

**REPORT OF THE  
DIVISION OF CONSUMER COUNSEL  
OF THE OFFICE OF ATTORNEY GENERAL  
To  
THE GOVERNOR  
And  
THE GENERAL ASSEMBLY OF VIRGINIA**



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TO THE HONORABLE MILLS E GODWIN, JR

and

THE GENERAL ASSEMBLY OF VIRGINIA

In accordance with the provisions of § 2-1-133.1 (b) of the Code of Virginia of 1950, I transmit to you herewith a report of the Division of Consumer Counsel of the Office of Attorney General

As the statute provides, this report contains various recommendations for your consideration and that of the General Assembly for legislation to protect the interest of the consumers in Virginia

This statute, adopted by the 1970 General Assembly, charges the Division of Consumer Counsel with two primary responsibilities, first, to "represent and be heard on behalf of consumers' interests (before governmental commissions, agencies and departments, including the State Corporation Commission) and investigate such matters relating to such appearance "

The second responsibility of the Division is "to make such studies related to enforcing consumer laws of the Commonwealth as deemed necessary to protect the interests of consumers and *recommend to the Governor and the General Assembly the enactment of such legislation deemed necessary to promote and protect the interests of the people as consumers* " The purpose of this report is to fulfill the second responsibility imposed upon the Division of Consumer Counsel in the statute

The necessity for mature and continuing consideration of the consumer interest, with emphasis on legislative action, is reflected in the bills prepared to implement this annual report. In the following pages, I will outline the need for the legislation and discuss each proposal in general terms

The welcome interest of the General Assembly in legislation to provide greater protection to Virginia consumers has expanded steadily since the Division of Consumer Counsel was established at my suggestion in 1970. One result has been the undertaking of a number of studies of consumer problems and legislation independent of the Division's own. In the past year, legislative commissions and the Virginia Advisory Legislative Council, as well as standing committees of the General Assembly and the Office of The Administrator of Consumer Affairs, have made intensive studies of various questions affecting the consumer interest. Their detailed reports and recommendations will be available to you as the 1974 General Assembly convenes, and I will refer to them in this report whenever pertinent

There are several clearly defined areas of consumer protection which the Division of Consumer Counsel has studied in the past year, and the legislative proposals prepared by the Division are discussed herein according to the area in which they are intended to be effective

### ***THE CONSUMER AND THE INSURANCE INDUSTRY***

In each of the last two sessions of the General Assembly no fault insurance legislation has been considered and rejected, despite the fact that federal legislation in this area is imminent, legislation that will pre-empt the field in

the absence of adequate state legislation. Indeed, the Judiciary Committee of the United States Senate is due to report a federal no fault insurance bill in mid-February of this year.

While the no fault bill presented to the General Assembly in 1972 was not adopted, considerable improvements were made to the bill introduced in 1973. Although that measure, too, was rejected in the final hours of the 1973 session, I remain convinced that no fault legislation is needed in Virginia. Accordingly, the Division of Consumer Counsel again proposes no fault legislation. The bill, attached to this report, embodies amendments to the 1973 measure to meet many of the remaining objections voiced last year. In any event, the cost and inefficiency of the current auto liability insurance system is of such great concern to the consumer that no fault insurance legislation should be delayed no longer.

Events of the past year involving the failure of an industrial loan association and the recent closing of two others by Commission order warrant a careful study of this subject not only as it applies to industrial loan associations, but to savings and loan associations and credit unions as well. If deposits in all such organizations were to be insured, we would have complete insurance of deposits in Virginia financial institutions. This was the position of my office in 1973 and was reflected in legislation prepared by my office and introduced in the General Assembly. The bills would have required insurance of all deposits in all financial institutions.

In view of the recent closings, it is regrettable the General Assembly did not see fit to approve this legislation. The legislature did, however, turn the question over to a Commission to Study Insurance Required of Certain Financial Institutions. That Commission has now recommended enactment of legislation requiring insurance of deposits in all financial institutions. I trust the General Assembly will take favorable action on that recommendation at its 1974 session.

The advent of competitive pricing in Virginia, authorized by the 1972 General Assembly, merits the continued attention of the Division of Consumer Counsel. While the Division recommends no additional legislation at this time, the entire field of competitive pricing of insurance is being constantly studied. Of present concern, for example, are the actions of some automobile liability insurance firms in rolling back rates as a result of a reduction in the number of accidents due to the lowering of highway speed limits during the energy crisis.

Another area of interest is Pennsylvania's decision requiring that insurance policies be made readable to the policy holder. A clear understanding of an insurance policy's provisions is a basic requirement for the policy holder to make the sort of evaluation of insurance envisioned by the Competitive Pricing Act. To this end, the Division will in the months ahead study the desirability of standardization of insurance forms in language which is readily understandable to the layman.

### *ANTITRUST LAWS AND THE CONSUMER*

In 1972, I suggested that Virginia's present inadequate antitrust laws be subjected to meticulous study with a view toward thorough revision. There were two reasons prompting my suggestion. First, the incursion of organized crime into the Commonwealth and the threat posed thereby to legitimate business. Second, the rapid growth of franchising in Virginia. At the same time, because of the obvious relationship of the Virginia Fair Trade Act to antitrust questions, I recommended a parallel study of that Act. The General Assembly assigned these studies to the Virginia Advisory Legislative Council. During the past two years, my office has assisted the VALC in its study. At the same time, the Antitrust Committee of the National Association of Attorneys

General, a committee of which I have the privilege to be Chairman, has provided input to the study, particularly in relation to a model state antitrust act. I trust the General Assembly will give careful consideration to the recommendations of the VALC.

### *THE CONSUMER AND CHARITY*

Charitable giving continues to be a worthwhile preoccupation of the American citizen. With each year, the amounts given to charitable organizations increase, as witnessed by the overall success in Virginia, for example, of United Way campaigns. In addition, there is a significant number of independent fund raising groups, the majority of which maintain high standards of integrity both in fund raising and ultimate expenditures.

It is important to note, however, that in Virginia the public has no established access through which to learn how these sums are spent by the organizations which solicit them. There is no law in Virginia, in other words, to guard against the possibility, however occasional it may be, of fraud in charitable solicitations.

At both the 1972 and 1973 sessions, the General Assembly gave earnest consideration to passage of a Charitable Solicitations Act. Understandable interest and concern in the legislation was demonstrated by organizations which raise funds for charitable purposes on an annual or continual basis. The complex nature of the bill caused the General Assembly to take no final action on the proposed Act in either session. Thus the bill will again be before the legislature, with some minor amendments, this year.

The purpose of the Charitable Solicitations Act is neither to hinder legitimate fund raising activity in the Commonwealth nor to suggest that any charitable organization's integrity is in question. It is simply to ensure that such fund raising in the Commonwealth will always be above reproach by requiring adequate disclosure of the facts relating to such organizations' activities. I trust the General Assembly will act favorably on this measure in 1974.

### *THE CONSUMER AND HOUSING*

Beyond question, the most significant and costly investment the consumer makes in a lifetime is for shelter for himself and his family, whether it be in the purchase of a home or in the long term payment of rent. Protection for the consumer-home buyer has been afforded in various ways, including statutory law. Thus, the Virginia Real Estate Commission is empowered to regulate the real estate industry. More recently, Virginia has passed a Fair Housing Act to prevent discrimination in the sale or rental of housing.

For the past two years, the Virginia Housing Study Commission has been studying all aspects of housing, from the availability of adequate housing to the relationship between homeowner and mortgage holder and between lessee and landlord. Much of the Commission's report and legislative recommendations deals with the relationship between landlord and tenant. This relationship has become of critical importance, a fact attested to by the number of complaints my office has become aware of concerning abuses of security deposits. The Housing Study Commission recommends legislation to correct these abuses in which tenants find they are unable to reclaim all or a reasonable portion of the deposits they made when signing a lease.

After making its own study of the problem, the Division of Consumer Counsel has prepared legislation setting a time limit within which a landlord must refund his tenant's security deposit after expiration of the lease or submit an itemized list of damages which the deposit is to cover. Such a bill

will prohibit the arbitrary refusal of a landlord to refund a deposit when the tenant moves I consider this to be necessary legislation in the consumer interest in Virginia

The growing need for regulations governing the sale of subdivided land, particularly land developed for recreational subdivisions, was underscored last year by the introduction of the Subdivided Land Sales Act The purpose of the legislation was to ensure that promises made by developers to prospective purchasers are kept Instances of misrepresentation as to, for example, the planned construction of offsite facilities have been numerous enough to warrant legislative action

The federal Interstate Land Sales Act appears to provide basic protection, adequately alerting buyers to the responsibilities of developers At the same time, however, it is clear that substantive local legislation is required Mandatory local subdivision control ordinances could well be the answer A subcommittee of the Senate Courts of Justice Committee has been considering the problem, and I am confident the Committee will offer appropriate legislation to the 1974 session of the General Assembly

### *THE CONSUMER IN THE MARKETPLACE*

Since the Division of Consumer Counsel began its work in the summer of 1970, it has seen with pleasure the responsiveness of the General Assembly to the consumer and his interests In the past three sessions, the legislature has added to the statutes a significant number of new laws and amendments to existing laws which provide to the consumers of Virginia a broad measure of protection from fraud and misrepresentation in the marketplace Even so, other opportunities remain for legislative action in the field of consumer protection, and the remainder of this report will be a summary of legislative proposals which the Division of Consumer Counsel recommends for enactment at the 1974 session of the General Assembly Some of the legislation has been prepared by the Division itself, some has been prepared by other agencies or study groups but has the Division's support

In 1973, the Division recommended that a study be undertaken to determine whether the automobile repair industry in Virginia should be regulated The number of complaints brought to the attention of the Division and the Office of Consumer Affairs indicated that some auto mechanics are not competent and that some auto repair firms are engaged in deceptive practices

The General Assembly decided that the Automobile Repair Study Commission be established, headed by the Administrator of Consumer Affairs The result of that study is embodied in the proposed Consumer Motor Vehicle Repair Industry Licensing and Certification Act To be administered by the Department of Professional and Occupational Registration, the Act would require that auto repair shops in Virginia be subject to a mandatory licensing procedure The Act, incidentally, would not apply to a business where the only work performed consists of fueling, changing oil, water or batteries or similar functions not directly related to repairs or adjustments to the motor vehicle itself Thus, most of those businesses commonly known as service stations would be exempt

The Act would encourage, but not require, the certification of auto mechanics This voluntary certification would be directed by a Board of Consumer Motor Vehicle Repair Industry Licensing and Certification The Board would certify mechanics who meet standards established by the Board based upon written tests, educational achievement and practical experience

The mandatory licensing requirement and the voluntary certification program coupled with industry pride and consumer pressure should have the



effect of providing impetus to the automobile repair industry to steadily upgrade itself The Division of Consumer Counsel fully supports this bill

In 1973, a measure was introduced, with the support of the Division of Consumer Counsel, to regulate the radio and television repair industry in Virginia Again, the volume of consumer complaints about the quality and cost of radio and television repair, plus accusations that some repairs made were not even necessary, prompted the introduction of the measure However, the General Assembly imposed a moratorium on all legislation pertaining to licensing, pending a Virginia Advisory Legislative Council study of licensing procedures With that study now complete, the Division of Consumer Counsel proposes enactment of the Radio-TV Repair Licensing Act in 1974 The bill proposed is little changed from that offered in 1973

Promotional schemes to improve sales through the involvement of consumers in games or giveaways are still a source of concern to the Division of Consumer Counsel Accordingly, a bill similar to one introduced in 1973 to regulate such schemes has been drafted by the Division The legislation is aimed at regulating those sales promotion games that involve chance without consideration These are the games in which "no purchase is necessary" The major improvement in the legislation offered in 1974 is that it gives greater authority to the Administrator of Consumer Affairs to regulate the games and thereby prevent abuses

A growing consumer problem has been the referral sales contract This device, often used in door to door sales solicitation, dupes the consumer into thinking he will get a rebate or discount from the seller if he helps the seller find additional customers As a rule, the merchandise is purposely priced high but is represented to the consumer as fairly priced The salesperson promises a rebate or discount in exchange for a list of names of other prospective purchasers or assistance in inducing others to buy Under this legislation, any contract entered into under such a referral sales scheme would be void and unenforceable

During the past year, both the Division of Consumer Counsel and the Consumer Credit Study Commission have given close attention to the necessity for legislation to benefit the consumer who makes payments to a holder in due course The General Assembly considered such legislation in 1972 and 1973, but declined to act favorably upon it The evidence is clear that under the present statutes, these contracts can and often do work hardship upon the consumer, particularly the consumer who finds that his merchandise is defective or that the seller refuses to meet his obligations The major purpose of the bill is to allow the consumer time in which to assert such defenses after his purchase I consider this bill to be reasonable and necessary, as well as long overdue

The experience of many consumers with debt collection agencies prompted the Division of Consumer Counsel to propose remedial legislation in 1973 Although the 1973 measure did not meet with the General Assembly's approval, I am hopeful that the more comprehensive measure the Division offers in 1974 will be enacted into law

Collecting debts is not easy Many businesses prefer to turn this necessary task over to debt collection agencies Reports from consumers indicate that some debt collection agencies subject debtors to harassment and indignity in order to collect money due No law exists in the Commonwealth to prevent such tactics The bill proposed for consideration by the 1974 General Assembly defines clearly what tactics would constitute harassment, intimidation or deceit in the collection of debts It also provides for recovery of damages by the consumer following successful court action against a collection agency

An amendment to Virginia's present law prohibiting "bait and switch"

advertising is submitted by the Division of Consumer Counsel for consideration by the General Assembly. The existing statute is designed to prevent a seller from enticing a customer, through advertisement, to purchase an article of merchandise and then persuading him not to buy it in favor of something else at a higher price. In some cases, the seller refuses to sell the advertised article.

The amendment prepared by the Division of Consumer Counsel provides clear definitions of what practices are prohibited under the law. Thus, enforcement of this necessary statute will be relatively easy. I trust the legislature will give favorable attention to the measure.

Finally, the Division of Consumer Counsel proposes further amendments to the comparative pricing statute. 1972 amendments supported by the Division were enacted, but additional amendments appear necessary in view of continuing consumer confusion as to the meaning of comparative price advertising. One major amendment proposed lengthens from 30 to 45 consecutive days the period during the three, rather than four, months preceding advertisement the former or comparative price must have been in effect. This amendment forbids an advertiser to state or imply that the merchandise was "formerly sold" at a particular price unless substantial sales at that price were actually made.

An alternative amendment, also offered by the Division of Consumer Counsel, would prohibit consideration of the price of another merchant for comparative purposes. The comparative or former price could only be a price previously offered by the same store at which the purchase is to be made.

#### *CONCLUSION*

The legislative program contained in this report will, if enacted, be of much benefit to Virginia's consumers. I trust the report and the suggested legislation will merit your support during the 1974 session of the General Assembly. In the meantime, the Division of Consumer Counsel will continue to study consumer problems and, as required by law, recommend additional measures should such action be indicated.

