

005517744

HOUSE BILL NO. 411

Offered January 13, 2000

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 43, consisting of sections numbered 59.1-479 through 59.1-485, relating to the Virginia Telephone Privacy Act; penalties.

Patrons—Grayson, Almand, Amundson, Barlow, Baskerville, Brink, Callahan, Cranwell, Darner, Keister, Marshall, Moran, Parrish, Plum, Pollard, Shuler, Thomas, Van Landingham and Van Yahres

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 and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 43, consisting of sections numbered 59.1-479 through 59.1-485, 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:

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60 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
61 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
62 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
63 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
64 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
65 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card
66 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
67 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
68 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This
69 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,
70 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
71 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
72 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
73 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
74 § 46.2-100;

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

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

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

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

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

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

95 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
96 (§ 59.1-207.17 et seq.) of this title;

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

98 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
99 (§ 59.1-424 et seq.) of this title;

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

101 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
102 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

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

115 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1.

116 34. Violating any provision of the Telephone Privacy Act, Chapter 43 (§ 59.1-479 et seq.) of this
117 title.

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

such contract or lease.

CHAPTER 43. TELEPHONE PRIVACY ACT.

§ 59.1-479. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Consumer goods or services" means any real property or any tangible or intangible personal property that is normally used for personal, family, or household purposes.

"Division" means the Consumer Affairs Division of the Department of Agriculture and Consumer Services.

"Telephone solicitor" means any person who makes, or causes to be made, a telephonic sales call.

"Telephonic sales call" means any call made by a telephone solicitor to any person in the Commonwealth for the purpose of soliciting, offering, or advertising for sale any consumer goods or services; for the purpose of soliciting, offering, or advertising an extension of credit for consumer goods or services; for the purpose of obtaining information that will or may be used for the purpose of soliciting, offering, or advertising for sale any consumer goods or services or an extension of credit for such purposes; or for the purpose of soliciting or obtaining donations.

"Unsolicited telephonic sales call" means any call made by a telephone solicitor except a call made (i) in response to an express request of the person called, (ii) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call, (iii) to any person with whom the telephone solicitor has a prior or existing business relationship, or (iv) to any person under common control.

§ 59.1-480. Identification of telephone solicitor required.

Any telephone solicitor that makes an unsolicited telephonic sales call to any telephone number shall identify himself by his first and last names and the business on whose behalf he is making the telephonic sales call immediately upon making contact by telephone with the person who is the object of the telephone solicitation.

§ 59.1-481. Registry of person not wishing to receive unsolicited calls; fees.

A. Any person, upon providing written notice and a ten dollar listing fee, shall be placed on a registry to be established and maintained by the Consumer Affairs Division pursuant to this section which indicates that such person does not wish to receive any unsolicited telephonic sales calls. Any person shall renew such listing by providing a written renewal notice and a five dollar assessment to the Division. Such written renewal notice shall specify whether the renewal is for one year or five years. In the absence of such specification, the renewal shall be for a period of one year.

B. The Division shall update the registry and shall provide such registry for a fee to any telephone solicitor upon request.

C. The Division shall publish quarterly a current listing of persons on the registry.

D. Any fees paid pursuant to this chapter shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department of Agriculture and Consumer Services to be used in the administration of this chapter.

§ 59.1-482. Making telephonic sales calls to persons listed on registry prohibited.

No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call if a telephone number is listed on the most recent quarterly registry published pursuant to subsection C of § 59.1-481, provided that the solicitor may continue to rely upon the most recently published registry for thirty days after the publication of the next quarterly registry.

§ 59.1-483. Notification to customers.

A. Every telephone company, as provided in Chapter 15 (§ 56-458 et seq.) and Chapter 16 (§ 56-485 et seq.) of Title 56, shall notify its customers of the provisions of this chapter by displaying such information in the consumer information pages of local telephone directories.

B. The State Corporation Commission is authorized to prescribe regulations in order to implement and enforce the provisions of this section.

§ 59.1-484. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

§ 59.1-485. Regulations.

The Board is authorized to prescribe reasonable regulations, including any necessary fees, in order to implement the provisions of this chapter. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).