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SENATE BILL NO. 388

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 2.2-517, 3.2-102, 3.2-114, and 59.1-203 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 5 of Title 2.2 sections numbered 2.2-517.1 and 2.2-517.2, relating to the Office of the Attorney General; Department of Agriculture and Consumer Affairs; powers and duties relating to consumer protection laws.*

Patron—Obenshain

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-517, 3.2-102, 3.2-114, and 59.1-203 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 5 of Title 2.2 sections numbered 2.2-517.1 and 2.2-517.2 as follows:

§ 2.2-517. Division of Consumer Counsel created; authority.

A. There is created in the Department of Law a Division of Consumer Counsel (the "Division") that shall represent the interests of the people as consumers. *The Division shall have authority to investigate and resolve complaints and related inquiries of consumer protection laws by any lawful means, including but not limited to legal action, settlement or alternative dispute resolution.*

B. The duties of the Division shall be to:

1. ~~Appear before governmental commissions, agencies and departments, including the State Corporation Commission, to represent and be heard on behalf of consumers' interests, and investigate such matters relating to such appearance.~~

2. *Make such studies related to enforcing consumer laws of the Commonwealth as deemed necessary to protect the interests of the consumer and recommend to the Governor and General Assembly the enactment of such legislation deemed necessary to promote and protect the interests of the people as consumers.*

C. ~~The Division, in all investigations connected with enforcing consumer laws and appearances before governmental bodies shall, on behalf of the interests of the consumer, cooperate and coordinate its efforts with such commissions, agencies and departments in ensuring that any matters adversely affecting the interests of the consumer are properly controlled and regulated. The appearance of a representative of the Division before any governmental body shall in no way limit or alter the duties of such governmental body.~~

D. ~~The Attorney General may employ and fix the salaries of such attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, and other services as may be provided for by law, as he may deem necessary in the operation of the Division of Consumer Counsel to carry out its functions.~~

§ 2.2-517.1. *Powers and duties of the Division.*

A. *The Division shall have such powers as may be necessary to perform the following duties:*

1. *Establish mechanisms by which to receive complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of the consumer protection laws listed in subsection B. Such mechanisms shall include establishing a statewide, toll-free telephone hotline to be administered by the Division; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Division through computer networks such as the Internet;*

2. *Establish and administer programs that facilitate resolution of complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of the consumer protection laws listed in § 2.2-517.2. Such programs may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 that volunteer to participate in a program;*

3. *Serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices and referring appropriate complaints to the federal, state and local departments or agencies charged with enforcement of consumer protection laws listed in § 2.2-517.2;*

4. *Maintain records of consumer complaints and their eventual disposition, which records shall be*

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59 open for public inspection, provided that information disclosing the business interests of any person,
60 trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of
61 such matters may be necessary for the enforcement of laws;

62 5. Promote consumer education, in cooperation with the Virginia Department of Agriculture and
63 Consumer Services and the Department of Education, and inform the public of policies, decisions and
64 legislation affecting consumers;

65 6. Serve as a central coordinating agency and clearinghouse for receiving and investigating
66 complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices
67 and referring appropriate complaints to the federal, state and local departments or agencies charged
68 with enforcement of consumer laws;

69 7. Maintain records of consumer complaints and their eventual disposition, which records shall be
70 open for public inspection, provided that information disclosing the business interests of any person,
71 trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of
72 such matters may be necessary for the enforcement of laws;

73 8. Appear before governmental commissions, agencies and departments, including the State
74 Corporation Commission, to represent and be heard on behalf of consumers' interests, and investigate
75 such matters relating to such appearance;

76 9. Make such studies related to enforcing consumer laws of the Commonwealth as deemed necessary
77 to protect the interests of the consumer and recommend to the Governor and General Assembly the
78 enactment of such legislation deemed necessary to promote and protect the interests of the people as
79 consumers;

80 10. Enter into agreements or accept commissions from federal agencies; and

81 11. Exercise such powers and perform such duties as requested by the Commissioner of the under
82 the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

83 B. The Division, in all investigations connected with enforcing consumer laws and appearances
84 before governmental bodies shall, on behalf of the interests of the consumer, cooperate and coordinate
85 its efforts with such commissions, agencies and departments in ensuring that any matters adversely
86 affecting the interests of the consumer are properly controlled and regulated. The appearance of a
87 representative of the Division before any governmental body shall in no way limit or alter the duties of
88 such governmental body.

89 C. The Attorney General may employ and fix the salaries of such attorneys, employees and
90 consultants, within the amounts appropriated to the Attorney General for providing legal service for the
91 Commonwealth, and other services as may be provided for by law, as he may deem necessary in the
92 operation of the Division of Consumer Counsel to carry out its functions.

93 § 2.2-517.2. Additional authority of the Division for certain consumer protection laws.

