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SENATE BILL NO. 266

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-186.3:2, relating to identity theft prevention; freezing access to credit reports; penalty.

 Patron—Bell

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-186.3:2 as follows:

§ 18.2-186.3:2. Identity fraud; security freezes.

A. As used in this section:

"Consumer" means any person who is utilizing or seeking credit for personal, family, or household purposes.

"Consumer reporting agency" has the meaning assigned by § 603(f) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).

"Credit report" means any written or oral report, recommendation, or representation of a consumer rating agency as to the creditworthiness, credit standing, or credit capacity of any consumer, and includes any information which is sought or given for the purpose of serving as the basis for determining eligibility for credit to be used primarily for personal, family, or household purposes.

"Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer, that prohibits the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer.

B. Any consumer may submit a written request, by certified mail or such other secure method as authorized by a consumer reporting agency, to a consumer reporting agency to place a security freeze on such consumer's credit report. The consumer reporting agency shall place a security freeze on a consumer's credit report not later than five business days after receipt of such request. Not later than 10 business days after placing a security freeze on a consumer's credit report, such consumer reporting agency shall send a written confirmation of such security freeze to such consumer that provides the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of such consumer's report to a third party or for a period of time.

C. If the consumer wishes to authorize the disclosure of such consumer's credit report to a third party, or for a period of time, while such security freeze is in effect, the consumer shall contact the consumer reporting agency and provide (i) proper identification, (ii) the unique personal identification number or password described in subsection B, and (iii) proper information regarding the third party who is to receive the credit report or the time period for which the credit report shall be available. Any consumer reporting agency that receives a request from a consumer pursuant to this section shall lift such security freeze not later than three business days after receipt of such request.

D. Except for the temporary lifting of a security freeze as provided in subsection C, a security freeze authorized pursuant to this section shall remain in effect until such time as such consumer requests such security freeze to be removed. A consumer reporting agency shall remove such security freeze not later than three business days after receipt of such request, if the consumer provides proper identification to the consumer reporting agency and the unique personal identification number or password described in subsection B at the time of such request for removal of the security freeze.

E. A consumer reporting agency shall develop procedures to receive and process requests from a consumer to temporarily lift or remove a security freeze on a credit report pursuant to subsection C. Such procedures, at a minimum, shall include, but not be limited to, the ability of a consumer to send such temporary lift or removal request by electronic mail, letter, or facsimile.

F. If a third party requests access to a consumer's credit report that has a security freeze in place and such third party's request is made in connection with an application for credit or any other use and such consumer has not authorized the disclosure of such consumer's credit report to such third party, such third party may deem such credit application to be incomplete.

G. Nothing in this section shall be construed to prohibit disclosure of a consumer's credit report to:

1. A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or,

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59 prior to assignment, had an account, contract, or debtor-creditor relationship for the purpose of (i)
60 reviewing the account; (ii) conducting activities related to account maintenance, monitoring, credit line
61 increases, and account upgrades and enhancements; or (iii) collecting the financial obligation owing for
62 the account, contract, or debt;

63 2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has
64 been granted under subsection C for the purpose of facilitating the extension of credit or other
65 permissible use;

66 3. A person acting pursuant to a court order, warrant, or subpoena;

67 4. Any person for the purpose of using such credit information to prescreen as provided by the
68 federal Fair Credit Reporting Act;

69 5. Any person for the sole purpose of providing a credit file monitoring subscription service to which
70 the consumer has subscribed;

71 6. A consumer reporting agency for the sole purpose of providing a consumer with a copy of his
72 credit report upon the consumer's request; or

73 7. A federal, state, or local governmental entity, including a law-enforcement agency, or court, or
74 their agents or assignees pursuant to their statutory or regulatory duties.

75 H. The following persons shall not be required to place a security freeze on a consumer's credit
76 report, provided such persons shall be subject to any security freeze placed on a credit report by
77 another consumer reporting agency:

78 1. A check services or fraud prevention services company that reports on incidents of fraud or issues
79 authorizations for the purpose of approving or processing negotiable instruments, electronic fund
80 transfers, or similar methods of payment;

81 2. A deposit account information service company that issues reports regarding account closures due
82 to fraud, substantial overdrafts, automated teller machine abuse, or similar information regarding a
83 consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request
84 for a deposit account at the inquiring bank or financial institution; or

85 3. A consumer reporting agency that (i) acts only to resell credit information by assembling and
86 merging information contained in a database of one or more credit reporting agencies and (ii) does not
87 maintain a permanent database of credit information from which new credit reports are produced.

88 I. A credit rating agency may charge a fee of not more than \$10 to a consumer for each placement
89 of a security freeze, removal of a security freeze, temporary lift of such freeze for a specific party, or
90 temporary lift of a security freeze for a period of time.

91 J. A violation of this section shall constitute a prohibited practice pursuant to the provisions of
92 § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer
93 Protection Act (§ 59.1-196 et seq.).

94 § 59.1-200. Prohibited practices.

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

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

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

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

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

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

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

105 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
106 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
107 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
108 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
109 irregulars, imperfects or "not first class";

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

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

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

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

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

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

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

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

15. Violating any provision of § 3.1-796.78, 3.1-796.79, or 3.1-796.82, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

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

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

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

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

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

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

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

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

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

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

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

24. Violating any provision of § 54.1-1505;

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

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

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

182 title;
183 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
184 this title;
185 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
186 seq.) of this title;
187 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
188 seq.) of this title;
189 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
190 title;
191 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
192 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
193 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
194 35. Using the consumer's social security number as the consumer's account number with the supplier,
195 if the consumer has requested in writing that the supplier use an alternate number not associated with
196 the consumer's social security number;
197 36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;
198 37. Violating any provision of § 8.01-40.2;
199 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
200 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;
201 40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;
202 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
203 (§ 59.1-525 et seq.) of this title;
204 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
205 43. Violating any provision of § 59.1-443.2 of this title; ~~and~~
206 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; *and*
207 45. *Violating any provision of § 18.2-186.3:2.*
208 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
209 lease solely by reason of the failure of such contract or lease to comply with any other law of the
210 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
211 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
212 such contract or lease.