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## HOUSE BILL NO. 1347

Offered January 22, 1996

*A BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to the Consumer Protection Act; prohibited practices.*

Patrons—Spruill, Christian, Crittenden, Jones, J.C., McEachin, Moore and Reynolds; Senators: Lambert, Lucas, Maxwell and Miller, Y.B.

Referred to Committee on Corporations, Insurance and Banking

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

**1. That § 59.1-200 of the Code of Virginia is amended and reenacted as follows:**

§ 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";

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

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

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

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

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

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

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

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

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

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

- a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does

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60 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
61 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
62 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card  
63 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of  
64 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase  
65 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This  
66 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,  
67 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the  
68 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand  
69 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection  
70 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
71 § 46.2-100;

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

77 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
78 of five dollars (i) on an account maintained by the supplier and (ii) resulting from such consumer's  
79 overpayment on such account. Suppliers shall give consumers written notice of such credit balances  
80 within sixty days of receiving overpayments. If the credit balance information is incorporated into  
81 statements of account furnished consumers by suppliers within such sixty-day period, no separate or  
82 additional notice is required;

83 *16b. Requiring an individual, when completing a consumer transaction by credit card, to purchase a*  
84 *specified minimum dollar value of goods or services;*

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

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

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

92 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et  
93 seq.) of this title;

94 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
95 (§ 59.1-207.17 et seq.) of this title;

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

97 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
98 (§ 59.1-424 et seq.) of this title;

99 24. Violating any provision of § 54.1-1505;

100 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
101 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

113 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1.

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