

LD0569164

HOUSE BILL NO. 1227

Offered January 25, 1994

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 38, consisting of sections numbered 59.1-460 through 59.1-467, relating to creation of the Telephone Solicitation Protection Act; penalty.

Patron—Copeland

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 38, consisting of sections numbered 59.1-460 through 59.1-467 as follows:

§ 59.1-200. Prohibited practices.

The following fraudulent acts or practices committed by a supplier in connection with a consumer 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 which are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or which are "seconds," irregulars, imperfections, 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, imperfections 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 which 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 which are void or unenforceable under the laws of this 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 §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, 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

INTRODUCED

HB1227

60 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
61 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
62 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
63 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
64 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card
65 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
66 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
67 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This
68 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,
69 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
70 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
71 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
72 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
73 § 46.2-100;

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

79 17. If a supplier enters into a written agreement with a consumer to resolve a dispute which arises in
80 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
81 agreement;

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

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

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

88 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
89 (§ 59.1-207.17 et seq.) of this title;

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

91 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
92 (§ 59.1-424 et seq.) of this title;

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

94 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
95 17.6 (§ 59.1-207.34 et seq.) of this title;

96 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

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

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

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

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

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

107 32. (Expires effective July 1, 1994) Violating any provision of §§ 46.2-1231 and 46.2-1233.1. This
108 subdivision shall expire July 1, 1994; and

109 33. Violating any provision of the Telemarketing Protection Act (§ 59.1-460 et seq.).

110 CHAPTER 38.

111 TELEMARKETING PROTECTION ACT.

112 § 59.1-460. Definitions.

113 As used in this chapter, unless the context requires a different meaning:

114 "Board" means the Virginia Board of Agriculture and Consumer Services.

115 "Buyer" means a person who purchases, or agrees to purchase, consumer goods or services from a
116 telemarketer.

117 "Consumer goods or services" means any real property or any tangible or intangible personal
118 property which is used normally for personal, family or household purposes.

119 "Division" means the Consumer Affairs Division of the Department of Agriculture and Consumer
120 Services.

121 "Telemarketer" means any natural person, firm, organization, partnership, association, corporation

or a subsidiary or affiliate thereof, which engages in the business of making telephonic sales calls on behalf of another for the purpose of soliciting, offering or advertising for sale any consumer goods or services or an extension of credit for such purposes, but shall not include calls made by a telemarketer (i) in response to an express request of the person called; (ii) in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call; (iii) to any person with whom the telemarketer has a prior or existing business relationship; (iv) by those qualifying under § 501 (c) (3) of the United States Internal Revenue Code; or (v) to any person under common control.

§ 59.1-461. Registration of telemarketers.

A. Every telemarketer, except as otherwise provided in this chapter shall, prior to conducting business as a telemarketer, file an initial registration statement with the Commissioner upon forms acceptable to him. Each registration statement shall thereafter be refiled on or before the fifteenth day of the fifth calendar month of the next and each following fiscal year in which such telemarketer is engaged in such activities within this Commonwealth. It shall be the duty of the president, chairman or principal officer of such telemarketers to file the statements required under this chapter. Such statement shall contain the following information:

1. The name of the telemarketer and the purpose for which it was organized.
2. The principal address of the telemarketer, the address of any offices in this Commonwealth and its designated agent for process with the Commonwealth. If no such agent is designated, the organization shall be deemed to have designated the Secretary of the Commonwealth. If the telemarketer does not maintain an office, the name and address of the person having custody of its financial records.
3. The names and addresses of any chapters, branches or affiliates in this Commonwealth.
4. The place where and the date when the telemarketer was legally established, the form of its organization.
5. The names and addresses of the officers, directors, trustees and the principal executive staff officer, as applicable.
6. A statement indicating whether the telemarketer, or any officer, has ever been convicted of a felony and, if so, a description of the pertinent facts.
7. A copy of the current articles of incorporation, bylaws, or other governing documents. If current copies are already on file with the Commissioner, only amendments, if any, shall be filed in years after the initial registration.
8. A description of the types of business to be undertaken.

§ 59.1-462. Cancellation of sale.

A. Except as provided in subsection E, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a purchase of consumer goods or services from a telemarketer until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase consumer goods or services which complies with § 59.1-463.

B. Cancellation occurs when the buyer gives written notice of cancellation to the telemarketer at the address stated in the agreement or offer to purchase.

C. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

D. Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the purchase of consumer goods or services from a telemarketer.