94 A. The Division shall be responsible for receiving, investigating, and resolving complaints and
95 related inquiries from the Commonwealth's consumers involving violations or alleged violations of
96 consumer protection laws as set forth in the following:

97 1. Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.);

98 2. Virginia Consumer Protection Act (§ 59.1-196 et seq.);

99 3. Automobile Repair Facilities Act (§ 59.1-207.1 et seq.);

100 4. Collision Damage Waiver Act (§ 59.1-207.28 et seq.);

101 5. Motor Vehicle Manufacturers' Warranty Adjustment Act (§ 59.1-207.34 et seq.);

102 6. Comparison Price Advertising Act (§ 59.1-207.40 et seq.);

103 7. Virginia Health Spa Act (§ 59.1-294 et seq.);

104 8. Virginia Membership Camping Act (§ 59.1-311 et seq.);

105 9. Virginia Credit Services Businesses Act (§ 59.1-335.1 et seq.);

106 10. Prizes and Gifts Act (§ 59.1-415 et seq.);

107 11. Virginia Public Telephone Information Act (§ 59.1-424 et seq.);

108 12. Pay-Per-Call Services Act, (§ 59.1-429 et seq.);

109 13. Extended Service Contract Act (§ 59.1-435 et seq.);

110 14. Legal Services Contracts (§ 59.1-441.1 et seq.);

111 15. Virginia Travel Club Act (§ 59.1-445 et seq.);

112 16. Virginia Telephone Privacy Protection Act (§ 59.1-510 et seq.);

113 17. Virginia Post-Disaster Anti-Price Gouging Act (§ 59.1-525 et seq.); and

114 18. Solicitations of Contributions law (§ 57-48 et seq.).

115 B. Nothing in this section shall be construed to limit the regulatory authority of the Virginia
116 Department of Agriculture and Consumer Services granted pursuant to § 3.2-102 with respect to
117 consumer protection laws.

118 § 3.2-102. General powers and duties of the Commissioner.

119 A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers
120 and duties herein provided, and such other powers and duties as may be prescribed by law, including

those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Have the authority, in the same manner 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;

2. Establish mechanisms by which to receive complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth, *which is not subject to regulation by the Division of Consumer Counsel of the Office of the Attorney General pursuant to § 2.2-517.2*. Such mechanisms shall include establishing a statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Department through computer networks such as the Internet;

3. Establish and administer programs that facilitate resolution of complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth, *which is not subject to regulation by the Division of Consumer Counsel of the Office of the Attorney General pursuant to § 2.2-517.2*. Such programs shall be developed in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 that volunteer to participate in a program. He shall submit an annual written report on or before January 15 to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation, and Natural Resources on his activities pursuant to this subdivision and subdivision 2 of this subsection during the preceding calendar year;

4. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products; and

5. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-207. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a

182 winery or farm winery licensee that is not served by a wholesaler when the owner or manager is
183 appointed to the board; one owner or manager of a winery or farm winery licensee that produces no
184 more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making
185 appointments to the board of directors, the Board shall consider nominations of winery and farm winery
186 licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the
187 Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to
188 him at least annually on its activities, including reporting the quantity of wine distributed for each
189 winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement
190 Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers
191 granted under this section.

192 § 3.2-114. Powers and duties of Office.

193 A. The Office shall have only such powers as may be necessary to perform the following duties
194 *relating to consumer protection laws that are not subject to regulation by the Division of Consumer*
195 *Counsel of the Office of the Attorney General pursuant to § 2.2-517.2:*

196 1. Promote consumer education, in cooperation with the *Office of the Attorney General and the*
197 Department of Education, and inform the public of policies, decisions and legislation affecting
198 consumers;

199 2. Serve as a central coordinating agency and clearinghouse for receiving and investigating
200 complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices
201 and referring appropriate complaints to the federal, state and local departments or agencies charged with
202 enforcement of consumer laws;

203 3. Maintain records of consumer complaints and their eventual disposition, which records shall be
204 open for public inspection, provided that information disclosing the business interests of any person,
205 trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of
206 such matters may be necessary for the enforcement of laws;

207 4. Enter into agreements or accept commissions from federal agencies; and

208 5. Exercise such powers and perform such duties as requested by the Commissioner under the
209 Virginia Consumer Protection Act (§ 59.1-196 et seq.).

210 B. If the department or agency to which a complaint is referred pursuant to subdivision A 2
211 determines that the matter cannot be settled at an administrative level, the complaint together with all
212 supporting evidence may be transmitted to the appropriate enforcement officer for such legal action as
213 may be necessary.

214 C. The responsibility of the Office in these matters shall not be limited to those areas of peculiar
215 interest to the Department, but shall embrace the consumer programs and responsibilities of all the
216 departments and agencies of the Commonwealth.

217 § 59.1-203. Restraining prohibited acts.

218 A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney
219 for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought
220 in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to
221 enjoin any violation of § 59.1-200 or 59.1-200.1. The circuit court having jurisdiction may enjoin such
222 violations notwithstanding the existence of an adequate remedy at law. In any action under this section,
223 it shall not be necessary that damages be proved.

224 B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county,
225 city, or town determines that a person subject to the provisions of this chapter intends to depart from
226 this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or
227 on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall,
228 before initiating any legal proceedings as provided in this section, give notice in writing that such
229 proceedings are contemplated, and allow such person a reasonable opportunity to appear before said
230 attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as
231 provided in § 59.1-202.

232 C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and
233 prevent violations of § 59.1-200 or 59.1-200.1.

234 D. The Commissioner of the Department of Agriculture and Consumer Services, or his duly
235 authorized representative, shall have the power to inquire into possible violations of § 59.1-200 or
236 59.1-200.1 *relating to consumer protection laws that are not subject to regulation by the Division of*
237 *Consumer Counsel of the Office of the Attorney General pursuant to § 2.2-517.2*, and, if necessary, to
238 request, but not to require, an appropriate legal official to bring an action to enjoin such violation.