

LD3619480

## HOUSE BILL NO. 1628

Offered January 13, 1995

A BILL to amend and reenact § 59.1-206 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-133.5, relating to the continuation of the Regulatory and Consumer Advocacy Revolving Trust Fund; civil penalties under the Virginia Consumer Protection Act.

Patrons—Van Yahres, Jones, D.C., Keating and Orrock; Senators: Calhoun and Maxwell

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 59.1-206 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-133.5 as follows:**

§ 2.1-133.5. *Regulatory and Consumer Advocacy Revolving Trust Fund; administration; sources of funds; distribution; purposes.*

A. *The Regulatory and Consumer Advocacy Revolving Trust Fund (the "Fund"), created in Item 48 of § 1-17 of Chapter 966 of the 1994 Acts of Assembly, shall be administered and distributed by the Attorney General in accordance with this section. The Fund shall consist of:*

1. *Such sums as have been or may be appropriated from time to time by the General Assembly and designated for the Fund;*

2. *Notwithstanding any other provision of law, ten percent of any amounts recovered by or on behalf of the Commonwealth, at trial or by settlement, from any case brought pursuant to the Virginia Antitrust Act (§ 59.1-9.1 et seq.) or the Virginia Consumer Protection Act (§ 59.1-196 et seq.); however, civil penalties imposed by the court shall be deposited into the Literary Fund;*

3. *Any moneys, gifts, endowments, or grants (i) donated or devised by individuals; (ii) donated by associations, corporations, or partnerships, whether public or private; or (iii) obtained from the United States government, its agencies or instrumentalities, and designated for the Fund; and*

4. *All interest, dividends, and appreciation which may accrue to the Fund.*

B. *Moneys in the Fund shall be made available by the Attorney General to the Office of the Attorney General; the Virginia Department of Agriculture and Consumer Affairs; if a local office of consumer affairs has been established pursuant to § 15.1-23.2 in any part of their jurisdiction, the attorney for the Commonwealth and the attorney for a county, city, or town; and the local offices of consumer affairs established pursuant to § 15.1-23.2. The moneys shall be used for the following purposes and in the order indicated: (i) operation of a statewide, toll-free consumer telephone hotline by the Virginia Department of Agriculture and Consumer Services in an amount not to exceed \$200,000 per biennium; (ii) expenditures for and reimbursements of reasonable costs and expenses associated with litigation or investigation of alleged violations of the Virginia Antitrust Act (§ 59.1-9.1 et seq.) or the Virginia Consumer Protection Act (§ 59.1-196 et seq.), including, but not limited to, attorney's and expert-witness fees, investigation expenses, and costs; and (iii) establishment of new or maintenance of existing alternative dispute resolution programs for consumer complaints involving the Virginia Antitrust Act or the Virginia Consumer Protection Act within the Virginia Department of Agriculture and Consumer Services or the local offices of consumer affairs established pursuant to § 15.1-23.2.*

C. *Prior to the distribution of any moneys for purposes (ii) and (iii) of subsection B, the Attorney General shall promulgate rules and regulations pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) which shall specify the criteria for distributing moneys for such purposes.*

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

A. *In any action brought under this chapter, if the court finds that a person has willfully engaged in an act or practice in violation of § 59.1-200, or has willfully violated the terms of any assurance of voluntary compliance, the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover for the literary fund Literary Fund, upon petition to the court, a civil penalty of not more than \$1,000 per violation. Such attorney may also recover, upon petition to the court, court costs, reasonable expenses incurred by the state or local agency in investigating and preparing the case not to exceed \$200 per violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town which such attorney represented. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town notifies the alleged violator by certified mail that an act or practice is a violation of § 59.1-200, and the alleged violator, after receipt of said notice, continues to engage in the act or*

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60 practice.

61 B. Any person who willfully violates the terms of an injunction issued under § 59.1-203 shall forfeit  
62 and pay to the ~~literary fund~~ *Literary Fund* a civil penalty of not more than \$5,000 per violation. For  
63 purposes of this section, the circuit court issuing an injunction shall retain jurisdiction, and the cause  
64 shall be continued, and in such cases the Attorney General, the attorney for the Commonwealth, or the  
65 attorney for the county, city, or town may petition for recovery of civil penalties, ~~attorney's fees, court~~  
66 ~~costs for the Commonwealth, and reasonable expenses incurred by the state or local agency in~~  
67 ~~investigating and preparing the case for the Commonwealth or for the county, city, or town represented.~~  
68 ~~Such expenses shall not exceed the sum of \$200 per violation. Such expenses and attorney's fees shall~~  
69 ~~be paid into the appropriate general fund as provided in subsection A of this section.~~

70 C. *In any action brought under this chapter, if the court finds that a person has willfully engaged in*  
71 *a continuing series or pattern of violations of this chapter against consumers who cannot reasonably*  
72 *protect their interests because of age, physical or mental infirmity, ignorance, illiteracy, or inability to*  
73 *understand the language of the consumer transaction, the Attorney General, the attorney for the*  
74 *Commonwealth, or the attorney for the county, city, or town may recover for the Literary Fund, upon*  
75 *petition to the court, a civil penalty of not more than \$15,000 from any person who has obtained*  
76 *substantial income or resources as a result of such violations.*

77 D. *In any action pursuant to subsections A, B, or C, the Attorney General, the attorney for the*  
78 *Commonwealth, or the attorney for the county, city, or town may recover, in addition to any applicable*  
79 *civil penalty, costs, reasonable expenses incurred by the state or local agency in investigating and*  
80 *preparing the case not to exceed \$200 per violation, and attorney's fees. Ten percent of such expenses*  
81 *and attorney's fees recovered shall be paid into the Regulatory and Consumer Advocacy Revolving Trust*  
82 *Fund established in § 2.1-133.5, and the remainder shall be paid into the general fund of the*  
83 *Commonwealth or of the county, city, or town which such attorney represented.*

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

87 D. F. The right of trial by jury as provided by law shall be preserved in actions brought under this  
88 section.

89 **2. That the provisions of this act relating to § 2.1-133.5 shall apply to: (1) such sums as may be**  
90 **appropriated by the General Assembly on or after July 1, 1995, and designated for the Fund; (2)**  
91 **ten percent of any amounts recovered by or on behalf of the Commonwealth, at trial or by**  
92 **settlement, from any case brought pursuant to the Virginia Antitrust Act (§ 59.1-9.1 et seq.) or the**  
93 **Virginia Consumer Protection Act (§ 59.1-196 et seq.) on or after July 1, 1995; (3) any moneys,**  
94 **gifts, endowments, or grants (i) donated or devised by individuals on or after July 1, 1995; (ii)**  
95 **donated by associations, corporations, or partnerships, whether public or private on or after July**  
96 **1, 1995; (iii) obtained from the United States government, its agencies or instrumentalities, on or**  
97 **after July 1, 1995, and designated for the Fund; and (4) all interest, dividends, and appreciation**  
98 **which may accrue to the Fund on or after July 1, 1995.**