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SENATE BILL NO. 95

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 15, 2008)

(Patron Prior to Substitute—Senator Reynolds)

A BILL to amend and reenact §§ 18.2-239 and 59.1-200 of the Code of Virginia, relating to definition of pyramid promotional schemes; penalty.

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-239 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-239. Pyramid promotional schemes; misdemeanor; definitions; contracts void.

Every person who contrives, prepares, sets up, operates, advertises or promotes any pyramid promotional scheme shall be guilty of a Class 1 misdemeanor. For the purposes of this section:

(a) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant gives a valuable consideration for the opportunity to receive compensation or things of value in return for inducing other persons to become participants in the program plan or operation by which a person gives consideration for the opportunity to receive compensation, a majority of which is derived from the introduction of other persons into the plan or operation, rather than from the sale or consumption of goods, services or intangible property by a participant or other person introduced into the plan or operation;

(b) "Compensation" does not mean payment based on sales of goods or services to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme; and

(c) "Promotes" shall mean inducing one or more other persons to become a participant.

All contracts and agreements, now existing or hereafter formed, whereof the whole or any part of the consideration is given for the right to participate in pyramid promotional scheme programs, are against public policy, void and unenforceable.

"Consideration" means the payment of cash, or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale.

§ 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 that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfections, 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, imperfections 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 that appears to be an invoice or bill for merchandise or services previously ordered;

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

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

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

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

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

73 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
74 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
75 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
76 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
77 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
78 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
79 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
80 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
81 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
82 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
83 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
84 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
85 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
86 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
87 § 46.2-100;

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

93 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
94 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
95 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
96 receiving overpayments. If the credit balance information is incorporated into statements of account
97 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

98 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
99 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
100 agreement;

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

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

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

107 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
108 (§ 59.1-207.17 et seq.) of this title;

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

110 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
111 (§ 59.1-424 et seq.) of this title;

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

113 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
114 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

- 122 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
123 seq.) of this title;
- 124 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
125 title;
- 126 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 127 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 128 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 129 35. Using the consumer's social security number as the consumer's account number with the supplier,
130 if the consumer has requested in writing that the supplier use an alternate number not associated with
131 the consumer's social security number;
- 132 36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;
- 133 37. Violating any provision of § 8.01-40.2;
- 134 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 135 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;
- 136 40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;
- 137 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
138 (§ 59.1-525 et seq.) of this title;
- 139 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
- 140 43. Violating any provision of § 59.1-443.2;
- 141 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; ~~and~~
- 142 45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1; *and*
- 143 46. *Violating any provision of § 18.2-239.*
- 144 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
145 lease solely by reason of the failure of such contract or lease to comply with any other law of the
146 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
147 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
148 such contract or lease.