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HOUSE BILL NO. 1623

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws
on February 15, 1995)

(Patron Prior to Substitute—Delegate Keating)

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.

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~~ this chapter shall be entitled to initiate an action to recover actual damages, or ~~\$100~~ \$500, whichever is greater. *If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater.*

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs. *If the trier of fact finds that the violation was willful, such person shall be awarded reasonable attorney's fees and court costs in addition to any damages awarded.*

§ 59.1-204.1. Tolling of limitation.

A. Any individual action pursuant to § 59.1-204 for which the right to bring such action first accrues on or after July 1, 1995, shall be commenced within two years after such accrual. 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 ~~(+)~~ 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 court costs pursuant to § 59.1-204 B to individuals aggrieved as a result of an unintentional violation of § ~~59.1-200~~ this chapter.