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HOUSE BILL NO. 2671

Offered January 11, 2019

A *BILL to amend the Code of Virginia by adding sections numbered 55-525.25:1 and 55-525.31:1 and to repeal § 55-525.12 of the Code of Virginia, relating to real estate settlements and settlement agents; prohibited conduct; penalties.*

Patrons—Gooditis and Simon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 55-525.25:1 and 55-525.31:1 as follows:

§ 55-525.25:1. Prohibition against payment or receipt of settlement services kickbacks, rebates, commissions, and other payments; criminal penalty.

A. No person selling real property, or performing services as a settlement agent, lay real estate settlement agent, real estate agent, attorney, or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person.

B. Nothing in this section shall be construed to prohibit:

1. Expenditures for bona fide advertising and marketing promotions otherwise permissible under the provisions of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);

2. The provision of educational materials or classes, if such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort;

3. The payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the settlement service provider; or

4. An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance business. An employer's payment to its own employees for the referral of insurance business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.

C. No person shall be in violation of this section solely by reason of ownership in a settlement service provider, where such person receives returns on investments arising from the ownership interest, provided that such person discloses in writing to the consumer an ownership interest in those settlement services, including its ownership percentage in the settlement service provider pursuant to the requirements of § 55-525.13.

D. Any person who knowingly and willfully violates this section is guilty of a Class 3 misdemeanor. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

§ 55-525.31:1. Civil penalties; attorney fees.

A. In addition to the penalties and liabilities set forth in §§ 55-525.25:1 and 55-525.31, in any action brought under this chapter, if a court finds that a person has willfully engaged in an act or practice in violation of this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the locality notifies the alleged violator by certified mail that an act or practice is a violation of this chapter and the alleged violator, after receipt of the notice, continues to engage in the act or practice.

B. The Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town recovering a civil penalty under subsection A, or the appropriate licensing authority or the Commission instituting an enforcement action under § 55-525.31, may recover costs and reasonable expenses incurred by it in investigating and preparing the case, and attorney fees.

2. That § 55-525.12 of the Code of Virginia is repealed.

INTRODUCED

HB2671