover damages is barred if it is not commenced within four years after the cause of action accrues, or within one year after the conclusion of any action or proceeding under *subsection A of § 59.1-9.15* (a) commenced within or before that time based in whole or in part on any matter complained of in the action for damages, whichever is later.

§ 59.1-9.15. Actions on behalf of Commonwealth or localities; injunctive and other equitable relief; damages.

(a) *A.* The Attorney General on behalf of the Commonwealth, or the attorney for the Commonwealth or county attorney on behalf of a county, or the city attorney on behalf of a city, or the town attorney on behalf of a town may institute actions and proceedings for injunctive relief, *disgorgement, and other forms of equitable monetary relief as the court deems appropriate*, and civil penalties for violations of this chapter. In any such action or proceeding in which the plaintiff substantially prevails, the court may award the cost of suit, including a reasonable attorney's fee attorney fees, to such plaintiff.

(b) *B.* The Commonwealth, a political subdivision thereof, or any public agency injured in its business or property by reason of a violation of this chapter, may recover the actual damages sustained, reasonable attorney's attorney fees and the costs of suit. If the trier of facts finds that the violation is willful or flagrant, it may increase damages to an amount not in excess of three times the actual damages sustained.

(c) *C.* The Attorney General in acting under subsection (a) or (b) of this section may also bring such action on behalf of any political subdivision of the Commonwealth, provided that the Attorney General shall notify each such subdivision of the pendency of the action and give such subdivision the option of exclusion from the action.

(d) *D.* The Attorney General may bring a civil action to recover damages and secure other relief as provided by this chapter as parens patriae respecting injury to the general economy of the Commonwealth.