E. The buyer may not cancel a purchase of consumer goods or services from a telemarketer if the buyer requests the telemarketer to provide goods or services without delay because of an emergency, and

1. the telemarketer in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation;

2. in the case of goods, the goods cannot be returned to the telemarketer in substantially as good condition as when received by the buyer; and

3. the buyer's emergency request is in a dated writing personally signed by the buyer and expressly states that the buyer understands that he is waiving his right to cancel the purchase of consumer goods or services from a telemarketer under the provisions of this chapter.

F. Except as provided in subsection E, any waiver or modification of a buyer's right to cancel is void and of no effect. In the event the telemarketer obtains from the buyer a waiver or modification of his right to cancel, the buyer's right to cancel shall commence on the first business day following his learning that the waiver or modification is void and of no effect.

§ 59.1-463. Receipt or written agreement.

A. Every telemarketer shall present to the buyer a fully completed receipt if it is a cash or credit card sale or obtain the buyer's signature to a written agreement or offer to purchase, in the case of a

183 credit sale, which designates as the date of the transaction the date on which the buyer actually makes
 184 payment in whole or in part or signs, and which contains a statement of the buyer's rights and a notice
 185 of cancellation which complies with this subsection. The telemarketer shall also furnish the buyer with a
 186 copy of any contract pertaining to a purchase of consumer goods or services from a telemarketer at the
 187 time of its execution.

188 1. The statement shall:

189 a. Appear on the front side of the receipt or contract, or immediately above the buyer's signature, in
 190 bold face type of a minimum size of ten points under the conspicuous caption: "BUYER'S RIGHT TO
 191 CANCEL," and

192 b. Read as either of the following:

193 (1) "If this agreement was solicited at a residence and you do not want the goods or services, you,
 194 the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after
 195 the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

196 Notice of Cancellation

197 (Date of Transaction) To cancel this transaction, mail or deliver a signed
 198 and dated copy of this cancellation notice or any other written notice, or send a telegram to
 199 at (name of telemarketer) (address of telemarketer's place of business) not later
 200 than midnight of (Date) I hereby cancel this transaction (Date)"; or
 201 (Buyer's signature)

202 (2) In the form and content of any similar notice requirement for purchase of consumer goods or
 203 services from a telemarketer under federal law; provided that such requirement contains at least the
 204 information required in subdivision 1 of this subsection and, further provided, that nothing in such
 205 notice is in conflict with the provisions of this chapter. Any statement or notice form presented to a
 206 buyer prior to the effective date of an amendment to this section shall be deemed sufficient if it satisfied
 207 the requirements of this section in effect at the time the statement or notice was presented.

208 C. Except as otherwise provided in this section, until the telemarketer has complied with this section
 209 the buyer may cancel the purchase of consumer goods or services by notifying the telemarketer in any
 210 manner and by any means of his intention to cancel.

211 § 59.1-464. Regulations.

212 The Board is authorized to prescribe reasonable regulations in order to implement the provisions of
 213 this chapter. These regulations shall be adopted, amended, or repealed in accordance with the
 214 Administrative Process Act (§ 9-6.14:1 et seq.).

215 § 59.1-465. Investigations.

216 A. The Commissioner may, with respect to the purchase of consumer goods or services from a
 217 telemarketer:

218 1. Make necessary public and private investigations within or without this Commonwealth to
 219 determine whether any person has violated, or is about to violate, the provisions of this chapter or any
 220 rule, regulation, or order issued pursuant to this chapter;

221 2. Require or permit any person to file a statement in writing, under oath or otherwise as the
 222 Commissioner determines, as to all facts and circumstances concerning the matter under investigation;
 223 and

224 3. Administer oaths or affirmations and, upon motion or upon request of any party, may subpoena
 225 witnesses, compel their attendance, take evidence, and require the production of any matter that is
 226 relevant to the investigation, including the existence, description, nature, custody, condition, and location
 227 of any books, documents, or other tangible things; the identity and location of persons having
 228 knowledge of relevant facts; or any other matter reasonably calculated to lead to the discovery of
 229 material evidence.

230 B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are
 231 subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain
 232 material evidence shall take place within the City of Richmond.

233 C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner
 234 and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit
 235 Court of the City of Richmond for an order compelling compliance.

236 § 59.1-466. Production of records.

237 Every telemarketer, upon written request of the Commissioner, shall make available to the
 238 Commissioner its records for inspection and copying to enable the Commissioner to reasonably
 239 determine compliance with this chapter. Every telemarketer shall maintain a true copy of each
 240 agreement between the telemarketer and a buyer, and such agreement shall be maintained for its term
 241 plus two years.

242 § 59.1-467. Violations of chapter; penalty.

243 Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the
 244

245 *provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the*
246 *Virginia Consumer Protection Act (§ 59.1-196 et seq.).*

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HB1227