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HOUSE BILL NO. 2156

Offered January 10, 2001

Prefiled January 10, 2001

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 32.1, consisting of sections numbered 59.1-428.1 through 59.1-428.3, relating to telephone solicitation practices; consumer protection.

Patrons—Morgan, Grayson, Parrish, Plum and Pollard

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 32.1, consisting of sections numbered 59.1-428.1 through 59.1-428.3, 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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59 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
60 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
61 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
62 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
63 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
64 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card
65 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
66 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
67 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This
68 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,
69 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
70 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
71 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
72 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
73 § 46.2-100;

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

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

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;

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

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

115 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1; and

116 35. *Violating any provision of Chapter 32.1 (§ 59.1-428.1 et seq.) of this title.*

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

121 such contract or lease.

122 CHAPTER 32.1.

123 TELEPHONE SOLICITATION PRACTICES.

124 § 59.1-428.1. Definitions.

125 "Consumer goods or services" means any real property or any tangible or intangible personal
126 property or service, including a loan or extension of credit, that is normally used for personal, family,
127 or household purposes.

128 "Doing business in the Commonwealth" refers to the conduct of telephone solicitations from a
129 location in Virginia or from any other state to a residential subscriber located within Virginia.

130 "Residential subscriber" means a person who has subscribed to residential telephone service from a
131 local exchange company or the other persons living or residing with such person.

132 "Telephone solicitation" means any voice communication over a telephone line, whether made from a
133 line operator or by other means, made by any person doing business in the Commonwealth to any
134 residential subscriber in Virginia for the purpose of (i) soliciting or encouraging the purchase or rental
135 of any consumer goods or services or an extension of credit for such purposes; (ii) obtaining
136 information that will or may be used for the purpose of soliciting or encouraging the purchase or rental
137 of, or investment in, any consumer goods or services or an extension of credit for such purposes; or (ii)
138 soliciting or encouraging the making of donations or contributions to any charitable organization, as
139 defined in § 57-48.

140 "Telephone solicitor" means any person who makes, or causes to be made, a telephone solicitation.

141 § 59.1-428.2. Prohibited telephone solicitation practice.

142 Any telephone solicitor doing business in the Commonwealth who makes a telephone solicitation to
143 the telephone number of any residential subscriber shall not block or otherwise prevent the telephone
144 number of the telephone solicitor and the state from which the telephone solicitation is being placed
145 from being read by a caller identification device operating on the residential subscriber's telephone.

146 § 59.1-428.3. Enforcement; penalties.

147 Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the
148 provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the
149 Virginia Consumer Protection Act, Chapter 17 (§ 59.1-196 et seq.) of this title.