Respectfully submitted,



Andrew P. Miller  
Attorney General

A BILL to amend and reenact §§ 38 1-381 and 46 1-395, as amended, of the Code of Virginia, relating to liability insurance on motor vehicles, aircraft and watercraft, standard provisions, "omnibus clause", uninsured motorist coverage, certificates of self-insurance, and to repeal § 38 1-380 1, as amended, of the Code of Virginia, relating to optional insurance of motor vehicle occupants

Be it enacted by the General Assembly of Virginia

1 That §§ 38 1-381 and 46 1-395, as amended, of the Code of Virginia are amended and reenacted as follows

§ 38 1-381 Liability insurance on motor vehicles, aircraft and watercraft, standard provisions, "omnibus clause", uninsured motorist coverage —(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, aircraft or any private pleasure vessel, ship, boat or other watercraft, shall be issued or delivered in this State to the owner of such vehicle, aircraft or such watercraft, or shall be issued or delivered by any insurer licensed in this State upon any motor vehicle, aircraft or any private pleasure vessel, ship, boat or other watercraft then principally garaged or docked or principally used in this State, unless it contains a provision insuring the named insured and any other person responsible for the use of or using the motor vehicle, aircraft or private pleasure vessel, ship, boat or other watercraft with the consent, expressed or implied, of the named insured, against liability for death or injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle, aircraft or such watercraft by the named insured or by any such person, provided, that every automobile liability insurance policy or contract, or endorsement thereto, insuring private passenger automobiles principally garaged and/or used in Virginia, and every policy of liability insurance, contract or endorsement thereto insuring aircraft, private pleasure vessels, ships, boats or other watercraft principally docked or used in Virginia, when the named insured is an individual or husband and wife, which includes, with respect to any liability insurance provided by the policy, contract or endorsement for use of a nonowned automobile, aircraft or private pleasure watercraft, any provision requiring permission or consent of the owner of such automobile or such watercraft in order that such insurance apply shall be construed to include permission or consent of the custodian in such provision requiring permission or consent of the owner, provided, however, that in the case of aircraft liability insurance, such policy or contract may contain the exclusions enumerated in § 38 1-389 2, provided, however, notwithstanding any other provisions of law, no policy or contract shall require pilot experience greater than that prescribed by the Federal Aviation Agency, except for those pilots operating air taxis

(a1) Nor shall any such policy or contract relating to ownership, maintenance or use of a motor vehicle be so issued or delivered unless it contains an endorsement or provision insuring the named insured and any other person responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured, against liability for death or injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by any such person, notwithstanding the failure or refusal of the named insured or such other person to cooperate with the insurer under the terms of the policy, provided, however, that if such failure or refusal prejudices the insurer in the defense of an action for damages arising from the operation or use of such motor vehicle, then this endorsement or provision shall be void

(a2) Any endorsement, provision or rider attached to, or included in, any such policy of insurance which purports or seeks in any way to limit or reduce in any respect the coverage afforded by the provisions required therein by this section shall be wholly void

(a3) Such policy or contract of bodily injury liability insurance, or of property damage liability insurance, which provides insurance to a named insured in connection with the business of selling, repairing, servicing, storing or parking motor vehicles, against liability arising from the ownership, maintenance or use of any motor vehicle incident thereto shall contain a provision that the insurance coverage applicable to such motor vehicles afforded a person other than the named insured and his employees in the course of their employment, including a motor vehicle loaned or leased to such other person as a convenience during the repairing or servicing of a motor vehicle for such other person, shall not be applicable if there is any other valid and collectible insurance applicable to the same loss covering such other person under a policy with limits at least equal to the financial responsibility requirements specified in § 46 1-504 of the Code of Virginia

In the event that such other valid and collectible insurance has limits less than the financial responsibility requirements specified in § 46 1-504 of the Code of Virginia, then the coverage afforded a person other than the named insured and his employees in the course of their employment shall be applicable to whatever extent may be necessary to equal the financial responsibility requirements specified in § 46 1-504 of the Code of Virginia

(a4) Any policy or contract of bodily injury liability insurance or of property damage liability insurance shall exclude coverage to persons other than named insured, directors, stockholders, partners, agents or employees thereof, or residents of the same household of either, while such person is employed or otherwise engaged in the business of selling, repairing, servicing, storing or parking motor vehicles if there is any other valid or collectible insurance applicable to the same loss covering such person under a policy with limits at least equal to the financial responsibility requirements specified in § 46 1-504 of the Code of Virginia

In the event that such other valid and collectible insurance has limits less than the financial responsibility requirements specified in § 46 1-504 of the Code of Virginia, then the coverage afforded a person other than the named insured while such person is employed or otherwise engaged in the business of selling, repairing, servicing, storing or parking motor vehicles shall be applicable to whatever extent may be necessary to equal the financial responsibility requirements specified in § 46 1-504 of the Code of Virginia

(b) Nor shall any such policy or contract relating to ownership, maintenance or use of a motor vehicle be so issued or delivered unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of § 46 1-1 (8), as amended from time to time, of the Code herein, provided, however, that said insured, after January one, nineteen hundred sixty-seven, shall be offered the opportunity to contract, at an additional premium, for limits higher than those provided in § 46 1-1 (8) so long as such limits do not exceed the limits of the automobile liability coverage provided by such policy. Such endorsement or provisions shall also provide for no less than five thousand dollars coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of such loss or damage

(c) As used in this section, the term "bodily injury" shall include death resulting therefrom, the term "insured" as used in subsections (b), (d), (f), and

(g) hereof, means the named insured and, while resident of the same household, the spouse of any such named insured, and relatives of either, while in a motor vehicle or otherwise, and any person who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies or the personal representative of any of the above, and the term "uninsured motor vehicle" means a motor vehicle as to which there is no (i) bodily injury liability insurance and property damage liability insurance both in the amounts specified by § 46 1-1 (8), as amended from time to time, or (ii) there is such insurance but the insurance company writing the same denies coverage thereunder for any reason whatsoever including failure or refusal of the insured to cooperate with such company, (iii) there is no bond or deposit of money or securities in lieu of such bodily injury and property damage liability insurance, and (iv) the owner of such motor vehicle has not qualified as a self-insurer under the provisions of § 46 1-395. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown, provided that recovery under the endorsement or provisions shall be subject to the conditions hereinafter set forth.

There shall be a rebuttable presumption that a motor vehicle is uninsured if the Commissioner of the Division of Motor Vehicles certifies that, from the records of the Division of Motor Vehicles, it appears (i) that there is no bodily injury liability insurance and property damage liability insurance, both in the amounts specified by § 46 1-1 (8), covering the owner or operator thereof, or (ii) that no bond has been given or cash or securities delivered in lieu of such insurance, or (iii) that the owner or operator of such vehicle has not qualified as a self-insurer in accordance with the provisions of § 46 1-395.

(d) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured or someone on his behalf, in order for the insured to recover under the endorsement, shall report the accident as required by § 46 1-400, unless such insured is reasonably unable to do so, in which event the insured shall make such report as soon as reasonably practicable under the circumstances.

(e) If the owner or operator of any vehicle causing injury or damages be unknown, an action may be instituted against the unknown defendant as "John Doe" and service of process may be made by delivery of a copy of the motion for judgment or other pleadings to the clerk of the court in which the action is brought and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance company shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

(e1) Any insured intending to rely on the coverage required by paragraph (b) of this section shall, if any action is instituted against the owner or operator of an uninsured motor vehicle, serve a copy of the process upon the insurance company issuing the policy in the manner prescribed by law, as though such insurance company were a party defendant, such company shall thereafter have the right to file pleadings and take other action allowable by law in the name of the owner or operator of the uninsured motor vehicle or in its own name, provided, however that nothing in this paragraph shall prevent such owner or operator from employing counsel of his own choice and taking any action in his own interest in connection with such proceeding.

This subsection shall not apply to any cause of action arising prior to April twenty-seven, nineteen hundred fifty-nine.

(f) Any insurer paying a claim under the endorsement or provisions required by paragraph (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such

injury, death or damage and such person's insurer, notwithstanding that it may deny coverage for any reason, to the extent that payment was made, provided, that the bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe, or such person's insurer denying coverage for any reason, provided, that any recovery against such owner or operator, or insurer as heretofore referred, shall be paid to the insurance company to the extent that such insurance company paid the named insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its proportionate part of any reasonable costs and expense incurred in connection therewith including reasonable attorney's fees. Nothing in an endorsement or provisions made under this paragraph nor any other provision of law shall operate to prevent the joining in an action against John Doe of the owner or operator of the motor vehicle causing such injury as a party defendant and such joinder is hereby specifically authorized

(g) No such endorsement or provisions shall contain any provision requiring arbitration of any claim arising under such endorsement or provisions, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings

(h) The provisions of paragraphs (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer under any workmen's compensation law, but no provision or application of this section shall be construed to limit the liability of the insurance company, insuring motor vehicles, to an employee or other insured under this section who is injured by an uninsured motor vehicle

(i) No policy of insurance shall exclude coverage to an employee of the insured in any controversy arising between employees, even though any one employee shall be awarded compensation as provided in Title 65 1 of the Code of Virginia

*(j) In addition to the other requirements of this section, every insurer licensed in this State issuing or delivering any policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any licensed motor vehicle, except motorcycles as defined in § 46 1-1(14), shall also provide, as a minimum, three thousand dollars aggregate coverage per person to the named insured, and while residents of the named insured's household, the spouse of any such named insured and relatives of either, for injuries and for death arising from the ownership, maintenance or use of any motor vehicle or for injuries or death arising from the ownership, maintenance or use of any motor vehicle and incurred while a pedestrian, all other persons injured or who die as a result of such injury while occupying the insured motor vehicle as a guest or passenger or while using it with the express or implied permission of the named insured, any person injured or who dies as a result of injuries incurred while entering or alighting from the insured vehicle, and any pedestrian injured or who dies as a result of being struck by the insured motor vehicle. For the purposes of this section the term "pedestrian" shall include any person on foot or outside a vehicle and includes any person riding an animal or in or on a vehicle other than a motor vehicle as defined in § 46 1-167 2 (a) Such coverage shall provide for payment of the following benefits for each person*

*(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, x-ray, ambulance, physical therapy, prosthetic, professional nursing*

*and medical rehabilitation services and drugs arising out of the ownership, maintenance or use of a motor vehicle and incurred within two years from the date of the injury*

*(2) All reasonable and necessary funeral expenses arising out of the ownership, maintenance or use of a motor vehicle and incurred within two years from the date of the injury, not in excess of one thousand dollars*

*(3) An amount equal to the work loss incurred within two years from the date of the injury for the period from the first work day lost as a result of the injury up to the date such person is reasonably able to return to his usual occupation, provided, however, the benefits payable for such loss shall not exceed two hundred dollars per week, and shall apply pro rata to any period less than one week. For the purposes of this section the term "work loss" shall mean the income lost by a person as a result of accidental bodily injury reduced by income from substitute work performed by an injured person. In calculating payments for work loss which an injured person is entitled to receive, his monthly income, or, an amount equal to one-twelfth of his annual income for the year immediately preceding the date of injury, whichever is greater, shall be used in determining the monthly income which he would have earned if he had not been injured.*

*(4) All reasonable and necessary expenses incurred within two years from the date of the injury not to exceed fifteen dollars per day for essential services ordinarily performed by the person injured for care and maintenance of his or her family or household.*

*(k) The coverages required under subsection (j) shall be payable without regard to the fault or lack of fault of the named insured or of the person entitled to benefits thereunder in causing or contributing to the injury or death or damages which resulted from his ownership, maintenance or use of a motor vehicle except as provided in subsection (p), and without regard to any collateral source of medical, hospital or wage continuation benefits or coverage, except that benefits for loss of income payable under the coverage in subsection (j) may be reduced to the extent that the recipient thereof has recovered loss of income benefits under the Workmen's Compensation law of any state or of the United States.*

*(l) Nothing in subsection (j) shall be construed to prohibit an insurer from paying any benefits for nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.*

*(m) Any insurer paying benefits required by subsection (j) shall not recoup such payments by subrogation or otherwise.*

*(n) If any person receiving or entitled to receive benefits under (j), (u) or § 46 1-395 for loss arising out of an automobile accident files an action for damages for death or bodily injury arising out of the same automobile accident in any federal or State court of this State, such benefits shall be disclosed to the trier of fact of such court or, in the event of arbitration of such action, to the arbitrator, to the extent such benefits are applicable to losses for which damages are sought to be recovered. Prior to the entry of a judgment or award, the value of such benefits shall be deducted by the trier of fact from the verdict or other decision of the court, or the arbitrator from any determination, in favor of such person in such proceeding and may not be considered a part of the judgment or award for any purpose. The amount of such benefits so disclosed shall not include any deductibles, elected pursuant to (r). The amount of benefits so disclosed shall include any amounts excluded pursuant to subsection (s) where the amounts covered by such exclusions are payable or have in fact been paid by sources specified under such subsection to the person filing such action.*

(o) *All payments of benefits required under subsection (j) shall be made promptly as the claims arise after reasonable proof thereof is received by the insurer. Benefits not paid within thirty days shall thereafter bear interest at the rate of one and one-half per centum per month and such interest shall be compounded on a monthly basis. In addition, any insurer failing to pay benefits as herein required shall be liable for reasonable attorney's fees and expenses incurred by an injured person incident to the recovery of the benefits to which he is entitled under subsection (j) of this section. Any person claiming benefits pursuant to subsection (j) may be required to complete a claim form approved by the State Corporation Commission and return a copy of such form to the insurer along with reasonable proof of injury or damage. For the purpose of this subsection hospital bills, ambulance bills, medical bills, doctors bills or statements and bills for services or items furnished pursuant to subsection (j) shall constitute reasonable proof.*

(p) *An insurer providing coverage under subsection (j) may only exclude from coverage any person otherwise insured under the policy who*

(1) *Intentionally causes the accident resulting in the injury, or*

(2) *Is injured while operating or voluntarily riding in a vehicle known by*

(3) *Is injured in the commission of a felony*

(q) (1) *As a condition of the retention of its license to do business in this State, every insurer issuing for delivery in this State a policy of insurance of the kind to which this section applies shall, within five working days of submission of reasonable proof of loss, pay without regard to fault for the following property loss or damage inflicted by any vehicle insured by such insurer in a motor vehicle collision with the rear-end of any other motor vehicle stopped at a traffic sign, traffic light or other traffic control device requiring that such motor vehicle come to a stop, or in any such collision with any motor vehicle parked in an area which may reasonably be deemed suitable for parking or in any such collision with any building or other structure affixed to land, (a) reasonable repair costs of damaged property or replacement value of destroyed property, minus salvage, plus reasonable auto rental expense, if any, or (b) any amount of loss not otherwise covered under an applicable policy of first party physical damage insurance, plus reasonable auto rental expense, if any. In the event of a dispute as to the reasonable repair cost or actual cash value of property damaged or destroyed under the circumstances of this subsection, the dispute may, upon demand of either party, be submitted to two independent appraisers, one of whom, shall be selected by each party, which appraisers shall in turn select an umpire to resolve any difference between them in the appraised amount of damage. No appraiser shall be selected who is not capable of rendering an estimate within twenty-four hours of a request to do so. Each party shall pay his own appraiser. This subsection does not apply to damage inflicted by any person on property owned by such person or a member of such person's family.*

*It shall not be a defense to a claim for payment under this subsection that a dispute exists between the insurer of the party against whom demand for payment is made and the insurer of a third party as to which party is legally liable for the damage. Where such dispute exists, the insurer of the party against whom demand for payment is reasonably made and who makes payment, may compel contribution on a pro rata basis from such other insurer or insurers, and the parties to such dispute may later determine, through binding inter-company arbitration procedures established by the State Corporation Commission, which insurer shall bear such loss.*

*The owner of a motor vehicle damaged by an uninsured motorist under the*



*circumstances set forth in this subsection may demand, and shall be entitled to payment in the manner provided in this subsection from his own insurer under the uninsured motorist endorsement required by subsection (b) hereof, which insurer shall then be subrogated to the rights of its insured against any person whose negligence caused such property damage or loss. If any claimant is denied payment for damages, he may institute an action pursuant to this subsection to recover such damages, and, if he recovers damages, shall also be entitled to recover reasonable attorney's fees*

*(2) Except in those cases to which subparagraph (1) of this subsection applies, in all instances in which property damage is caused or incurred by a motor vehicle which is registered or principally garaged in this State, any insurer providing property damage liability or collision coverage on such motor vehicle, or the owner of such vehicle if it is operated under a certificate of self-insurance, shall, as a condition of retention of its license to do business in this State or its certificate of self-insurance, submit to binding arbitration any dispute between such insurer or self-insurer and any claimant for monetary compensation as a result of such property damage. Rules and regulations establishing and governing such system of arbitration shall be promulgated, and may be revised from time to time, by the State Corporation Commission, subject to the following criteria*

*(a) Such system shall utilize private arbitrators, and shall be administered by such recognized private arbitration association as may be designated for the purpose by the Commission*

*(b) Such system shall provide for determination of all claims by not later than the fortieth day following the date on which such damage is caused or incurred, provided, however, if demand for arbitration together with submission of reasonable proof of loss is not made within ten days of the date such damage is caused or incurred, such determination shall be made not later than the thirtieth day following the date of such demand and submission of proof*

*(c) The cost of arbitration shall be borne jointly by the parties involved, and in such proportion as the Commission determines by rule or regulation to be equitable, provided, however, that the cost shall not exceed twenty-five dollars for any claimant. Upon a showing of necessitous circumstances the arbitrator may defer the collection of such fee from a claimant until the conclusion of the proceeding*

