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HOUSE BILL NO. 1623

House Amendments in [] — February 6, 1995

A BILL to amend and reenact §§ 59.1-204, 59.1-204.1, and 59.1-207 of the Code of Virginia, relating to the Virginia Consumer Protection Act; private rights of action.

Patrons—Keating, Orrock and Van Yahres; Senator: Calhoun

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-204, 59.1-204.1, and 59.1-207 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-204. Individual action for damages or penalty.

A. Any person who suffers loss as the result of a violation of ~~§ 59.1-200~~ shall be entitled to this chapter may initiate an action to recover (i) actual damages, or in the case of a willful violation, three times the actual damages incurred, or ~~\$100~~ (ii) \$500, whichever is greater.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may, or in the case of a willful violation, [shall may], be awarded entitled to an award of reasonable attorney's fees and court costs.

[~~C. If the court finds, upon motion or its own initiative, that an action was brought pursuant to this chapter in violation of § 8.01-271.1, it shall impose sanctions as authorized by that section.~~]

§ 59.1-204.1. Tolling of limitation.

A. Any individual action pursuant to this chapter accruing on or after July 1, 1995, shall be commenced within two years after the cause of action has accrued. The cause of action shall accrue as provided in § 8.01-230.

B. When any of the authorized government agencies files suit under this chapter, the time during which such governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under § 59.1-204 shall be brought.

§ 59.1-207. Unintentional violations.

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

ENGROSSED

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