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HOUSE BILL NO. 2073

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 27, 2017)

(Patron Prior to Substitute—Delegate Watts)

*A BILL to amend and reenact §§ 19.2-215.1 and 59.1-200 of the Code of Virginia, relating to certain fraud crimes; multi-jurisdiction grand jury; Virginia Consumer Protection Act.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-215.1 and 59.1-200 of the Code of Virginia are amended and reenacted as follows:****§ 19.2-215.1. Functions of a multi-jurisdiction grand jury.**The functions of a ~~multi-jurisdiction~~ multi-jurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:

a. Title 10.1 for which punishment as a felony is authorized;

b. § 13.1-520;

c. §§ 18.2-47 and 18.2-48;

d. §§ 18.2-111 and 18.2-112;

e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;

f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;

g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;

h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;

i. § 18.2-434, when violations occur before a ~~multi-jurisdiction~~ multi-jurisdiction grand jury;

j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;

k. § 18.2-460 for which punishment as a felony is authorized;

l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;

m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;

n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;

o. Article 9 (§ 3.2-6570 et seq.) of Chapter 65 of Title 3.2;

p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

q. Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;

r. Article 5 (§ 18.2-186 et seq.) and Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2;

s. Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1;

t. § 18.2-178 where the violation involves insurance fraud;

u. § 18.2-346 for which punishment as a felony is authorized or § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1;

v. Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2;

w. Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2;

x. Malicious felonious assault and malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

y. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2;

z. Felonious sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

aa. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;

bb. Chapter 13 (§ 18.2-512 et seq.) of Title 18.2;

cc. § 18.2-246.14 and Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1; and

dd. §§ 18.2-178, 18.2-178.1, and 18.2-200.1; and

ee. Any other provision of law when such condition is discovered in the course of an investigation that a ~~multi-jurisdiction~~ multi-jurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.

2. To report evidence of any criminal offense enumerated in subdivision 1 and for which a court reporter has recorded all oral testimony as provided by § 19.2-215.9 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated, or to the chief law-enforcement officer of any jurisdiction where such offense could be prosecuted or investigated, or to a sworn investigator designated pursuant to § 19.2-215.6, or, when appropriate, to the Attorney General.

3. To consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which

60 allege an offense enumerated in subdivision 1 may be submitted to a ~~multijurisdiction~~ *multi-jurisdiction*
61 grand jury.

62 4. The provisions of this section shall not abrogate the authority of an attorney for the
63 Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

64 **§ 59.1-200. Prohibited practices.**

65 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
66 transaction are hereby declared unlawful:

67 1. Misrepresenting goods or services as those of another;

68 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

69 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
70 services, with another;

71 4. Misrepresenting geographic origin in connection with goods or services;

72 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
73 benefits;

74 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

75 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
76 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
77 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
78 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
79 irregulars, imperfects or "not first class";

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

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

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

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

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

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

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

103 13a. Failing to provide to a consumer, or failing to use or include in any written document or
104 material provided to or executed by a consumer, in connection with a consumer transaction any
105 statement, disclosure, notice, or other information however characterized when the supplier is required
106 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
107 information in connection with the consumer transaction;

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

110 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain
111 animals by pet dealers which is described in such sections, is a violation of this chapter;

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

113 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
114 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
115 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
116 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
117 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
118 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
119 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
120 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
121 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision

does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

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

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

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

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

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

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

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

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

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

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

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

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

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

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

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

183 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
184 47. Violating any provision of § 18.2-239;
185 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
186 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
187 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
188 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
189 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
190 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
191 children's products that are used, secondhand or "seconds";
192 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;
193 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
194 52. Violating any provision of § 8.2-317.1;
195 53. Violating subsection A of § 9.1-149.1; ~~and~~
196 54. *Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1; and*
197 55. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
198 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
199 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
200 which defective drywall has been permanently installed or affixed.
201 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
202 lease solely by reason of the failure of such contract or lease to comply with any other law of the
203 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
204 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
205 such contract or lease.