*(d) Every insurer subject to this subsection shall, by virtue of its continuing to do business in this State, and every claimant shall, by virtue of his demand for arbitration, be deemed to have agreed that any controversy submitted to arbitration may be entered of record in a court having jurisdiction of the claim. Upon the return of any award, whether any previous record of the submission of the dispute to arbitration has been made or not, it shall be entered up as the judgment of the court. No such award shall be set aside, except for errors apparent on its face, unless it appears to have been procured by fraud or other undue means*

*(e) A standard form or notice shall be devised by the Commission to advise individuals, whether or not they be policyholders, of the existence and nature of their right to demand arbitration of claims for property damage arising out of the operation or use of motor vehicles, and such form or notice shall be furnished by every self-insurer and every property damage liability and collision insurer to any person to whom such self-insurer, insurer, or such insurer's policyholder is potentially liable. Such notice shall be furnished promptly upon receipt of an accident report disclosing damage to property*

*(3) The amount recoverable by any claimant under subparagraphs (1) and (2) of this subsection shall not exceed five thousand dollars*

*(r) At appropriately reduced premium rates, insurers shall offer each of the following deductibles, applicable only to claims of the named insured, dependents of the named insured residing in his household and, in case of death of the named insured, to claims of dependents of the deceased residing in his household*

*(1) Deductibles, applying against medical treatment expense benefits provided under (j) (1) in the amounts of one hundred dollars, three hundred dollars or five hundred dollars,*

*(2) A deductible, applying against loss of earnings benefits under (j) (3) in the amount of one hundred dollars,*

*(3) A deductible, applying against personal services benefits under (j) (4) in the amount of one hundred dollars*

*(s) Subject to the provisions of subsection (v) insurers shall offer at appropriately reduced premiums exclusions of any category or categories of loss otherwise compensated under subsection (j) for which a person is covered by any specified source or combination of specified sources if (i) the specified source has been approved specifically or as to type of source by the State Corporation Commission by rule, regulation or administrative action upon a determination that the specified source or type of source is financially reliable and that approval of it is consistent with the purposes of this act, and (ii) the specified source is a contract of insurance, pre-paid health contract or government-sponsored program of medical expense benefits for the medically indigent or persons aged sixty-five and over, providing benefits to insureds, dependents of insureds residing in their household and/or insureds' survivors on terms at least as favorable to such persons as those in subsections (j) through (w) for the kind of loss to which the specified source applies. No exclusion may be elected under this provision unless the insured or his specified source of other coverage has presented the insurer with reasonable identification of, and evidence of coverage under, such specified source. The insurer and its agents shall be entitled to rely on such representation and may not in any case be held liable for any loss for which there is no coverage due to the improper election by the insured of an exclusion under this section, or to the insured's failure to maintain coverage under such specified source. Any exclusion elected pursuant to this provision must exclude the entire category or categories of loss to which it applies and shall be applicable only to claims of the person or persons against whom the exclusion is taken.*

*(t) All benefits received by a claimant or his dependents residing in his household pursuant to subsection (j) of this section may be deducted by the company from any recovery paid to such person in accordance with the provisions of § 38 1-381 (b)*

*(u) (1) Subject to the approval and regulation of the Commission, all insurers subject to this article shall organize and maintain an uninsured claims bureau and plan, and adopt rules and regulations for its operation. In default of the organization and continued maintenance of an uninsured claims bureau and plan, in the manner considered by the Commission to be consistent with the terms and purposes of this act, the Commission shall organize and maintain such a bureau and plan. Every insurer so engaged in writing the mandatory first-party coverages provided for in this act shall participate in such bureau and plan.*

*(2) Except as otherwise provided in this subsection, such plan shall provide first-party coverages as set forth in (j) through (w) to persons sustaining injury as a result of the operation, use or maintenance of a motor vehicle if no policy of insurance providing such first-party coverage to such*

*person can be identified, or if an insurer obligated under such policy is financially unable to provide such coverage Benefits provided under this subsection shall be afforded under such circumstances as are contemplated in, and in the manner and amounts provided by subsections (j) through (w) for the protection of insured claimants*

*(3) Benefits under this subsection may be denied in any case where the provisions of subsection (p) apply Benefits shall be paid under this section as soon as practicable, but only to the extent that the losses of the uninsured claimant are not covered by other sources*

*In any case in which the bureau pays benefits to an uninsured claimant, or where benefits are paid under this section because of the financial inability of an obligated insurer providing first-party coverages to pay such benefits, the bureau shall be deemed an insurer for purposes of exercising subrogation rights in addition to such other remedies as exist at law*

*(4) The operating costs of the bureau and the amount of claims paid by the bureau shall be assessed on a fair and equitable basis among the insurers subject to this section The amount of such costs and claims paid by each such insurer shall be reimbursed to such insurers annually from sums maintained in the Uninsured Motorist Fund Such sums shall be distributed by the Commission from the Fund prior to the distribution made pursuant to § 38 1-379 2*

*(v) The Commission is hereby empowered to issue and promulgate all rules and regulations, and make provision for forms and definitions, as are necessary to implement the provisions of subsections (j) through (w) The Commission shall approve only such policy terms and conditions as are consistent with the purposes of this act The Commission may limit by rule the variety of coverages available in order to give insurance purchasers reasonable opportunity to compare the cost of insuring with various insurers*

*(w) The provisions of subsections (j) through (w) of this section shall be liberally construed and applied to provide for the prompt and efficient reparation for losses from bodily injury and death and property damage arising out of the ownership, maintenance or use of a motor vehicle without regard to fault except as provided in subsection (p) hereof*

§ 46 1-395 Certificate of self-insurance exempts from chapter —(a) This chapter, except §§ 46 1-399 through 46 1-402, shall not apply to any person having registered in his name in this State more than twenty motor vehicles nor to any person operating more than twenty vehicles whether as owner or as lessee if such person seeking exemption under this section shall obtain from the Commissioner a certificate of self-insurance as provided in the following paragraph

(b) The Commissioner may, in his discretion and upon the application of such a person, issue a certificate of self-insurance when he is reasonably satisfied that (1) such person is possessed and will continue to be possessed of financial ability to respond to a judgment as hereinbefore described, obtained against such person, arising out of the ownership, maintenance, use or operation of any such person's motor vehicles and (2) that such certificate provides for protection against the uninsured motorist to the extent required by § 38 1-381 of this Code of certain policies of insurance, provided, however, that such protection against the uninsured motorist required hereunder shall be secondary coverage to any other valid and collectable insurance providing the same protection which is available to any person otherwise entitled to assert a claim to such protection by virtue hereof *and (3) that such person will afford benefits not less favorable than those required by § 38 1-381 (j) through (w) to those persons protected by, and under such circumstances as are*

*contemplated in such subsections and will perform all other obligations imposed on insurers by such article except those imposed under § 38 1-381(u)*

(c) Upon due notice and hearing, the Commissioner may, in his discretion and upon reasonable grounds cancel a certificate of self-insurance

2 That § 38 1-380 1, as amended, is hereby repealed

3 That if any section, subsection, sentence, part or application of this act be held unconstitutional by a court of last resort, such holding shall not affect any other section, sentence, part or application which can be given effect without the part so held invalid

4 That this act shall be effective on and after July one, nineteen hundred seventy-five

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*A BILL to amend the Code of Virginia by adding in Title 57 a new chapter numbered 41 consisting of sections numbered 57-401 through 57-4020, and to repeal §§ 18-1-372 through 18-1-379 and 57-40 through 57-47, as severally amended, of the Code of Virginia, such repealed and new sections relating to the solicitation of contributions, to appropriate funds for the regulation of charitable solicitations and to direct the Commission on Charitable Contributions to study the definition of fund-raising expenses*

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia be amended by adding in Title 57 a new chapter numbered 41 consisting of sections numbered 57-401 through 57-4020, as follows

#### **Chapter 4.1**

§ 57-401 Definitions —(1) “Administrator” The Administrator of Consumer Affairs, or a member of his staff to whom he may delegate his duties under this chapter

(2) “Charitable organization” Any person which is or holds itself out to be organized or operated for any charitable purpose, or any person which solicits or obtains contributions solicited from the public This definition shall not be deemed to include any church or convention or association of churches, primarily operated for non-secular purposes and no part of the net income of which inures to the direct benefit of any individual, nor shall it include any political party as defined in § 24-1-1 or any political campaign committee required by State or federal law to file a report or statement of contributions and expenditures, nor shall it include any labor union registered under § 40-1-76 nor any trade association, nor shall it include any authorized individual who solicits, by authority of such organization, solely on behalf of a registered or exempt charitable organization or on behalf of an organization excluded from the definition of charitable organization

(3) “Charitable purpose” Any charitable, benevolent, humane, philanthropic, patriotic, or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting, or intervening in litigation

(4) “Contribution” Any gift, bequest, devise or other grant of any money, credit, financial assistance or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, and except money, credit, financial assistance or property received from any governmental authority The term “contribution” shall not include any donation of blood or any gift made pursuant to the Uniform Anatomical Gift Act

(5) “Federated fund-raising organization” Any federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization

(6) “Fund-raising expenses” The expenses of all activities that constitute or are an integral and inseparable part of a solicitation

(7) “Membership” Those persons to whom, for payment of fees, dues, assessments, etc, an organization provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in

addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(8) "Parent organization" That part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates.

(9) "Person" Any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

(10) "Professional fund-raising counsel" Any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization, but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional fund-raising counsel.

(11) "Professional solicitor" Any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or any person who, for a financial or other consideration, plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt charitable organization or a bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional solicitor.

(12) "Sale", "sell" and "sold" The transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

(13) "Solicit" and "solicitation" The request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including without limitation, the following methods of requesting such contribution:

a Any oral or written request,

b Any announcement to the press, over the radio or television, or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith,

c The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support,

d The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or

where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose

Solicitation as defined herein, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution

§ 57-40 2 Registration of charitable organizations  
charitable organization, except as otherwise provided in this chapter, which intends to solicit contributions within this Commonwealth, or have funds solicited on its behalf, shall, prior to any solicitation, file an initial registration statement with the Administrator upon forms acceptable to him Each registration statement shall thereafter be refiled on or before the first day of the fourth calendar month of the next and each following fiscal year in which such charitable organization is engaged in solicitation activities within this Commonwealth It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this chapter Such statement shall contain the following information

1 The name of the organization and the purpose for which it was organized

2 The principal address of the organization, the address of any offices in this Commonwealth and its designated agent for process with the Commonwealth If no such agent is designated, the organization shall be deemed to have designated the Secretary of the Commonwealth If the organization does not maintain an office, the name and address of the person having custody of its financial records

3 The names and addresses of any chapters, branches or affiliates in this Commonwealth

4 The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code

5 The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer

6 A copy of a balance sheet and income and expense statement, with the opinion of an independent public accountant, for the organization's immediately preceding fiscal year, or a copy of a financial statement certified by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing kind and amount of funds raised, fund-raising expenses and allocation of disbursement of funds raised The report required by this subparagraph shall comply with the accounting standards prescribed pursuant to § 57-40 6

7 A statement showing the computation of the percentages provided for in §§ 57-40 8 and 57-40 11

8 A statement indicating whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others

9 A statement indicating whether the organization is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raiser or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction

10 The general purpose or purposes for which the contributions to be solicited shall be used

11 The name or names under which it intends to solicit contributions

12 The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions

13 The names of the individuals or officers of the organization responsible for the final distribution of the contributions

14 A statement indicating whether the organization, or any officer, professional fund-raiser or professional solicitor thereof, has ever been convicted of a felony and, if so, a description of the pertinent facts

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, shall separately report the information required by this section or report the information to its parent organization which shall then furnish such information as to itself and all of its State affiliates, chapters and branches in a consolidated form. All affiliated organizations included in a consolidated registration statement shall be considered as one charitable organization for all purposes of this chapter. If a consolidated registration statement is filed all statements thereafter filed shall be upon the same basis unless permission to change is granted by the Administrator.

(c) Each federated fund-raising organization shall report the information required by this section in a consolidated form. Any federated fund-raising organization may elect to exclude from its consolidated report information relating to the separate fund-raising activities of all of its independent member agencies. No member agency of a federated fund-raising organization shall be required to report separately any information contained in such a consolidated report, provided, however, that any separate solicitations campaign conducted by, or on behalf of, any such member agency shall nevertheless be subject to all other provisions of this chapter.

(d) The registration forms shall be verified under oath or affirmation by the chief fiscal officer and by another authorized officer of the charitable organization.

(e) Every charitable organization which submits an independent registration to the Administrator shall pay an annual registration fee of ten dollars, a parent organization filing on behalf of one or more chapters, branches or affiliates or a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such chapters, branches, affiliates or member agencies included in the registration statement.

§ 57-40 3 Reciprocal agreements—The Administrator may enter into a reciprocal agreement with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements, the Administrator may accept information filed by a charitable organization, professional fund-raising counsel or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this chapter, if such information is substantially similar to the information required under this chapter. The Administrator may also grant exemption from the requirement for the filing of annual registration statement with him to charitable organizations organized under the laws of another state, having their principal place of business in such other state,



having funds derived principally from sources outside this Commonwealth, and having been granted exemption from the filing of registration statements by such other state, if such state has a statute similar in substance to the provisions of this chapter and participates in a reciprocal agreement pursuant to this section

§ 57-40 4 Nonresident registration —(a) Any unregistered charitable organization, professional fund-raising counsel or professional solicitor, having his or its principal place of business without this Commonwealth or organized under and by virtue of the laws of a foreign state who or which shall solicit contributions from people in this Commonwealth, shall be deemed to have irrevocably appointed the Secretary of the Commonwealth as his or its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, or any partner, principal, officer, or director thereof or to such professional fund-raising counsel or professional solicitor Service shall be made by leaving two copies of the process, notice, order or demand, together with any fee required by law, in the office of the Secretary of the Commonwealth, together with an affidavit giving the last known post office address of the defendant and such service shall be sufficient if notice of such service and a copy of the process, notice, order or demand are forthwith sent by registered mail, with return receipt requested, by the Secretary of the Commonwealth or one of his staff to the defendant at the specified address An affidavit by the Secretary of the Commonwealth showing compliance herewith shall be filed with the papers in the suit, action or proceeding

(b) Any charitable organization, having no office or place of business within this Commonwealth and soliciting in this Commonwealth from without the Commonwealth solely by telephone or telegraph, direct mail or advertising in national media, and any professional fund-raising counsel or professional solicitor engaged by such an organization, may file with the Administrator any report which would otherwise be required of it, without payment of any fee or cost, or request the Administrator to determine that such organization is exempt under § 57-40 3 or § 57-40 13

§ 57-40 5 Publication of warning concerning certain charitable organizations —If the Administrator shall determine that any charitable organization, not registered with his office and not exempt from registration, irrespective of whether such organization is subject to the jurisdiction of this Commonwealth, is soliciting in this Commonwealth, directly or indirectly, by any means including without limitation, by telephone or telegraph, by direct mail or by advertising in national media, he may, after ten days' written notice mailed to the charitable organization, cause to be printed in one or more newspapers published in this Commonwealth a notice in substantially the following form

#### WARNING—UNREGISTERED CHARITABLE SOLICITATION

The organization named below has solicited contributions from Virginia citizens for allegedly charitable purposes It has not registered with the Administrator of Consumer Affairs as required by law Contributors are cautioned that their contributions to such organization may be used for non-charitable purposes

§ 57-40 6 Records to be kept by charitable organizations —Every charitable organization shall keep true fiscal records for all fiscal years beginning on and after the effective date hereof, in accordance with the standards and practices set out in Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations adopted and approved in December nineteen hundred sixty-four, by the National Health

Council and National Social Welfare Assembly, and as may be modified from time to time by the National Health Council and the National Assembly for Policy and Development, or in accordance with the standards and practices set out in Uniform Chart of Accounts and Definitions for Hospitals as approved by, and as may be modified by, the American Hospital Association, or in accordance with such other uniform standards of accounting as the Administrator may find to be as appropriate. A copy of such standards shall be maintained on file in the Office of the Administrator. Such records shall be retained for a period of at least three years after the end of the period of registration to which they relate.

§ 57-40 7 Written contracts —(a) Every contract or agreement between professional fund-raising counsel and a charitable organization must be in writing and shall be filed with the Administrator within ten days after such contract or written agreement is entered into.

(b) Every contract, or a written statement of the nature of the arrangement to prevail in the absence of a contract, between a professional solicitor and a charitable organization shall be filed with the Administrator within ten days after such contract is entered into or such arrangement is agreed to.

(c) All agreements and arrangements between professional fund-raising counsel and charitable organizations must be reduced to writing before executed or acted upon.

