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HOUSE BILL NO. 852

Offered January 22, 1996

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 17.8, consisting of sections numbered 59.1-207.45 through 59.1-207.48, relating to the Future Services Contract Act.

Patrons—Keating, Almand, Callahan, Connally, Darner, Dillard, Fisher, Grayson, Harris, Hull, O'Brien, Puller and Watts; Senators: Gartlan, Howell, Ticer, Waddell and Whipple

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 17.8, consisting of sections numbered 59.1-207.45 through 59.1-207.48, 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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60 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
61 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
62 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
63 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
64 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
65 less than twenty days after date of purchase, a cash refund or credit to the purchaser's credit card
66 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
67 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
68 and any refund may be delayed for a period of ten banking days to allow for the check to clear. This
69 subdivision does not apply to sale merchandise which is obviously distressed, out of date, post season,
70 or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
71 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
72 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
73 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
74 § 46.2-100;

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

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

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

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

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

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

95 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
96 (§ 59.1-207.17 et seq.) of this title;

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

98 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
99 (§ 59.1-424 et seq.) of this title;

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

101 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
102 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

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

115 33. Violating any provision of the Future Services Contracts Act, Chapter 17.8 (§ 59.1-207.45 et
116 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 this
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.

CHAPTER 17.8.
FUTURE SERVICES CONTRACTS ACT.

§ 59.1-207.45. Title of chapter.

This chapter may be cited as the Future Services Contracts Act.

§ 59.1-207.46. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Business day" means any day except a Sunday or any legal holiday.

"Consumer" means any natural person who purchases a future services contract primarily for personal, family or household purposes.

"Future services" means any service that will be delivered at a future time for lawn care, dating services or martial arts instruction.

"Future services contract" means any agreement that obligates a consumer to purchase a future service from a provider.

"Provider" means any person who sells any future services to a consumer. The term "provider" does not include any person defined as a "health spa" by § 59.1-296 and who does not offer martial arts instruction as a primary business activity.

"Purchaser" means any consumer who enters into a future services contract.

§ 59.1-207.47. Right of cancellation.

A. Every future services contract for the sale of future services, which is paid for in advance or which the purchaser agrees to pay for in future installments, shall be in writing and shall contain the following contractual provisions:

1. A provision for the penalty-free cancellation of the future services contract within three business days of its making and refund within 30 days of such notice of all moneys paid under the contract.

2. A provision warning the consumer in ten-point, bold-faced type which shall appear on the first page directly under the contract title stating: "YOU MAY NOT BE ENTITLED TO EARLY TERMINATION OF THIS CONTRACT BEYOND THE INITIAL THREE-DAY RIGHT OF CANCELLATION. THEREFORE, YOU SHOULD READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ALL PROVISIONS BEFORE SIGNING. GET ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE."

3. A provision for the cancellation of the future services contract if the provider does not or cannot substantially provide the future services in accordance with the terms of this contract, materially misrepresents the services, or if the provider of any dating service or martial arts instruction relocates and fails to provide alternate facilities within five miles of the location designated in the contract where any dating services or martial arts instruction are to be offered. Upon receipt of written notice from the purchaser stating the exact services that were materially misrepresented or not performed and sent by certified mail, return receipt requested or personal delivery, to the address specified in the future services contract, the provider shall have thirty days in which to provide the services. If the services are not provided within the thirty-day period, the purchaser may notify the provider in the manner specified in subdivision 4 that the contract is cancelled. If the services are provided within thirty days, but the same or other services are not provided again at a later date as specified in the future services contract, the purchaser may cancel the contract immediately in the manner specified in subdivision 4. The provider shall refund to the purchaser, within thirty days of receipt of notice of cancellation, a pro rata refund of the contract price for the undelivered portion of the contract.

4. A provision specifying the method of contract cancellation which requires the purchaser to notify the future services provider of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address specified in the future services contract; that all moneys to be refunded upon cancellation of the future services contract shall be paid within thirty days of receipt of the notice of cancellation; and that if the purchaser has executed any credit or lien agreement with the future services provider to pay for all or part of the services, any such negotiable instrument executed by the purchaser shall also be returned within thirty days after such cancellation.

5. A provision for the cancellation of the future services contract if the provider agrees to accept contract cancellation for any other reason not outlined in this section. Upon receipt of such notice, the provider shall refund to the purchaser, within thirty days of receipt of notice of cancellation, a pro rata refund of the contract price for the undelivered portion of the contract.

B. A copy of every future services contract shall be delivered to the purchaser at the time the contract is executed. All future services contracts shall be in writing, be signed by the purchaser, designate the date on which the purchaser actually signed the contract, state the starting and ending dates of the service period, separately identify any other fees or costs to be paid by the purchaser during the term of the contract, and contain the following statement printed in letters of not less than ten-point, bold-faced type which shall appear immediately above the purchaser's signature under the conspicuous caption, "BUYER'S RIGHT TO CANCEL":

183 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN
184 THREE CALENDAR DAYS FROM THE DATE OF RECEIPT OF THIS DISCLOSURE UNLESS YOU
185 HAVE ALREADY USED THE FUTURE SERVICES PROVIDED IN CONNECTION WITH THIS
186 AGREEMENT. IF YOU HAVE ALREADY USED THE SERVICES PROVIDED IN CONNECTION WITH
187 THIS AGREEMENT, YOU MAY STILL CANCEL THIS TRANSACTION WITHIN THREE CALENDAR
188 DAYS FROM THE RECEIPT OF THIS DISCLOSURE, BUT YOU ARE SUBJECT TO A
189 CANCELLATION PENALTY NO GREATER THAN THE PRORATED PORTION OF THE TOTAL
190 CONTRACT PRICE THAT YOU HAVE USED.

191 TO CANCEL THIS TRANSACTION, MAIL BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
192 OR DELIVER A SIGNED AND DATED COPY OF THE FOLLOWING CANCELLATION NOTICE OR
193 ANY OTHER WRITTEN NOTICE OR SEND A TELEGRAM TO:

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195 (Name and Address of Provider)
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199 Place of Business NOT LATER THAN
200 MIDNIGHT OF THE THIRD DAY
201 AFTER RECEIPT OF THIS
202 DISCLOSURE

202 (Date)

203 I HEREBY CANCEL THIS TRANSACTION

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210 C. Within thirty days after notice of cancellation is received, the provider shall refund to the
211 purchaser any payments made by the purchaser for the future services agreement, minus the prorated
212 cancellation penalty if the purchaser has already used the service. The refund may be made by crediting
213 the purchaser's credit card account if a credit card was used to make a payment and if the provider
214 informs the purchaser in writing that the credit card account has been credited.

215 § 59.1-207.48. Violations of chapter; penalty.

216 Any violation of the provisions of this chapter or any future services contract executed therewith
217 shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to the
218 enforcement of Chapter 27 (§ 59.1-196 et seq.) of this title.