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HOUSE BILL NO. 1628

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on February 2, 1995)

(Patron Prior to Substitute—Delegate Van Yahres)

A BILL to amend and reenact §§ 3.1-18.2 and 59.1-206 of the Code of Virginia, relating to the Virginia Consumer Protection Act; appropriation; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-18.2 and 59.1-206 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-18.2. Powers and duties.

A. The Administrator of Consumer Affairs shall have only such powers as may be necessary to perform the following duties:

(a) To promote 1. Promote consumer education in cooperation with the Department of Education and inform the public of policies, decisions and legislation affecting consumers.

(b) To serve 2. Serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by Virginia consumers of illegal, fraudulent, deceptive or dangerous practices and referring such appropriate complaints to the federal, state and local departments or agencies charged with enforcement of consumer laws.

(c) If the department or agency to which a complaint is referred determines that the matter cannot be settled at an administrative level, but requires either civil or criminal legal action, then the complaint together with all supporting evidence shall be transmitted to the appropriate enforcement officer for such legal action as may be necessary.

(d) To maintain 3. Maintain records of consumer complaints and their eventual disposition, which records shall be open for public inspection, provided that information disclosing the business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of such matters may be necessary for the enforcement of laws.

(e) To enter 4. Enter into agreements or to accept commissions from federal agencies.

5. Operate, maintain, and administer a statewide, toll-free consumer telephone hotline.

B. If the department or agency to which a complaint is referred pursuant to subdivision A 2 determines that the matter cannot be settled at an administrative level, the complaint together with all supporting evidence may be transmitted to the appropriate enforcement officer for such legal action as may be necessary.

C. The responsibility of the Administrator in these matters shall not be limited to those areas of peculiar interest to the Department of Agriculture and Consumer Services, but shall embrace the consumer programs and responsibilities of all the departments and agencies of the Commonwealth.

§ 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 \$2,500 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 practice.

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

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60 C. In any action brought under this chapter and in addition to any other amount awarded, if the
61 court finds that a person has willfully engaged in a continuing series or pattern of violations of this
62 chapter against consumers who cannot reasonably protect their interests because of physical disability,
63 mental infirmity, or inability to understand the language of the consumer transaction, the Attorney
64 General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover
65 for the Literary Fund, upon petition to the court, a civil penalty of not more than \$10,000 from any
66 person who has obtained substantial income or resources as a result of such violations.

67 D. In any action pursuant to subsection A, B, or C and in addition to any other amount awarded,
68 the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town
69 may recover any applicable civil penalty or penalties, costs, reasonable expenses incurred by the state
70 or local agency in investigating and preparing the case not to exceed \$1,000 per violation, and
71 reasonable attorney's fees. Such civil penalty or penalties, costs, reasonable expenses, and reasonable
72 attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town
73 which such attorney represented.

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

77 ~~F.~~ F. The right of trial by jury as provided by law shall be preserved in actions brought under this
78 section.