§ 57-40 8 Limitations on amount of payments for solicitation activities —(a) No charitable organization shall pay or agree to pay to a professional solicitor or his agents, servants or employees in the aggregate, including reimbursement for expenses incurred, a total amount in excess of fifteen percent of the gross amount collected by it as a result of his, or their, solicitation activities or campaigns, nor shall any charitable organization pay or agree to pay to all professional solicitors retained by it and their agents, servants and employees in the aggregate a total amount in excess of ten percent of its support received directly from the public in the year in which such services are performed.

(b) For purposes of this section, the payments to the professional solicitor shall not include the purchase price to the charitable organization of any tangible personal property or services which are resold by the organization as a part of its fund-raising activities, but the amount so expended by the organization shall be deducted from the gross amount collected by it, or the organization's support received directly from the public, before the computation of the percentage limitations.

§ 57-40 9 Information filed to become public records —Registration statements, reports, professional fund-raising counsel contracts or professional solicitor contracts and all other documents and information required to be filed under this chapter shall become public records in the office of the Administrator, and shall be open to the general public for inspection at such time and under such conditions as the Administrator may prescribe. A charge not exceeding one dollar per page may be made for any copy of such documents and information as may be furnished any person by the Administrator.

§ 57-40 10 Prohibited acts —(a) No charitable organization shall use or exploit the fact of registration under this chapter so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by this Commonwealth, provided, however, that the use of the following statement shall not be deemed a prohibited exploitation, "Registered with the Virginia Administrator of Consumer Affairs as required by law. Registration does not imply endorsement of a public solicitation for contributions."

(b) No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services represent, or lead anyone by any manner, means, practice or device whatsoever to believe, that the person on whose behalf such solicitation or sale is being conducted is a bona fide charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if he has reason to believe such not to be the fact

(c) No person shall in connection with the solicitation of contributions or the sale of tangible personal property or services for charitable purposes represent, or lead anyone by any manner, means, practice or device whatsoever to believe, that any other person sponsors or endorses such solicitation of contributions, sale of tangible personal property or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such other person has not given written consent to the use of his name for these purposes

Any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors

(d) No person shall denominate any membership fee or purchase price of goods or services sold, as a contribution or as a donation or in any other manner represent or imply that the member or the purchaser of such goods or services will be entitled to an income tax deduction for his cost or any portion thereof unless (1) there shall have been first obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible or (2) the member or purchaser is informed in writing that such cost may not be deductible, nor shall any charitable organization, other than an organization exempt under § 57-40 13 (a) (3), represent or imply that a contributor thereto will be entitled to an income tax deduction for his contribution unless there shall have been first obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be so deductible

(e) No person shall make any representation that he is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization

(f) No professional solicitor shall solicit in the name of or on behalf of any charitable organization unless such solicitor has

(1) Written authorization of two officers of such organization, a copy of which shall be filed with the Administrator Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued

(2) Such authorization with him when making solicitations and exhibits the same on request to persons solicited, or police officers, or agents of the Administrator

(g) No charitable organization shall accept any contribution exceeding five

dollars in cash or tangible property without providing on request of the donor a written receipt acknowledging such contribution and personally signed by the person accepting such contribution

(h) No person, and no organization of which such person is an officer, professional fund-raising counsel or professional solicitor, shall solicit within this Commonwealth if

(1) Such person has been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense or the public is informed of such conviction in a manner approved in writing by the Administrator before any solicitation occurs, or

(2) Such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the Administrator shall first determine in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within this Commonwealth or that the reason for such injunction or prohibition does not involve moral turpitude

(i) No person shall solicit within this Commonwealth for the benefit of any other person located without the Commonwealth, if such other person refuses to supply any information which the Administrator deems necessary to assure himself that the provisions of this chapter are complied with. A solicitation shall be deemed to be on behalf of every person who or which receives, directly or indirectly, more than ten percent of the gross amount collected

§ 57-40 11 Excessive fund-raising expenses —Each charitable organization shall, as a part of its registration statement, compute the percentage which its fund-raising expenses for its preceding fiscal year bore to its support received directly from the public during such year

§ 57-40 12 Enforcement and penalties —(a) Any person who wilfully and knowingly violates or causes to be violated any provision of this chapter, or who shall wilfully and knowingly give false or incorrect information to the Administrator in filing statements or reports required by this chapter, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced for the first offense to pay a fine of not less than one hundred dollars and not more than five hundred dollars or undergo imprisonment for not more than six months, or both, and for the second and any subsequent offense to pay a fine of not less than five hundred dollars and not more than one thousand dollars or to undergo imprisonment not more than one year, or both

(b) The Administrator, upon his own motion or upon complaint of any person, may investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or professional solicitor has violated the provisions of this chapter or has filed any application or other information required under this chapter which contains false or misleading statements

(c) Whenever the Attorney General or any Commonwealth's attorney shall have reason to believe that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this chapter or has knowingly and wilfully made any false statement in any registration application or statement, report or other information required by this chapter or that a charitable organization, professional fund-raising counsel or professional solicitor has failed to file a registration statement required by this chapter, or that there is employed or is about to be employed in any solicitation or collection of contributions for a

charitable organization any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or that the officers or representatives of any charitable organization, professional fund-raising counsel or professional solicitor have refused or failed after notice to produce any records of such organization, or that the funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization, in addition to all other actions authorized by law, the Attorney General or Commonwealth's attorney may bring an action in the name of the Commonwealth against such charitable organization and its officers, such professional fund-raising counsel or professional solicitor to enjoin such charitable organization or professional fund-raising counsel or professional solicitor from continuing such violation, solicitation or collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as to the court deems appropriate

§ 57-40 13 Exemptions —(a) The following persons shall be exempt from the registration requirements of § 57-40 2 and the requirements of § 57-40 6, but shall otherwise be subject to the provisions of this chapter

(1) Educational institutions that are recognized by the superintendent of Public Instruction or that are accredited by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use

(3) Charitable organizations which do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of two thousand dollars or which do not receive contributions from more than ten persons during a calendar year, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member Nevertheless, if the contributions raised from the public, whether all of such is or is not received by any charitable organization during any calendar year, shall be in excess of two thousand dollars, it shall, within thirty days after the date it shall have received total contributions in excess of two thousand, register with and report to the Administrator as required by this chapter

(4) Organizations which solicit only within the membership of the organization by the members thereof

(5) Organizations which have no office within the Commonwealth, which solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and which have a chapter, branch or affiliate within the Commonwealth which has registered with the administrator

(b) A charitable organization shall be subject to the provisions of §§ 57-40 10 and 57-40 12, but shall otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations in this Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under the charitable solicitations ordinance, if any, of each such city and county No organization shall be exempt under this paragraph if, during its next preceding fiscal year, more than ten percent of its gross receipts

were paid to any person or combination of persons, located outside the boundaries of such cities and counties, other than for the purchase of real property or tangible personal property to be used within such localities. An organization which is otherwise qualified for exemption under this subsection which solicits by means of a local publication, or radio or television station, shall not be disqualified solely because the circulation or range of such medium extends beyond the boundaries of such cities or counties.

(c) No charitable organization shall be exempt under this section unless it shall submit, before any solicitation in any calendar year, to the Administrator on forms to be prescribed by him, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. If exempted, the Administrator shall issue, annually, a letter of exemption which may be exhibited to the public. No registration fee shall be required of any exempt organization.

§ 57-40 14 Registration of professional fund raisers and solicitors —(a) No person shall act as a professional fund-raising counsel or professional solicitor for a charitable organization, unless he has first registered with the Administrator. Applications for registration shall be in writing under oath or affirmation in the form prescribed by the Administrator and contain such information as he may require. The application shall be accompanied by an annual fee in the sum of fifty dollars. A partnership or corporation which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees.

(b) Each applicant shall, at the time of making application, file with and have approved by the Administrator a bond in which the applicant shall be the principal obligor in the sum of five thousand dollars with one or more sureties satisfactory to the Administrator, whose liability in the aggregate as such sureties will at least equal the said sum, and maintain said bond in effect so long as a registration is in effect. The bond shall run to the Commonwealth of Virginia for the use of said bonds in reimbursement for any penalties or losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration shall be valid throughout the Commonwealth of Virginia for a period of one year from date of issue and may be renewed for additional one year periods upon written application under oath or affirmation in the form prescribed by the Administrator and the payment of the fee prescribed herein.

(d) The Administrator shall examine each application, and if he finds it to be in conformity with the requirements of this chapter and all relevant rules and regulations and the registrant has complied with the requirements of this chapter and all relevant rules and regulations, he shall approve the registration. Any registration which is not approved or disapproved by the Administrator within thirty days after an application is filed shall be deemed approved until it shall be denied approval. Any applicant who is denied approved registration may, within fifteen days from the date of notification of such denial, apply for relief to the Circuit Court of the City of Richmond. If the court be satisfied that the denial was for any reason erroneous, it shall provide such relief as may be appropriate.

§ 57-40 15 Liability imposed by other laws not decreased —Nothing contained in this chapter shall be construed as making lawful any act or omission which is now unlawful, or as decreasing the liability, civil or criminal, of any person, imposed by existing laws.

§ 57-40 16 Local ordinances —(a) The governing body of any city, town or county may by ordinance not inconsistent with this chapter provide for the regulation and licensing of persons soliciting within the city, town or county, and for penalties for violation thereof, subject to the following limitations

(1) No local license tax or fee in excess of ten dollars shall be required of any charitable organization

(2) No charitable organization exempt from registration under § 57-40 13 (a) (1) or (4) shall be required to be licensed Any such organization may obtain a local license, without payment of any license tax or fee, upon compliance with all such requirements of the local ordinance as would have been applicable had it been registered with the Administrator during each year in which it obtained an exemption letter under § 57-40 13 (c)

(3) No charitable organization which has registered with the Administrator for the current and next preceding three years, or exempt for such years under § 57-40 3, shall be required to provide any financial information

(4) No charitable organization which solicits within this Commonwealth from a place outside the Commonwealth solely by telephone, telegraph, direct mail or advertising in national media, and having no chapter, branch, area or office within this Commonwealth, shall be required to be licensed

(5) If a charitable organization shall designate by power of attorney filed with the Administrator one or more persons authorized to sign on its behalf, the signature, verification or affirmation of any such persons shall be sufficient for all purposes of any local charitable solicitations ordinance

(b) Any ordinance adopted pursuant to this section may provide, inter alia, for procedures whereby charitable organizations may, for valid reasons, after an administrative hearing, be denied a local license or whereby a license may be revoked Valid reasons for denial or revocation of a local license may be defined to include, without limitation, the expenditure of charitable assets for non-charitable purposes, any misrepresentation to the public or to any prospective donor, and any violation of State or local law Any charitable organization which is denied a license may, within fifteen days from the date of such denial, apply for relief to the circuit or corporation court of such city or county or of the county in which such town is located If the court be satisfied that the denial was for any reason erroneous, it shall provide such relief as may be appropriate

(c) No ordinance, or amendment thereto, adopted pursuant to this section shall be valid for any calendar year beginning after December thirty-one, nineteen hundred seventy-four unless, before September one of that year, there shall have been filed with the Administrator, on forms to be prescribed by him, information deemed by him to be sufficient for the purpose of advising charitable organizations of the necessity for them to be licensed by such city, town or county

§ 57-40 17 Out-of-state enforcement proceedings —Any state of the United States shall have the right to sue in the courts of Virginia to enforce the civil provisions of any statute thereof general in application regulating charitable solicitations, when the like right is accorded this Commonwealth by such state, whether such right is granted by statutory authority or as a matter of comity

§ 57-40 18 Fees and charges —All fees and charges collected by the Administrator as provided in this chapter shall be paid into the State treasury and are hereby appropriated to the Administrator of Consumer Affairs for the expenses of publication as provided in this chapter

§ 57-40 19 Rules and regulations, model ordinance —The Administrator shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter, or other applicable laws, or the Constitution of this Commonwealth, or the Constitution of the United States, for the enforcement of the provisions of this chapter and for the achievement of uniform regulation of charitable solicitations throughout the Commonwealth. The Administrator shall promulgate a model ordinance which may be used by localities in their regulation of charitable solicitations.

§ 57-40 20 Commission on Charitable Contributions —(a) There is hereby created a commission, to be known as the Commission on Charitable Contributions, composed of five members representing the public, to be appointed by the Governor to hold office at the pleasure of the Governor for a term concurrent with that of the Governor. The members of the Commission shall receive no compensation, but shall be paid their necessary expenses incurred in the performance of their duties.

(b) The duties of the Commission shall be to advise the Administrator in his administration of this chapter. The Commission shall meet once each month, but the chairman may call additional meetings or, if there be no pending business, cancel any meeting.

(c) Any charitable organization aggrieved by any rule or regulation or by any determination or interpretation of the Administrator as to the application of any provision of this chapter may appeal the same to the Commission, which may grant such relief as may be appropriate. To this end, the Commission shall be clothed with all the powers and duties of the Administrator.

Except at the request of the charitable organization, the Commission's consideration of the application shall be in executive session and, unless the final order be against the charitable organization, the application and other records of the hearing shall be kept in strict confidence.

§ 57-40 21 Application to court for relief —Any person aggrieved by any final order of the Administrator or the Commission, denying such person any right to which he is entitled under law, may within fifteen days from the date of such order, apply for relief to the Circuit Court of the City of Richmond. Either party may appeal any final order of such court in the same manner as provided by law in cases other than cases of appeals of right.

§ 57-40 22 Separability —If any provision of this chapter, or the application of such provision to any persons or under any circumstances shall be held invalid, the remainder of this chapter, or the application of such provisions to persons or under circumstances, other than those to which it shall have been held invalid, shall not be affected thereby.

2 That §§ 18 1-372 through 18 1-379 and 57-40 through 57-47 of the Code of Virginia be repealed.

3 The Commission on Charitable Contributions shall study fund-raising expenses and shall on or before December one, nineteen hundred seventy-five, report to the Governor and the General Assembly whether the present definition in this Act is adequate, consistently applied and fair to all parties concerned, and what percentage of fund-raising expenses should be considered excessive for regulatory purposes. In so doing, the Commission shall study the laws of other states, hold one or more public hearings and consult with representatives of affected charitable organizations. The Commission may make any further recommendations as to desired amendments to this Act.

