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## HOUSE BILL NO. 1636

Offered January 16, 1995

*A BILL to amend and reenact §§ 3.1-14 and 59.1-200 of the Code of Virginia, relating to the towing of vehicles.*

\_\_\_\_\_  
Patron—Orrock

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Referred to Committee on Agriculture

**Be it enacted by the General Assembly of Virginia:****1. That §§ 3.1-14 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:**

§ 3.1-14. Powers and duties in general; rules and regulations of Board of Agriculture and Consumer Services; records to be held in confidence.

A. 1. The Commissioner shall see to the proper execution of the laws relating to the subject of his Department, and he shall investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizer and compost, and for the inducement of immigration and capital, and he shall be especially charged with the supervision of the trade in commercial fertilizers as will best protect the interests of the farmers with the enforcement of the laws which are or may be enacted in this Commonwealth concerning the sale of commercial fertilizers, seed and food products, with authority in the Board of Agriculture and Consumer Services to make rules and regulations governing the same, and to publish them as required by law. He shall ensure that, unless an intent is expressly stated otherwise, the term "horse" or "equine," when used in this title, shall be considered to mean an agricultural or livestock animal.

2. He shall be charged with the inducement of capital and immigration, by the dissemination of information relative to the advantages of soil, climate, healthfulness and markets of this Commonwealth, and to resources and industrial opportunities offered in the Commonwealth as he may deem useful, and also with investigation adapted to promote the improvement of the milk and beef cattle and other stock.

3. (Expires July 1, 1995) He, or his duly authorized representative, shall have the authority, as provided in § 59.1-308.2, to inquire into consumer complaints regarding violations of § 46.2-1231 or § 46.2-1233.1 involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials. ~~The provisions of this subdivision shall expire July 1, 1995.~~

4. He shall have such other powers and duties as are prescribed by law.

B. The Commissioner shall hold the following records of the Department in confidence unless otherwise directed by the Governor or Board:

1. Schedules of work for regulatory inspection;
2. Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;
3. Reports of criminal violations made to the Department by persons outside the Department;
4. Records of active investigations until the investigations are closed;
5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records which are otherwise a matter of public record;
6. Tax returns required by the agricultural commodity commissions established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.

§ 59.1-200. Prohibited practices.

A. 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, imperfects, 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, imperfects or "not first class";

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60 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
61 at the price or upon the terms advertised.

62 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or  
63 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
64 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph  
65 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
66 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
67 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
68 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

69 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts  
70 of price reductions;

71 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
72 installed;

73 11. Misrepresenting by the use of any written or documentary material which appears to be an  
74 invoice or bill for merchandise or services previously ordered;

75 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"  
76 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the  
77 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
78 manufacturing the goods or services advertised or offered for sale;

79 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of  
80 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,  
81 or penalties which are void or unenforceable under any otherwise applicable laws of this  
82 Commonwealth, or under federal statutes or regulations;

83 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
84 with a consumer transaction;

85 15. Violating any provision of §§ 3.1-796.78, 3.1-796.79, or § 3.1-796.82, relating to the sale of  
86 certain animals by pet dealers which is described in such sections, is a violation of this chapter;

87 16. Failing to disclose all conditions, charges, or fees relating to:

88 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
89 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
90 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
91 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
92 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
93 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card  
94 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of  
95 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase  
96 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This  
97 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,  
98 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the  
99 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand  
100 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection  
101 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
102 § 46.2-100;

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

108 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
109 of five dollars (i) on an account maintained by the supplier and (ii) resulting from such consumer's  
110 overpayment on such account. Suppliers shall give consumers written notice of such credit balances  
111 within sixty days of receiving overpayments. If the credit balance information is incorporated into  
112 statements of account furnished consumers by suppliers within such sixty-day period, no separate or  
113 additional notice is required;

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

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

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

121 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et

seq.) of this title;

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

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

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

24. Violating any provision of § 54.1-1505;

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

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

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

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

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

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

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

32. (Expires July 1, 1995) Violating any provision of §§ 46.2-1231 and 46.2-1233.1. ~~This subdivision shall expire July 1, 1995.~~

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of this Commonwealth or any federal statute or regulation, to the extent such other law, statute or regulation provides that a violation of such law, statute or regulation shall not invalidate or make unenforceable such contract or lease.