4 The cost incurred by the Administrator of Consumer Affairs and the Commission on Charitable Contributions in administering this Act shall be paid out of such appropriation therefor as may be made by law. For such



purpose, there is hereby appropriated to the Administrator of Consumer Affairs from the General Fund of the State treasury the sum of fifteen thousand dollars for the first year, and thirty thousand dollars for the second year, of the biennium beginning July one, nineteen hundred seventy-four

5 This Act shall be effective on January one, nineteen hundred seventy-five, except that the Commission on Charitable Contributions may be created and its members appointed for the purpose of advising the Administrator before the effective date of the substantive provisions of this Act

A BILL to amend the Code of Virginia by adding a section numbered 55-222 2, providing that security deposits paid by tenants to landlords are to be held in trust and returned to the tenants, less the costs of damages to the premises, within thirty days after termination of the lease, penalties for violations

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding a section numbered 55-222 2 as follows

§ 55-222 2. (a) No landlord shall require a sum in excess of one month's rent to be deposited in escrow for the payment of damages to the leasehold premises and/or in default in rent thereof

(b) Whenever money or other form of security shall be deposited or advanced on a contract, lease or license agreement for the rental of residential real property as security for the performance of the contract, lease or agreement or as security for damages to the premises rented, such money or other form of security, until repaid or so applied including the tenant's portion of the interest earned thereon as hereinafter provided, shall continue to be the property of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made for the use in accordance with the terms of the contract, lease or agreement and shall not be mingled with the personal property or become an asset of the person receiving the same. The person receiving money so deposited or advanced shall deposit such money in a banking institution or savings and loan association insured by an agency of the federal government in an account bearing interest at the rate currently paid by such institutions and associations on time or savings deposits and shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the banking institution in which the deposit of the security money is made, and the amount of such deposit

All of the money so deposited or advanced may be deposited by the person receiving the same in one interest bearing account so long as he complies with all other requirements of this act

The person receiving money so deposited or advanced shall be entitled to receive as administration expenses, an amount equal to one per centum per annum of the security deposit, in lieu of all other administrative and custodial expenses. The balance of the interest shall be remitted to the tenant or lessee, either as cash or as a credit to the rent due as per lease agreement

(c) The principal as well as the undistributed interest accrued after the deposit of such security deposit, excepting only the one per centum which may be deducted each year for administrative expense, shall be returned to the tenant or lessee within thirty days after the date the tenancy terminates. Notwithstanding this, the landlord or lessor may retain all or any portion of the security deposit as is reasonably necessary to compensate the landlord or lessor for a default by the tenant or lessee, or to repair unreasonable wear or damage to the leased premises. If any portion of the security deposit is thus retained, the landlord or lessor shall forward to the tenant or lessee by certified mail or personal service within thirty days of the termination of the tenancy, an itemized statement accounting for the proceeds retained and giving the reason therefore

Failure to include such statement will result in a forfeiture of all the landlord's rights relating to the security deposit

(d) If the landlord fails to pay the tenant the difference between the sum deposited, including any unpaid interest thereon, and the actual damages to

the leasehold premises caused by the tenant and/or default in performance of the contract, lease or agreement, within thirty days after termination of the lease or surrender and acceptance of the leasehold premises, the landlord shall be liable to the tenant in a sum equal to double the amount by which the sum deposited in escrow, including any unpaid interest thereon, exceeds the actual damages to the leasehold premises caused by the tenant or his default in performance, as determined by any court having jurisdiction in civil actions at law, together with costs

In any action concerning such deposit, the burden of proof of actual damages caused by the tenant or other reason for withholding all or any portion of such deposit shall be on the landlord

(e) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such deposit

(i) transfer such deposit or any remainder after any lawful deductions made under subsection (c), with interest thereon as provided in subsection (b), to the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address, or

(ii) return such deposit, or any remainder after any lawful deductions made under subsection (c), with interest thereon as provided in subsection (b), to the tenant

(f) Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except that if tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice

(g) Any attempted waiver of this section by a landlord and/or tenant, by contract or otherwise, shall be void and unenforceable

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A BILL to amend and reenact § 54-864, as amended, of the Code of Virginia, and to further amend the Code of Virginia by adding in Title 54 a chapter numbered 27, containing sections numbered 54-916 through 54-941, to regulate the consumer motor vehicle repair industry, to provide for a bureau in the State Department of Professional and Occupational Registration, to provide for clerical, investigative and technical assistance, rules and regulations, a Board, complaints and investigations, license repair shops, fees, liability insurance, voluntary certification, and prohibitions and penalties, how fees applied, and to appropriate funds therefor

Be it enacted by the General Assembly of Virginia

1 That § 54-864, as amended, of the Code of Virginia is amended and reenacted and that the Code of Virginia is further amended by adding in Title 54 a chapter numbered 27, containing sections numbered 54-916 through 54-941, as follows

§ 54-864 Administration, certain powers and duties of Director with respect to boards—It shall be the duty of the Director to perform the administrative duties of the following boards and agencies of the Commonwealth (1) The State Board of Accountancy, (2) The State Board for the Examination and Certification of Architects, Professional Engineers and Land Surveyors, (3) The Virginia Board of Psychologists Examiners, (4) The State Board for the Certification of Librarians, (5) The Board of Examiners of Mines, created by chapter 150 of the Acts of the General Assembly of nineteen hundred forty, (6) The Board of Commissioners to Examine Pilots, (7) The Virginia Real Estate Commission, (8) The Board of Veterinary Examiners, (9) The Board of Barber Examiners, (10) The Virginia State Board of Opticians, (11) The Virginia State Board of Registered Professional Hairdressers, (12) The Virginia Board for Registration of Social Workers, (13) The Virginia Board of Hearing Aid Dealers and Fitters, (14) Board for Certification of Operators of Water and Wastewater Works, (15) The State Board of Sanitarian Examiners, (16) The State Board of Examiners for Nursing Home Administrators, ~~and~~ (17) The Virginia Board of Examiners for Audiology and Speech Pathology, and (18) *The Board of the Bureau of Consumer Motor Vehicle Repair Industry Licensing and Certification*

Each of the boards designated in this section and § 54-865 is hereby transferred to the Department of Professional and Occupational Registration, and each shall be a separate board within said Department. All of the administrative functions of the boards designated in this section shall be under the direction and supervision of the Director, and it shall be the duty of the members of each of the several boards designated in this section to cooperate with the Director to the end that his powers of direction and supervision of the administrative functions of each board shall not be impaired

In the performance and discharge of his duties hereunder with respect to the boards designated in this section only, the Director shall (1) be the secretary of each board, (2) maintain all records for each board, (3) collect and account for all fees prescribed by law to be paid into each board and account for and deposit the moneys so collected in the manner prescribed by the several acts creating said boards, (4) make and file annually with the Governor a consolidated report with respect to each board, (5) employ such personnel and assistance as may be required for the operation of said boards, (6) enforce all regulations promulgated by said boards; and (7) exercise such other powers as may be necessary to function as the sole administrative officer and director of each of said boards

## CHAPTER 27

### Consumer Motor Vehicle Repair Industry

#### Licensing and Certification Act

§ 54-916 *Statement of purpose* —The purposes of this chapter are to further highway safety by promoting the proper and efficient repair of motor vehicles and to protect the consumers of this Commonwealth from dishonest and fraudulent practices which may occur in the repair of motor vehicles, to license those businesses engaged in repairing motor vehicles, to exclude from that practice those persons who engage in dishonest and fraudulent practices, to promote increased proficiency of individual mechanics by creating a voluntary certification program, and, to promote education programs in the field of automobile repair

§ 54-917 *Short title* —This act shall be known as the Consumer Motor Vehicle Repair Industry Licensing and Certification Act

§ 54-918 *Definitions* —The following terms as used in this chapter shall have the meaning expressed in this section, unless the context clearly requires otherwise

(a) "Person" shall include any natural person, firm, partnership, association or corporation

(b) "Department" shall mean the State Department of Professional and Occupational Registration

(c) "Director" shall mean the Director of the State Department of Professional and Occupational Registration or his authorized delegate

(d) "Bureau" shall mean the bureau of Consumer Motor Vehicle Repair Industry Licensing and Certification

(e) "Board" shall mean the Board of the Bureau of Consumer Motor Vehicle Repair Industry Licensing and Certification

(f) "Motor vehicle" shall mean every vehicle which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle and includes every device in, upon or by which any person or property is or can be transported or drawn upon a highway, except devices moved by human or animal power and devices used exclusively upon stationary rails or tracks, and vehicles used in this State, but not required to be licensed by the State

(g) "Repair of motor vehicles" shall mean the diagnosis, repair or adjustment of motor vehicles for compensation

(h) "Motor vehicle repair shop" shall mean any place in the State where the business of repairing motor vehicles is performed

(i) "Motor vehicle repair mechanic" shall mean any individual who is engaged in the repair of motor vehicles

(j) "Certified motor vehicle repair mechanic" shall mean any mechanic who has been certified in one or more areas of motor vehicle repair in accordance with standards established by the Board

(k) "Place of business" shall mean the motor vehicle repair shop or shops operated under the same name by the same owner or owners within a political subdivision

§ 54-919 *Exemptions* —Except for those provisions relating to voluntary certification, this chapter shall not apply to

(a) Any employee of a motor vehicle repair shop, if the employee services motor vehicles for compensation only,

(b) The repair of motor vehicles used in commercial, industrial, or governmental establishments when such work is performed by the establishment's own employees, and,

(c) Any business where the only repairs or adjustments performed consist of fueling, changing oil, water or batteries, or such other similar servicing functions not directly related to the mechanical operation of a motor vehicle

§ 54-920 Bureau of Consumer Motor Vehicle Repair Industry Licensing and Certification —There is hereby created a Bureau of Consumer Motor Vehicle Repair Industry Licensing and Certification in the State Department of Professional and Occupational Registration under the supervision of the Director The Director shall administer and enforce the provisions of this chapter and all rules and regulations adopted pursuant to these provisions

§ 54-921 General duties of the Director —(a) The Director shall enforce such rules and regulations as may be established by the Board for the enforcement of this chapter The Director shall distribute to each licensed motor vehicle repair shop and to each certified motor vehicle repair mechanic copies of this chapter and of the rules and regulations established hereunder

(b) The Director shall keep a complete record of all licensed motor vehicle repair shops and certified motor vehicle repair mechanics and shall annually prepare a roster showing the names and addresses of all currently licensed or certified shops and mechanics A copy of the roster shall be made available to any person requesting it upon the payment of such sum as shall be established by the Director as sufficient to cover the costs and mailing thereof

(c) The Director shall appoint, on a part-time or full-time basis, such clerical, investigative, and technical personnel as may be necessary to carry out the provisions of this chapter

§ 54-922 Board —(a) There is created in the Bureau a Board which shall consist of nine members appointed by the Governor, the first members of which shall be appointed not later than July one, nineteen hundred seventy-four

(b) One member of the Board shall be a representative of the Virginia Auto Dealers Association, one member shall be a representative of the Independent Garage Owners Association, one member shall be a representative of the Virginia Gasoline Retailers Association, and one member shall be engaged in the profession of training motor vehicle repair mechanics on a full-time basis The Director of Consumer Affairs and the Safety Officer of the Virginia State Police shall be members of the Board Three members shall be selected to represent the general public and shall have no connection financially or otherwise with the motor vehicle repair industry The Board shall elect from its members, each for a term of one year, a chairman and a vice-chairman, and may appoint such committees as it deems necessary to carry out its duties The Director shall serve ex officio as secretary of the Board but shall not be a member thereof

(c) Seven members of the Board shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successor The Director of Consumer Affairs and the Safety Officer of the Virginia State Police shall hold office so long as they remain in their position and shall hold office until the appointment and qualification of their successor The terms of the other seven members of the Board first appointed shall expire as follows two members, July one, nineteen hundred seventy-six, two members, July one, nineteen hundred seventy-seven, three members, July one,

*nineteen hundred seventy-eight The terms shall thereafter be for four years Vacancies occurring shall be filled by appointment to the unexpired term No member except the Director of Consumer Affairs or the Safety Officer of the Virginia State Police shall serve more than two full terms*

*§ 54-923 Meetings of the Board, quorum —(a) The Board shall hold its initial meeting no later than July thirty-one, nineteen hundred seventy-four Subsequent to that date it shall meet at least twice a year Additional meetings may be held upon the call of the Director, the Chairman, or at written request of any four members of the Board All meetings of the Board shall be open and public unless the subject matter concerns the confidential business affairs of a person or persons engaged in the repair of motor vehicles*

*(b) The quorum required for any meeting of the Board shall consist of five members, one of whom shall be a representative of the motor vehicle repair industry*

*§ 54-924 Duties of the Board —The Board shall (a) Develop and prescribe regulations and rules, not later than March one, nineteen hundred seventy-five, to be implemented by July one, nineteen hundred seventy-five, for a system of standards which may include written tests, educational achievements, and practical experience under which a motor vehicle repair mechanic may establish his competency in one or more specific types of repair by obtaining certification in those areas,*

*(b) Develop and prescribe regulations and rules, not later than March one, nineteen hundred seventy-five, to be implemented by July one, nineteen hundred seventy-five, for a corresponding system of standards under which a motor vehicle repair mechanic who obtains an initial certification pursuant to subsection (a) may demonstrate his continued competency by renewing this certification,*

*(c) Develop and prescribe regulations and rules for a system of standards for educational programs and facilities related to the training of motor vehicle repair mechanics, in each of the specific areas for which a certification is established pursuant to subsection (a),*

*(d) Develop a program to encourage the development of training programs and facilities engaged in the training of motor vehicle repair mechanics,*

*(e) Inquire into the practices of the consumer motor vehicle repair industry, the functions of the Bureau and the matter of the policy thereof, and make such recommendations with respect thereto as, after consideration, may be deemed important or necessary for the welfare and safety of the consuming public and the motor vehicle repair industry,*

*(f) Confer with and advise the Director as to how the Bureau may best fulfill its function,*

*(g) Consider and make appropriate recommendations in all matters submitted to it by the Director, and,*

*(h) Prescribe all other such reasonable rules and regulations as it shall deem necessary to carry out the provisions of this chapter*

*§ 54-925 Compensation of the Board —Each member of the Board shall be paid the sum of thirty dollars per day for each day actually spent in the performance of his official duties, plus actual and necessary expenses*

*§ 54-926 Complaint procedure —(a) The Director shall establish procedures for accepting complaints of violations of this chapter and of any regulation established pursuant to its provisions by any motor vehicle repair*

shop, whether licensed or not, or by any employee, partner, officer or agent of any service dealer, or by any certified motor vehicle repair mechanic. The Director may also, on his own initiative, conduct spot check investigations of motor vehicle repair shops throughout the State on a continuous basis.

(b) If the complaint does not appear to state any violations of this chapter or of the regulations made pursuant to this chapter the Director shall so advise the complainant and take no further action.

(c) If such a complaint indicates a possible violation of this chapter or of the regulations made pursuant to this chapter, the Director shall advise the respondent of the contents of the complaint and, after the respondent has had reasonable opportunity to reply thereto, the Director shall make a summary investigation of the facts.

(d) If, upon summary investigation, it appears to the Director that there has been a violation of this chapter, or the regulations thereunder, the Director in his discretion, may suggest measures that in his judgment would compensate the complainant for the damages he has suffered as a result of the alleged violation. If the respondent accepts the Director's suggestions and performs accordingly, the Director shall give such fact due consideration in any subsequent disciplinary proceeding. If the respondent declines to abide by the suggestions of the Director, he may investigate further and may institute disciplinary proceedings in accordance with the provisions of the chapter. Nothing in this section shall be construed as requiring the Director to suggest such measures before instituting disciplinary proceedings.

(e) Upon completion of any investigation conducted pursuant to this chapter the Director shall report the findings together with documented evidence, if any, to the Board at its next meeting, provided, however, that such reporting shall not be a prerequisite to institution of enforcement or adjustment proceedings by the Director.

§ 54-927 Results of investigations admissible as evidence — If any person who files a complaint pursuant to this chapter brings an individual action for damages, certified copies of the results of any investigation of that complaint conducted by the Director shall be made available to the person who filed the complaint. These copies shall be admissible as evidence in the individual action for damages.

§ 54-928 Licenses, application — (a) On and after January one, nineteen hundred seventy-five, it shall be unlawful for any business which is not licensed pursuant to this chapter to engage in the repair of motor vehicles.

(b) An application for each license requested shall be filed in such form and detail as the Director shall prescribe, setting forth:

(1) The name and residence address of the applicant, if an individual, the name under which he intends to conduct business, if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted, if a corporation, the name of the corporation, the name and residence address of each of the officers and directors, and the name under which the business is to be conducted, if different from the name of the corporation.

(2) The place or places, including the complete address or addresses where the business is to be conducted.

(3) Such further information as the Director may prescribe. The Director may require the applicant to appear at such time and place as he may designate for examination to enable him to determine the accuracy of the facts.



set forth in the written application, either for an initial license or renewal thereof Every application shall be affirmed as true by the applicant

§ 54-929 Licenses, fees —Every application shall be accompanied by an application fee of fifteen dollars which shall in no event be refunded If an application is approved by the Director, the applicant shall be granted a license for each place of business, which license or licenses shall be valid for a period of one year, upon payment by the applicant of an additional fee of twenty-five dollars for each place of business The Director may, however, in his discretion, issue such licenses on a staggered expiration basis in which event such additional fee for each license initially issued for a period less than one year shall be two dollars per month or part thereof during which such license is valid and for each license initially issued for greater than one year shall be twenty-five dollars, plus two dollars per month for each month or part thereof, in excess of twelve months during which such license is valid In the event a license is issued on a staggered expiration basis it shall expire on the date fixed by the Director The annual fee for renewal of any license issued pursuant to this chapter shall be twenty-five dollars The Director shall issue a license certificate to each applicant pursuant to the provisions of this chapter, which certificate shall be conspicuously displayed in the licensee's place of business for which such license was issued In the case of loss, mutilation or destruction of a license certificate, the Director shall issue a duplicate certificate thereon upon proof of the facts and the payment of a fee of two dollars

§ 54-930 Licenses, identity of applicant(s) —(a) If a license under this chapter is issued in the names of two or more persons as partners and a change occurs in the membership of such partnership, the license shall not expire thereupon so long as any one of the persons named in such license is a member of the partnership or carries on the business of the partnership as surviving member of the partnership Provided, however, when any change occurs and the license does not expire, the partner or surviving member shall forthwith file with the Director a statement regarding such partnership in such form and give such information as the Director shall require, together with the fee of two dollars, and the Director shall issue a new license Such new license shall expire on the expiration date of the license replaced

(b) Where the business is conducted under a franchise, lease or other similar arrangement, the Director, in his discretion, may require the application to be submitted by the franchise holder, lessee or other person actually responsible for the person conducting the business

§ 54-931 Liability insurance —No motor vehicle repair shop shall be licensed pursuant to this chapter until the applicant or applicants demonstrate they possess sufficient liability insurance to comply with minimum requirements established by the Board No policy of insurance shall be accepted unless it is written by a company authorized to do business in this State

§ 54-932 Authorization for repairs —No licensee under this chapter shall undertake repairs without authorization by the owner of the motor vehicle or his authorized agent The authorization shall not be binding for any work that is not necessary, or that is not performed in a workmanlike manner, under prevailing standards of the profession as prescribed by the Board

§ 54-933 Written bill —No person upon whose behalf repairs of a motor vehicle have been made shall be liable for payment thereof unless the charges are presented in a written bill containing at least the description of work performed, the cost of all labor itemized by operation, a word description of parts, the price of each part, and the total price of parts used If used or reconditioned parts are utilized in making the repairs, this fact must be clearly stated on the written bill If the repairs, or the parts, are covered by a

warranty, the terms of this warranty must be presented in writing with the written bill. If no warranty is given, this fact must be clearly stated on the written bill.

§ 54-934 Denial of application, suspension or revocation of license, penalties —(a) The Director may deny the application of any person for a license and may suspend or revoke a license, or refuse to issue a renewal thereof if he determines that such applicant or licensee

(1) has made a material false statement or concealed a material fact in connection with his application,

(2) was the former holder of a license issued hereunder which was revoked or suspended by the Director,

(3) was, or that any officer, director, partner or stockholder holding more than ten percentum of the outstanding stock, was a culpable officer, director, partner or stockholder holding more than ten percentum of the outstanding stock in a corporation or partnership which was the former holder of a license issued hereunder which was revoked or suspended by the Director,

(4) has failed to furnish satisfactory evidence of good character, reputation and fitness,

(5) does not have a place of business as required by this chapter,

(6) is not the true owner of the repair shop, except where the Director has issued a license to a franchise holder or person actually conducting the motor vehicle repair business pursuant to the provisions of § 54-928 of this chapter,

(7) has been guilty of fraud or fraudulent practices or has practiced misleading or dishonest advertising,

(8) has been grossly negligent in the performance of any repair or adjustment covered by this chapter, or

(9) has failed to comply with the rules and regulations promulgated by the Board or any of the provisions of this chapter

(b) The Director in addition to, or in lieu of, revoking or suspending the license of a licensee in accordance with the provisions of this chapter may in any one proceeding order the licensee to pay to the Commonwealth a penalty in a sum not exceeding one hundred dollars for each violation, and not exceeding five hundred dollars in the aggregate for all violations, and upon the failure of such licensee to pay such penalties within twenty days of the mailing of such order, postage prepaid, registered, and addressed to the last known place of business of such licensee, unless such order is stayed by an order of a court of competent jurisdiction may revoke the license of such licensee or may suspend the same for such period as he may determine. Penalties provided in this section may be recovered by action brought by the Director in any court of competent jurisdiction. Such penalties may be released or compromised by the Director before the matter has been referred to the Attorney General of the Commonwealth of Virginia and where such matter has been referred to the Attorney General any such penalties may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Attorney General with the consent of the Director.

(c) Any licensee holding or possessing a license certificate which has been suspended or revoked pursuant to this chapter, who fails to deliver the same to the suspending or revoking officer or to any peace officer directed by the Director to secure possession thereof, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to imprisonment for not more than six months or to pay a fine not exceeding five hundred dollars or both.

§ 54-935 *Records* — Every licensee shall keep such records as the Director may by regulations require. Such records of the licensee shall be open to inspection by the Director or his representative at all times during reasonable business hours.

§ 54-936 *Certification of motor vehicle repair mechanics, applications, fees, renewals* — (a) The mechanics' certifications established by the Board pursuant to § 54-924(a) of this chapter shall be granted by the Director to any natural person who meets the requirements established by the Board.

(b) Certification shall not be a prerequisite to lawfully engaging in the business of motor vehicle repair.

(c) Applications for certification under this chapter shall be made on forms furnished for such purpose by the Director and shall contain, in addition to other reasonable information of identity, information as to the basic requirements established by the Board pursuant to § 54-924(a). Necessary affidavits shall be affixed thereto. Every application shall be affirmed as true by the applicant. Every application shall be accompanied by an application fee of five dollars to cover the costs of processing.

(d) Each certification shall be renewed periodically in accordance with the regulations and rules established by the Board pursuant to § 54-924(b).

§ 54-937 *Denial of application, suspension or revocation of certification* — The Director may deny the application of any person for certification and may suspend or revoke a certification, or refuse to issue a renewal thereof if he determines that such person has committed any of the following acts:

(a) conduct constituting gross negligence,

(b) acting for more than one customer in a transaction without the knowledge and consent of all parties thereto,

(c) any deceptive acts or practices, and

(d) failure in any material respect to comply with the provisions of this chapter or regulations promulgated thereunder.

§ 54-938 *Conduct of proceedings to deny an application for a license or certification, or to suspend or revoke a license or certification* — The Director shall not, however, suspend or revoke any license or certification, or impose any penalty until after a hearing is conducted, upon written notice, before the Director in accordance with Chapter 11 of Title 9 of this Code, provided, however, that where a notice of hearing is mailed to a licensee or holder of a certification at the address shown in the records of the Director and such licensee or holder of a certification fails to attend such hearing, the Director may suspend his license or certification upon a prima facie showing that such licensee or holder of a certification has committed any of the acts listed in § 54-937. Upon the denial of an application for a license or certification the Director shall grant a hearing to an applicant therefor upon receipt of a request for such a hearing made within thirty days after the applicant is notified of such denial. In the event a license or certification is revoked or an application is denied, no license or certification shall be issued to such former licensee, holder of a certification, or applicant for at least six months nor thereafter, except in the discretion of the Director. The applicant, holder of a certification, or licensee may be heard in person or by counsel. Such hearings shall be at such time and place as the Director shall prescribe. The Director shall have the power of subpoena and may bring before him any person in this Commonwealth, document, record or other relevant evidence. He shall have the power to administer oaths and take the testimony of any such person or cause his deposition to be taken.

§ 54-939 *Injunction* —In addition to any other penalties prescribed or authorized herein for action or inaction declared illegal or unlawful, an injunction may also be granted by the court of record of the city or county wherein such illegality or unlawfulness has occurred, notwithstanding the existence of an adequate remedy at law. The application for such injunction shall be made by the appropriate attorney for the Commonwealth or the Attorney General at the request of the Director. The application shall be tried in the same manner and under the same rules of procedure as other civil actions. Such action shall be brought in the name of the Commonwealth.

§ 54-940 *No lien without valid license* —No person required to have a valid license under the provisions of this chapter shall have the benefit of any lien provided for in Title 43 of this Code, or of any other lien for labor or materials, unless he has such a valid license.

§ 54-941 *Fund, appropriations* —All fees payable under this chapter shall be collected by the Director and paid by him to the general fund of the State treasury. All money so collected, or so much thereof as may be necessary, is hereby appropriated to the Bureau for expenditure in carrying out the provisions of this chapter. In addition, an initial appropriation of fifty thousand dollars or so much thereof as may be necessary, is also appropriated to the Bureau for these expenditures.

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A BILL to amend and reenact § 54-864, as amended, of the Code of Virginia, and to further amend the Code of Virginia by adding in Title 54 a chapter numbered 27, containing sections numbered 54-916 through 54-941, the amended and added sections relating to regulation of the consumer-electronic services industry, appropriation therefor, and providing penalties for violations

Be it enacted by the General Assembly of Virginia

1 That § 54-864, as amended, of the Code of Virginia is amended and reenacted and that the Code of Virginia is further amended by adding in Title 54 a chapter numbered 27, containing sections numbered 54-916 through 54-941, as follows

§ 54-864 Administration, certain powers and duties of Director with respect to boards—It shall be the duty of the Director to perform the administrative duties of the following boards and agencies of the Commonwealth (1) The State Board of Accountancy, (2) The State Board for the Examination and Certification of Architects, Professional Engineers and Land Surveyors, (3) The Virginia Board of Psychologists Examiners, (4) The State Board for the Certification of Librarians, (5) The Board of Examiners of Mines, created by chapter 150 of the Acts of the General Assembly of nineteen hundred forty, (6) The Board of Commissioners to Examine Pilots, (7) The Virginia Real Estate Commission, (8) The Board of Veterinary Examiners, (9) The Board of Barber Examiners, (10) The Virginia State Board of Opticians, (11) The Virginia State Board of Registered Professional Hairdressers, (12) The Virginia Board for Registration of Social Workers, (13) The Virginia Board of Hearing Aid Dealers and Fitters, (14) Board for Certification of Operators of Water and Wastewater Works, (15) The State Board of Sanitarian Examiners, (16) The State Board of Examiners for Nursing Home Administrators, ~~and~~ (17) The Virginia Board of Examiners for Audiology and Speech Pathology, *and* (18) *The Advisory Board on Consumer Electronics Registration and Certification*

Each of the boards designated in this section and § 54-865 is hereby transferred to the Department of Professional and Occupational Registration, and each shall be a separate board within said Department All of the administrative functions of the boards designated in this section shall be under the direction and supervision of the Director, and it shall be the duty of the members of each of the several boards designated in this section to cooperate with the Director to the end that his powers of direction and supervision of the administrative functions of each board shall not be impaired

In the performance and discharge of his duties hereunder with respect to the boards designated in this section only, the Director shall (1) be the secretary of each board, (2) maintain all records for each board, (3) collect and account for all fees prescribed by law to be paid into each board and account for and deposit the moneys so collected in the manner prescribed by the several acts creating said boards, (4) make and file annually with the Governor a consolidated report with respect to each board, (5) employ such personnel and assistance as may be required for the operation of said boards, (6) enforce all regulations promulgated by said boards, and (7) exercise such other powers as may be necessary to function as the sole administrative officer and director of each of said boards

Chapter 27

Consumer-Electronics Services Registration  
and Certification Act

§ 54-916 *Short title*—This act shall be known as the Virginia Consumer-Electronics Registration and Certification Act

§ 54-917 *Definitions*—The following terms as used in this chapter shall have the meaning expressed in this section, unless the context clearly requires otherwise

(a) “Person” shall include any natural person, firm, partnership, association, corporation or other legal entity

(b) “Department” shall mean the Department of Professional and Occupational Registration

(c) “Director” shall mean the Director of the Department of Professional and Occupational Registration or his authorized delegate

(d) “Board” shall mean the Advisory Board on Electronics Services Registration and Certification

(e) “Service dealer” shall mean a person who, for compensation, regularly engages in the business of servicing consumer-electronics equipment

(f) “Certified Radio and Television Technician” shall mean a person who meets the requirements as set forth in § 54-930

(g) “Electronics equipment” shall mean any unit or device which is operated by or uses one or more electron tubes, photoelectric cells, diodes, transistors, or other similar components, solid-state or otherwise, which control the motion or behavior of electrons in vacuums, gases and semiconductors

(h) “Consumer-Electronics Equipment” shall mean electronics equipment such as television, radio, tape system or phonograph equipment or any other electronics equipment normally used or sold for use as entertainment devices

(i) “Service” shall mean the service, repair, modification, alteration, maintenance, alignment or any acts other than those intended for the routine operation of consumer-electronics equipment by the owner or operator

(j) “Shop” shall mean any place in this State where the business of servicing consumer-electronics equipment or of receiving such equipment for service is performed

§ 54-918 *Exemptions*—Except for provisions relating to voluntary certification, this chapter shall not apply to

(a) Any employee of a service dealer, if the employee services consumer-electronics equipment for compensation only as such an employee

(b) The service of electronic equipment used in commercial, industrial, or governmental establishments when such work is performed by the establishment’s own employees

(c) The installation, repair or replacement of externally mounted speakers or antennas in motor vehicles

§ 54-919 [Reserved]

§ 54-920 *Personnel*—The Director, in accordance with Chapter 2 of Title 21 of this Code, may appoint, on part-time or full-time basis, such clerical, investigative, and technical personnel as may be necessary to carry out the provisions of this chapter

§ 54-921 *General duties of Director* —(a) *The Director, with active assistance from the Board, shall promulgate and enforce such rules and regulations as may be reasonable for the general enforcement of the provisions of this chapter and in the public interest. The Director shall distribute to each registered service dealer and certified radio and television technician copies of this chapter and of the rules and regulations thereunder. Such rules and regulations shall be promulgated in accordance with Chapter 11 of Title 9 of this Code.*

(b) *The Director shall keep a complete record of all registered service dealers and certified radio and television technicians and shall annually prepare a roster showing the names and addresses of all currently registered or certified dealers and technicians. A copy of the roster shall be made available to any person requesting it upon the payment of such sum as shall be established by the Director as sufficient to cover the preparation, handling and mailing costs thereof.*

§ 54-922 *Advisory Board* —(a) *There is created an Advisory Board on Consumer Electronics Registration and Certification which shall consist of seven members appointed by the Governor, the first members of which shall be appointed not later than October one, nineteen hundred seventy-four.*

(b) *Four members of the Advisory Board shall be selected to represent the public and shall have no connection financially or otherwise with the consumer-electronics services industry. Three members shall be selected from the consumer-electronics services industry. The Board shall elect from its members, each for a term of one year, a president and a vice-president, and may appoint such committees as it deems necessary to carry out its duties. The Director shall serve ex officio as secretary of the Board but shall not be a member thereof.*

(c) *Each member of the Board shall be appointed for a term of four years and shall hold office until the appointment and qualification of his successor. The terms of the members of the Board first appointed shall expire as follows: One member, July one, nineteen hundred seventy-six, three members, July one, nineteen hundred seventy-seven, three members, July one, nineteen hundred seventy-eight. The terms of each member thereafter appointed shall be four years. Vacancies occurring shall be filled by appointment to the unexpired term.*

§ 54-923 *Meetings of the Board, quorum* —(a) *The Board shall meet at least twice a year. Additional meetings may be held upon the call of the Director, the President, or at the written request of any three members of the Board.*

(b) *The quorum required for any meeting of the Board shall consist of four members, one of whom shall be a representative of the consumer-electronics services industry.*

§ 54-924 *Duties of the Board* —*The Board shall*

(a) *Inquire into the practices of the consumer-electronics services industry, the functions of the Department and the matter of the policy thereof, and make such recommendations with respect thereto as, after consideration, may be deemed important or necessary for the welfare and safety of the consuming public.*

(b) *Confer and advise with the Director as to how he can best fulfill his function.*

(c) *Consider and make appropriate recommendations on its*

as to changes in, or additions to or deletions of regulations which the Director has adopted as, after consideration, may be deemed important or necessary

(d) Assist the Director in the preparation of content and manner of administering the examination for qualification as "Certified Radio and Television Technician "

(e) Consider and make appropriate recommendations in all matters submitted to it by the Director

(f) Assist the Director in the collection of such necessary information and data as the Director may deem necessary to the proper administration of this chapter

§ 54-925 Compensation of the Board — The members of the Board shall be paid each the sum of thirty dollars per day for each day actually spent in the performance of their official duties and their actual and necessary expenses

§ 54-926 Complaint Procedure —(a) The Director shall establish procedures for accepting complaints of violations of this chapter and of any regulation established pursuant to this chapter by any service dealer, whether registered or not, or by any employee, partner, officer or agent of any service dealer, or by any certified radio and television technician. The Director may also, on his own initiative, conduct investigations of service dealers throughout the State on a continuous basis

(b) If the complaint does not appear to state any violations of this chapter or of the regulations made pursuant to this chapter the Director shall so advise the complainant and take no further action

(c) If such a complaint indicates a possible violation of this chapter or of the regulations made pursuant to this chapter, the Director shall advise the service dealer of the contents of the complaint and, after the service dealer has had reasonable opportunity to reply thereto, the Director shall make a summary investigation of the facts

(d) If, upon summary investigation, it appears to the Director probable that a violation of this chapter, or the regulations hereunder, has occurred, the Director in his discretion, may suggest measures that in his judgment would compensate the complainant for the damages he has suffered as a result of the alleged violation. If the service dealer accepts the Director's suggestions and performs accordingly, the Director shall give such fact due consideration in any subsequent disciplinary proceeding. If the service dealer declines to abide by the suggestions of the Director, he may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter

(e) Upon the completion of any investigation conducted pursuant to this chapter the Director shall report the findings together with documented evidence, if any, to the Board at its next meeting, provided, however, that such reporting shall not be a prerequisite to institution of enforcement or adjustment proceedings by the Director

§ 54-927 Registration, application and fees —(a) On and after October one, nineteen hundred seventy-four, it shall be unlawful for any service dealer which is not registered pursuant to this chapter to engage in the business of servicing consumer-electronics equipment. Application for registration shall be made to the Director on forms prescribed by him. The forms shall contain sufficient information to identify the service dealer, including name, address, and other identifying data to be prescribed by the Director. If the business is to be carried on under a name other than that of the owner or owners, such other name shall be additionally stated. If the service dealer is a partnership, identifying data shall be stated for each partner. If the service dealer is a corporation, data shall be included for each of the officers and directors of



*the corporation The individual in charge of each shop shall also be stated*

*(b) The fees for registration shall be thirty-five dollars for the initial registration for each shop in this State, and thirty-five dollars for a renewal fee for each shop, if renewed prior to its expiration date. If the registration is renewed more than thirty days after it ceased to be valid the renewal fee plus a delinquency charge in an amount equal to fifty percent of the renewal fee in effect on the last preceding regular renewal date must be paid.*

*§ 54-928 Surety bond —(a) A good and sufficient surety bond in the sum of three thousand dollars shall be required of each shop prior to registration. Such bonds shall be made in favor of the Secretary of the Commonwealth.*

*(b) No bond shall be accepted for filing unless it be with a surety company authorized to do business in this State, and shall be conditioned that the principal named therein will not do any of the acts meriting suspension or invalidation of his registration or certification under the provisions of this chapter.*

*(c) Any person aggrieved by any act of the principal named in such bond in violation of the provisions of this chapter may proceed on such bond against the principal or surety therein, or both, to recover damages. All such proceedings shall be instituted in the circuit court of the county or city where the violation occurred.*

*§ 54-929 Validation of registration —(a) Upon receipt of the form properly filled out, receipt of the required fee, and the filing of the required bond, the Director shall validate the registration and send a proof of such validation to the service dealer.*

*(b) A registration which is validated prior to May first of any year shall cease to be valid on June thirtieth of the same year if not renewed. A registration which is validated on or after May first of any year shall cease to be valid on June thirtieth of the following year if not renewed.*

*(c) To renew a valid registration the service dealer shall, prior to the applicable date specified in subsection (b) above, apply for renewal on a form prescribed by the Director and pay the renewal fee and file the bond prescribed. To renew a registration thereafter the service dealer shall apply for renewal on a form prescribed by the Director, pay the renewal fee in effect on the last regular renewal date, file the bond prescribed and, if applicable, pay the delinquency fee. Renewal shall be effective on the date on which the application is filed, the date on which the renewal fee is paid, the date the bond is filed, or the date on which the delinquency fee, if any, is paid, whichever occurs last.*

*(d) A registration shall cease to be valid on the thirtieth day from the date on which any of the information required to be provided by the registration form or the prescribed bond ceases to be current. The Director shall make regulations prescribing the procedure for keeping such registration information current.*

*(e) Certificates proving the validation of registration must be prominently displayed in the public area of each shop so registered.*

*§ 54-930 Certified Radio and Television Technician —(a) The certificate of "Certified Radio and Television Technician" shall be granted by the Director to any natural person who meets with the following requirements:*

*(1) He shall be domiciled in the Commonwealth of Virginia, or have a shop located therein at the time of making application,*

*(2) He shall be over the age of eighteen years,*

(3) *He shall be of good moral character,*

(4) *He shall not have been found guilty of any crime involving fraud or dishonest dealing nor have had a registration or certification under this chapter revoked in this State for such activity,*

(5) *He shall have had at least two years of practical professional experience in the service of consumer-electronics equipment and shall furnish affidavits from two other persons in this State over the age of twenty-one years who are engaged in the same work to the effect that the applicant possesses the requisite experience,*

(6) *He shall have passed the examination prescribed and administered by the Director for qualification as "Certified Radio and Television Technician "*

(b) *The program for qualification as "Certified Radio and Television Technician" is voluntary in nature and is not a prerequisite lawfully to engage in the business of consumer-electronics services*

§ 54-931 *Examination for certification —(a) The examinations to be given by the Director shall be practical in character and shall be confined to those matters which fairly test the capacity of the applicant for the certificate. The examination shall cover the theory and practice of consumer-electronics service, knowledge of the provisions of this chapter, ability to recognize and interpret normal trade phrases, symbols and diagrams and the knowledge of proper safety measures relating to the physical safety of the general public who may use his service. The examination may be written or oral, or both, and may require the applicant to perform certain practical operations. The Director shall ensure that the questions and answers are changed from time to time and shall ensure that the questions parallel the progress being made in the consumer electronics field.*

(b) *Applicants for certification under the provisions of this chapter shall be examined at a time and place fixed by the Board, provided that examinations shall be held not less than twice a year.*

(c) *Application for certification under this chapter shall be made under oath on forms furnished for such purpose by the Director and shall contain, in addition to other reasonable information of identity, information as to the basic requirements established in subsection (a) and necessary affidavits shall be affixed thereto. Applications shall be filed with the Director at least ten days before the date set for the examination and shall be accompanied by an examination fee of twenty-five dollars. There shall be no limit on the number of times a person may apply for and take the examination.*

(d) *Upon completion of the examination and the obtaining of a grade previously established by the Director as a passing or a satisfactory grade, such applicant for certification as a "Certified Radio and Television Technician" shall be issued such a certificate by the Director provided the applicant possesses and meets the other qualifications required by this chapter.*

§ 54-932 *Renewal of certification —(a) The certificate of a "Certified Radio and Television Technician" must be renewed annually. A certificate which is validated or granted prior to May first of any year shall cease to be valid on June thirtieth of the same year if not renewed. A certificate which is validated or granted on or after May first of any year shall cease to be valid on June thirtieth of the following year if not renewed. A renewal fee of five dollars shall accompany the request for renewal which shall be on forms provided by the Director.*

(b) *There shall be no delinquency charge for failure to renew the certificate, however, when a certificate is not renewed for two consecutive years another certificate shall be granted only after the person so attempting*

*to renew meets all the requirements for initial application for certification and again takes and passes the examination If a "Certified Radio and Television Technician" is found to have been guilty of gross negligence in service rendered by him or in instances where complaints and investigation discloses a pattern of unworkmanlike service, the Director may require such person to reapply for, retake, and again pass the examination prior to the renewal of any such person's certificate*

*§ 54-933 Grounds for refusal to validate or to invalidate registration, or for refusal to grant or to invalidate certification —The Director may refuse to register, renew an existing registration or may invalidate an existing registration, temporarily or permanently, for any of the following acts or omissions done by the service dealer registered or by any employee, partner, officer, or agent of the service dealer and related to the conduct of his business, and may refuse to certify, renew an existing certification or may invalidate an existing certification, temporarily or permanently, if any of the following acts are committed by the person certified*

*(a) Making or authorizing any statement or advertisement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading*

*(b) Making any false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of the equipment covered by this chapter*

*(c) Acting for more than one customer in a transaction without the knowledge or consent of all parties thereto*

*(d) Any other conduct which constitutes fraud or dishonest dealing*

*(e) Conduct constituting gross negligence in the performance of service*

*(f) Failure in any material respect to comply with the provisions of this*

*(g) In addition any registration or certification shall automatically cease to be valid when any of the information provided by the forms specified in § 54-927 or 54-931 ceases to be current The Director shall prescribe regulations establishing the procedure for keeping this information current*

*§ 54-934 Service dealer invoices, estimates, etc —(a) All work done by a service dealer or by an employee, partner, officer or agent of the service dealer shall be recorded on an invoice in such detail as is required by regulations issued by the Director and shall describe all service work done and all parts supplied If any used parts are supplied, the invoice shall clearly state the fact One copy shall be given to the customer and one copy shall be retained by the service dealer for a period of at least one year*

*(b) The service dealer shall make an individual written or oral offer to return replaced parts to the customer excepting such parts as may be exempted from this requirement by regulations of the Director and excepting such parts as the service dealer must return to the manufacturer or distributor under a warranty arrangement*

*(c) If the customer requests an estimate for labor and parts necessary for a specific job, the service dealer shall make such an estimate in writing and may not charge for work done or parts supplied in excess of one dollar of the estimate without previous consent of the customer The service dealer may charge a reasonable fee for making the estimate, but notice of such fee must be given to the customer prior to engaging in any work toward making the*

*(d) A service dealer may not make the compensation of any employee,*

partner, officer, or agent dependent upon the value of parts replaced in any equipment by, or with the consent of, such employee, partner, officer, or agent

(e) The use of "guarantee" and words of like import shall conform to the regulations adopted by the Director

(f) Each service dealer shall maintain such records as are required by the regulations adopted to carry out the provisions of this chapter. Such records shall be open for reasonable inspection by the Director or other law enforcement officials

§ 54-935 Removal of set from premises, receipt — Any person who for the purpose of repairing a television, radio, phonograph, tape recorder set or electric appliance removes the set or appliance from the premises of the owner shall furnish the owner at the time of such removal with a receipt containing all the following information

(a) The name and business address of the person or business firm which will repair or authorize the repair of the television, radio, phonograph, tape recorder set or electric appliance

(b) The name of the person who actually removes the set or appliance from the owner's premises if different from the person referred to in subsection (a)

(c) Each and every address at which the television, radio, phonograph, tape recorder set or electric appliance will be kept, repaired, or stored, if different from the address referred to in subsection (a)

(d) A description including the make and model of the television, radio, phonograph, tape recorder set or electric appliance removed from the premises

(e) An estimate of the total charges, including parts and labor, to be levied for all services to be rendered

(f) A statement of the total charges which will be levied if the television, radio, phonograph, tape recorder set or electric appliance is returned without being repaired

§ 54-936 Conduct of proceedings to refuse to validate or to invalidate a registration, or to refuse to grant or to invalidate a certification — All proceedings to refuse to register, revalidate, and temporarily or permanently to invalidate a registration, or to invalidate a certification, shall be conducted pursuant to the notice and hearing provisions of Article 11 of Title 9 of this Code

§ 54-937 Effect of expiration or invalidation of a registration or certification on jurisdiction of Director — The expiration or invalidation of a valid registration or certification shall not deprive the Director of jurisdiction to proceed with any investigation or hearing against a service dealer or to render a decision invalidating a registration or certification temporarily or permanently

§ 54-938 Violations, penalty — Any person who fails to comply with the statutory provisions of this chapter, or who commits an act enumerated in § 54-935 shall be guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars or by confinement in jail not exceeding six months, or both such fine and imprisonment. The court taking jurisdiction may, in addition, enjoin the unlawful conduct

§ 54-939 Injunction — In addition to any other penalties prescribed or authorized herein, for action or inaction declared illegal or unlawful, injunction of a mandatory or restraining nature may also be granted by the court of record of the city or county wherein said illegality or unlawfulness has occurred,

*notwithstanding the existence of an adequate remedy at law The application for such injunction shall be made by the appropriate attorney for the Commonwealth or the Attorney General at the request of the Director The application shall be tried in the same manner and under the same rules of procedure as other civil actions are tried The action shall be brought in the name of the Commonwealth*

*§ 54-940 No lien without valid registration —No person required to have a valid registration under the provisions of this chapter shall have the benefit of any lien for labor or materials unless he has such a valid registration*

*§ 54-941 Fund, appropriations —All fees payable under this chapter shall be collected by the Director and paid by him to the general fund of the State treasury All money so collected, or so much thereof as may be necessary, is hereby appropriated to the Department for expenditures in carrying out the provisions of this chapter*

2 That this act is effective on and after October one, nineteen hundred seventy-four

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A BILL to amend the Code of Virginia by adding in Title 59 1 a chapter numbered 4 01, containing sections numbered 59 1-68 1 1 through 59 1-68 1 7, providing for regulation of games and other means for promoting sales, and providing penalties for violations

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding in Title 59 1 a chapter numbered 4 01, containing sections numbered 59 1-68 1 1 through 59 1-68 1 7, as follows

#### Chapter 4 01

#### Games and Sales Promotions

§ 59 1-68 1 1 (a) For the purposes of this chapter, the following terms shall have the meanings ascribed herein

(1) "Game" shall mean any game, contest or other promotion or advertising scheme in connection with the sale of consumer products or services, or recreational or subdivided real estate, which offers or purports in any manner to offer the opportunity to receive gifts, prizes or gratuities as determined by chance, without any consideration therefor

(2) "Prize" shall mean any gift, prize, gratuity or other thing of value offered or purportedly offered in a game, as defined above

(3) "Administrator" shall mean the Administrator of Consumer Affairs

(b) If the total announced or actual cash value of the prizes exceeds five thousand dollars, every person, firm, association or corporation proposing to conduct any game shall file at least thirty days prior to its commencement by personal delivery or certified mail, with the Administrator of Consumer Affairs of the Department of Agriculture and Commerce a statement setting forth the following

(1) the minimum number of prizes included in such a game,

(2) the proportionate chance of winning such prizes,

(3) the minimum value of prizes to be made available,

(4) a statement of any necessary condition other than the element of chance, to the receipt or retention of the prize,

(5) the rules and regulations pertaining to such game,

(6) the period of time which the game will cover,

(7) the geographic area of the Commonwealth which the game will cover,

(8) copies of advertisements and other materials which are to be used to promote the game

The above statement shall be accompanied by a nonrefundable filing fee of fifty dollars If the Administrator determines that any material aspect of the game is misleading or deceptive, he shall return the statement to the promoter or promoters with an explanation of his reasons for doing so, and shall refuse to approve the statement No game shall be implemented until a statement is filed with, and approved by, the Administrator If the Administrator fails to return the statement within thirty days after filing, his failure shall constitute approval of the statement

(c) If the game is to have a duration of more than thirty days, with prizes to be awarded periodically rather than at its termination, the person, firm,

association or corporation conducting the game shall file with the Administrator each week after the game has been in progress for thirty days, by personal delivery or certified mail, a statement setting forth the following

- (1) the number of unredeemed prizes still available,
- (2) the odds existing of winning each such unredeemed prize, and
- (3) copies of advertisements and other materials which are currently being used to promote the game

If the Administrator determines that any aspect of the game has become misleading or deceptive, he shall return the statement to the promoter or promoters with an explanation of his reasons, and shall withdraw his approval of the initial statement. No game shall continue after approval is so withdrawn.

(d) If at any time the Administrator receives evidence that a material aspect of a game has become deceptive or misleading, he shall inform the promoter or promoters of this determination and the reasons therefor, and shall withdraw his approval of the initial statement. No game shall continue after approval is so withdrawn.

§ 59-1-68-1-2 For the purposes of this section a material aspect of a game is misleading or deceptive if the promoter or promoters

(a) Engage in advertising or other promotions which misrepresent by any means, directly or indirectly, participants' chances of winning any prize

(b) Engage in any advertising, including newspaper and broadcast media advertising, or other promotions such as store signs, window streamers, banners, or display materials, or issue any game piece if such game piece refers, on the exposed portion thereof, in any manner to prizes or their number or availability, which fail to disclose clearly and conspicuously

(1) the exact number of prizes in each category or denomination to be made available during the game program and the odds of winning each such prize made available, this disclosure, for prizes in the amount or value of twenty-five dollars or more, to be revised each week a game extends beyond thirty days to reflect the number of such unredeemed prizes still available and the odds existing of winning each such unredeemed prize,

(2) the geographic area covered by the game,

(3) the total number of retail outlets participating in the game, and

(4) the scheduled termination date of the game

(c) Fail to mix, distribute and disperse all game pieces totally and solely on a random basis throughout the game program and throughout the geographic area covered by the game, and fail to maintain such records as are necessary to demonstrate to the Administrator that total randomness was used in such mixing, distribution and dispersal

(d) Promote, sell or use any game which is capable of or susceptible to being solved or "broken" so that winning game pieces or prizes are predetermined or preidentified by such methods rather than by random distribution to the participating public

(e) Promote or use any new game without a break in time between the new game and any game previously employed in the same establishment equivalent to the duration of the game previously employed

(f) Add additional winning game pieces during the course of a game, or in any manner replenish the prize structure of a game in progress

§ 59-1-68-1.3 Within sixty days of the termination of any game conducted in accordance with § 59-1-68-1.1 the promoter or promoters shall file with the Administrator a statement setting forth the following

(a) a complete list of the names and addresses of the winners of each prize and the amount or value of the prizes won by each,

(b) the total number of game pieces distributed,

(c) the total number of prizes in each category or denomination which were made available, and

(d) the total number of prizes in each category or denomination which were awarded

Failure to comply with this section shall constitute a misdemeanor and shall constitute ground for the Administrator's refusing to approve any future game proposed by the same promoter or promoters

§ 59-1-68-1.4 Any person, firm or corporation who conducts a game approved in accordance with § 59-1-68-1.1, and who fails to distribute all offered gifts, prizes or gratuities, shall be guilty of a misdemeanor, and shall be prohibited from conducting any future game within Virginia until such gifts, prizes or gratuities are distributed

§ 59-1-68-1.5 Any person, firm or corporation who coerces a retail dealer to participate in any game as defined in § 59-1-68-1.1 shall be guilty of a misdemeanor. Such coercion includes, but is not limited to, circumstances in which a course of business conduct extending over a period of one year or longer between a supplier and a dealer is materially changed, for no legitimate business reason, coincident with a failure or refusal of the dealer to participate in such a game

§ 59-1-68-1.6 (a) The promoter or promoters of any game which is already in existence on the effective date of §§ 59-1-68-1.1 through 59-1-68-1.5 shall file an initial statement containing all information required by § 59-1-68-1.1 (b) within sixty days of the effective date of this chapter. No game shall be continued for more than sixty days after the effective date without filing this initial statement. If the Administrator determines that any material aspect of an existing game is misleading or deceptive, he shall return the initial statement to the promoter or promoters with an explanation of his reasons for doing so. No game shall continue after such action is taken

(b) If the initial statement is filed within sixty days an existing game may be continued until and unless the Administrator determines a material aspect of the game is misleading or deceptive. If the Administrator fails to return the statement within sixty days after filing, his failure shall constitute approval of the statement

(c) If the initial statement pertaining to an existing game is approved by the Administrator, the promoter or promoters thereof shall immediately be obligated to comply with all other requirements of §§ 59-1-68-1.1 through 59-1-68-1.5 in the same manner as if the initial statement had been filed pursuant to § 59-1-68-1.1(b)

§ 59-1-68-1.7 Unless otherwise provided by law, any person violating any provision of this chapter shall be guilty of a misdemeanor and shall be punished as provided in § 18-1-9

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A BILL to amend the Code of Virginia by adding a section numbered 59 1-68 02, relating to the prohibition of referral transactions and rights of consumer

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding a section numbered 59 1-68 02 as follows

§ 59 1-68 02 (a) For the purpose of its section, the term “consumer sale of lease of goods or services” means the sale or lease of goods or services which are purchased or leased by a natural person primarily for a personal, family, household or agricultural purpose, and not for resale

(b) With respect to a consumer sale or lease of goods or services, no seller or lessor shall give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for the sale or lease in return for the buyer’s giving to the seller or lessor the names of prospective buyers or lessees, or otherwise aiding the seller or lessor in entering into a transaction with another buyer or lessee, if the earning of the rebate, discount, or other value is contingent upon the occurrence of any other event subsequent to the time the buyer or lessee enters into the agreement of sale or lease

(c) Agreements made in whole or in part pursuant to a referral transaction as above described shall be void and unenforceable by the seller or lessor. The buyer or lessee shall be entitled to retain the goods, services or money received pursuant to a referral transaction without obligation to make any further or future payments of any sort on the transaction total, or he shall be entitled to avoid the transaction and to recover from the seller or lessor any sums paid to the seller or lessor pursuant to the transaction

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A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 11 a section numbered 11-94, relating to assignments of instruments, contracts, or other writings evidencing consumer credit obligations, defenses of consumer, limitation on defenses

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding in Chapter 1 of Title 11 a section numbered 11-94 as follows

§ 11-94 (a) Notwithstanding any other provision of law or any agreement to the contrary, any assignee or transferee, who is otherwise a bona fide purchaser or holder in due course under the Uniform Commercial Code, of the rights of a seller under any instrument, note, contract or other evidence of indebtedness created pursuant to a consumer credit sale is subject to all defenses and set-offs of the buyer against the seller arising out of such sale, provided, however, that the buyer's rights under this section may be asserted only as to amounts owing at the time he mails written notice to the assignee at the address stated in the notice of assignment and may be asserted only if the buyer's notice is given within ninety days after the notice of assignment required by subsection (b) is mailed by the assignee

(b) The notice of assignment shall be in writing and addressed to the buyer at his address as stated in the underlying contract, identify the contract, describe the goods or services, state the names of the seller and buyer, the name and address of the assignee, the amount payable by the buyer and the number, amounts and the due dates of the installments, and contain or enclose a conspicuous notice as follows

1 IF THE WRITTEN STATEMENT OF YOUR TRANSACTION WITH THE SELLER IS NOT CORRECT IN EVERY RESPECT, OR

2 IF THE GOODS OR SERVICES DESCRIBED IN [AN ENCLOSURE WITH] THIS NOTICE HAVE NOT BEEN DELIVERED TO YOU BY THE SELLER OR ARE NOT NOW IN YOUR POSSESSION, OR

3 IF THE SELLER HAS NOT FULLY PERFORMED ALL HIS AGREEMENTS WITH YOU, YOU SHALL NOTIFY THE ASSIGNEE IN WRITING AT THE ADDRESS INDICATED IN [AND ENCLOSURE WITH] THIS NOTICE WITHIN NINETY DAYS FROM THE DATE OF THE MAILING OF THIS NOTICE, OTHERWISE, YOU MAY NOT BE ABLE TO ASSERT AGAINST THE ASSIGNEE ANY RIGHT OF ACTION OR DEFENSE ARISING OUT OF THE SALE WHICH YOU MIGHT OTHERWISE HAVE AGAINST THE SELLER

(c) Payments made by the buyer to the seller under any instrument, note, contract or other evidence of indebtedness created pursuant to a consumer credit sale, after assignment of the seller's rights under such evidence of indebtedness but prior to the assignee's notice to the buyer of such assignment, may be asserted as a matter of defense or set-off against a claim by an assignee

(d) For purposes of this section (1) "consumer credit sale" shall mean a transaction in which credit is granted by a seller in connection with a sale or lease of goods or services or construction, improvement, repair or alteration on real property which becomes a fixture thereto whether or not severable, if such seller regularly engages in credit transactions as a seller, and such goods or services are purchases by a natural person primarily for a personal, family, or household purpose, and not for resale. It shall include such a sale or lease paid for with the proceeds of a loan from a person other than the seller but arranged for by a seller. It shall not include a sale charged to a credit card issued by an

issuer other than the seller, or a sale paid for by check or draft, (2) "seller" shall mean seller or lessor, (3) "buyer" shall mean buyer or lessee, and (4) a seller "arranges" a loan when the seller prepares the documents used in obtaining the loan, when the seller supplies the forms to the buyer which are used by the buyer to obtain the loan, when the person granting the loan is specifically recommended by the seller and at least two loans are thereby made in any calendar year, when the seller receives or will receive a fee from the person granting the loan to the buyer upon the granting of the loan or the referral by the seller, or any other relationship which a court of law having jurisdiction may find to be affected with knowledge of defenses that may be asserted by the buyer

(e) The remedy provided by this act shall be in addition to, and not in lieu of, any other remedy which the buyer may have under law

(f) The provisions of this section shall apply to all such assignments which occur on or after the effective date hereof

#

A BILL to amend the Code of Virginia by adding in Title 54 a chapter numbered 17 3, containing sections numbered 54-729 26 through 54-729 31, relating to conduct and practices in connection with the collection of claims arising from consumer credit transactions, and remedies when such practices used by debt collector

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding in Title 54 a chapter numbered 17 3, containing sections numbered 54-729 26 through 54-729 31, as follows

## CHAPTER 17 3 DEBT COLLECTION

§ 54-729 26 Scope —This chapter applies to conduct and practices in connection with the collection of claims arising from consumer credit transactions

§ 54-729 27 Definitions —(a) “Claim” means any obligation or alleged obligation arising from a consumer credit transaction

(b) “Consumer Credit Transaction” means a transaction between a merchant and a customer in which real or personal property, services or money are acquired on credit, and the customer’s obligation is payable in installments or for which credit a finance charge is or may be imposed

(c) “Customer” means a person other than an organization who seeks or acquires real or personal property, services, money or credit for personal, family, household or agricultural purposes

(d) “Debt Collection” means any action, conduct or practices of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant by a customer

(e) “Debt Collector” means any person engaging directly or indirectly in debt collection

(f) “Merchant” means any person who regularly deals in goods of a kind, realty, services or money or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction, or to whom such knowledge or skill may be attributed by employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill

§ 54-729 28 Prohibited practices —In attempting to collect an alleged claim arising from a consumer credit transaction, a debt collector shall not

(a) Threaten the institution of legal proceedings,

(b) Utilize a communication which simulates legal or judicial process,

(c) Misrepresent or create false impressions concerning the true nature of

(d) Threaten violence or harm to the customer, those related to him or his property,

(e) Use obscene, defamatory or threatening language in communicating with a customer or person related to him,

(f) Communicate with the customer or a person related to him with such frequency or at such unusual hours or in such a manner as can reasonably be expected to harass,

(g) Disclose or threaten to disclose to a person other than the customer, or his spouse if also liable, information concerning the existence of the claim, except through proper legal proceedings, provided, however, that this paragraph does not prohibit

(1) disclosure to another person of information permitted to be disclosed to him by statute, provided the customer is notified of such communication,

(2) disclosure to customer's employer when the employer has an established debt counseling service,

(h) Engage in any other conduct which can reasonably be expected to harass the customer or persons related to him

§ 54-729 29 Remedies —(a) Release from obligation —Proof that a debt collector has violated any provision of this chapter shall constitute a complete defense to any legal action to enforce the claim that was being collected at the time such violation occurred, and the customer shall be released from all obligation on such claim, provided, however, that if the debt collector shows by clear and convincing evidence that the violation was not intentional and resulted from a bona fide error, the customer shall not be released from the claim

(b) Damages —A customer injured by violation of this chapter may recover actual damages or two hundred dollars, whichever is greater. A debt collector may not be held liable for damages in any action brought under this section if the debt collector shows by clear and convincing evidence that the violation was not intentional and resulted from a bona fide error

(c) Costs and Fees —If a customer establishes that a debt collector has violated any provision of this chapter and the collector does not show by clear and convincing evidence that the violation was not intentional and resulting from a bona fide error, the customer shall be awarded court costs and attorney's fees based on work reasonably performed

(d) License Revocation —A customer injured by violation of this chapter by a licensed collection agency may petition the Collection Agency Board to hold a hearing to determine if the license of such agency should be revoked, provided, however, that no hearing shall be held if the customer has sought and failed to prevail under sections 54-729 29 (a) or 54-729 29 (b)

(e) Other Remedies Not Affected —The grant of remedies in this chapter does not affect remedies available to customers under principles of law or equity, nor does it affect criminal charges which may be brought for conducting proscribed practices

§ 54-729 30 Effects on other laws —This chapter does not annul, alter or affect, or exempt the debt collector from complying with the other laws of this State, except to the extent that those laws are inconsistent with the provisions of this chapter, and then only to the extent of such inconsistency shall this chapter prevail

§ 54-729 31 Severability —If a provision enacted by this chapter is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this chapter is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications

#

A BILL to amend the Code of Virginia by adding a section numbered 59 1-47 1, and to repeal § 59 1-47, as amended, of the Code of Virginia, the added and repealed sections relating to advertising merchandise, goods, commodity, service or thing for sale with intent not to sell at price or terms advertised

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding a section numbered 59 1-45 1 as follows

§ 59 1-45 1 (a) No person, firm, corporation or association shall in any manner advertise, or offer for sale to the public, any merchandise, goods, commodity, service or thing unless he intends to sell the advertised product or products at the price and upon the terms advertised

(b) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product or service offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, a potential buyer may be switched from the advertised product or service to another. Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by such statement or illustration

(c) No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise

Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are

(1) the refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer,

(2) the disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it,

(3) the failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the merchandise is available only at designated outlets,

(4) the refusal to take orders for the advertised merchandise to be delivered within a reasonable period of time,

(5) the showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement, and

(6) use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product

(d) No practice should be pursued by an advertiser, in the event of sale of the advertised product, of "unselling" with the intent and purpose of selling other merchandise in its stead

Among acts or practices which will be considered in determining if the initial sale was in good faith, and not a stratagem to sell other merchandise, are

(1) accepting a deposit for the advertised product, then switching the purchaser to a higher-priced product,

(2) failure to make delivery of the advertised product within a reasonable time or to make a refund,

(3) disparagement by acts or words of the advertised product, or the disparagement of the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it,

(4) the delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement

2 That § 59 1-45, as amended, of the Code of Virginia is repealed

#

A BILL to amend the Code of Virginia by adding a section numbered 59 1-47 1, and to repeal § 59 1-47, as amended, of the Code of Virginia, the added and repealed sections relating to the advertising of a former or comparative price of merchandise

Be it enacted by the General Assembly of Virginia

1 That the Code of Virginia is amended by adding a section numbered 59 1-47 1 as follows

§ 59 1-47 1 (a) No person, firm, corporation or association shall in any manner knowingly advertise a former or comparative price of the merchandise, goods, commodity, service or thing advertised without stating expressly whether the comparative or former price used relates to a previous price used by the advertiser or to a price currently being used by persons, firms, corporations or associations other than the advertiser

(b) If the former or comparative price contained in the advertisement is claimed to be a previous price of the advertiser, it must be a price at which the merchandise, goods, commodity, service or thing advertised of substantially the same kind, quality, quantity and with substantially the same service was openly and actively offered for sale for a period of at least forty-five consecutive days within the three months immediately next preceding the date of the advertisement honestly, in good faith and not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. In no instance, however, shall an advertiser state or imply that the merchandise, goods, commodity, service or thing advertised was "formerly sold" at a particular price unless substantial sales at that price were actually made

(c) If the former or comparative price contained in the advertisement is claimed to be the price currently being charged by persons, firms, corporations or associations other than the advertiser it must be the current price at or above which substantial sales of merchandise substantially of the same kind, quality, quantity, and with substantially the same service are made in the advertiser's trade area. For the purpose of this subsection "substantial sales" is defined as a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving, and "trade area" is defined as that geographic area served by the advertising medium used

(d) Neither a manufacturer's list price nor suggested retail price shall be used as a former or comparative price unless it satisfies the requirements of either (b) or (c) of this section. Nothing in this section, however, shall affect a manufacturer or other large distributor who does business on a large regional or national scale, and who advertises or disseminates a price list or preticketed price in good faith as an honest estimate of the actual retail price

(e) In any action to enjoin a violation of this section the party bringing the action need only establish a prima facie case that a violation has occurred. The burden of proof shall then be on the advertiser to establish that his use of a former or comparative price was in accordance with this section

2 That § 59 1-47, as amended, of the Code of Virginia is repealed

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A BILL to amend and reenact § 59 1-47, as amended, of the Code of Virginia, relating to the advertising of a former or comparative price of merchandise

Be it enacted by the General Assembly of Virginia

1 That § 59 1-47, as amended, of the Code of Virginia is amended and reenacted as follows

§ 59 1-47 Same, advertising former or comparative price of merchandise, etc —No person, firm, corporation or association shall in any manner knowingly advertise a former or comparative price of the merchandise, goods, commodity, service or thing advertised unless such price ~~is the current price at or above which substantial sales of merchandise substantially of the same kind, quality, quantity, and with substantially the same service are made in the offeror's or advertiser's trade area~~ or was the price at which the merchandise, etc , of substantially the same kind, quality, quantity and with substantially the same service was openly and actively offered for sale by the offeror or advertiser for a period of at least thirty consecutive days within the four months immediately next preceding the date of the advertisement, honestly, in good faith and not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based ~~This section shall not be construed to prohibit the advertisement of any former or comparative price when the date on which substantial sales were made at the former or comparative price so advertised is clearly and conspicuously stated in the advertisement~~

For the purposes of this section, "substantial sales" shall mean a substantial aggregate volume of sales of such merchandise at or above the advertised comparative price in the advertiser's trade area

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