

070139256

HOUSE BILL NO. 2804

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 59.1-200 and 59.1-444 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-443.3, relating to information privacy; credit report security freezes; penalties.

Patrons—Byron and Putney; Senator: Newman

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-200 and 59.1-444 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-443.3 as follows:

§ 59.1-200. Prohibited practices.

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

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

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

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

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

11. Misrepresenting by the use of any written or documentary material 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

INTRODUCED

HB2804

59 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
60 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
61 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
62 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
63 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
64 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
65 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
66 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
67 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
68 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
69 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
70 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
71 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
72 § 46.2-100;

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

78 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
79 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
80 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
81 receiving overpayments. If the credit balance information is incorporated into statements of account
82 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

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

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

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

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

92 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
93 (§ 59.1-207.17 et seq.) of this title;

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

95 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
96 (§ 59.1-424 et seq.) of this title;

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

98 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
99 17.6 (§ 59.1-207.34 et seq.) of this title;

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

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

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

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

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

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

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

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

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

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

117 36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

118 37. Violating any provision of § 8.01-40.2;

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

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

40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;
 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;
 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
 43. Violating any provision of § 59.1-443.2 or 59.1-443.3;
 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; and
 45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1.

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

§ 59.1-443.3. *Freezing access to credit reports.*

A. As used in this section:

"Consumer" means an individual who has attained the age of 65 years.

"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 reporting agency as to the creditworthiness, credit standing, or credit capacity of an individual described in clause (i) or (iii) of the definition of "consumer," and includes any information that is sought or given for the purpose of serving as the basis for determining the individual's eligibility for credit to be used primarily for personal, family, or household purposes.

"Security freeze" means a prohibition on the release by a consumer reporting agency of all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

B. A consumer may elect to place a security freeze by requesting a consumer reporting agency, by certified mail or such other secure method as authorized by a consumer reporting agency, to place a security freeze on such consumer's credit report. The consumer reporting agency shall place the requested security freeze on the credit report not later than five business days after receipt of such request.

C. The consumer reporting agency shall send a written confirmation of such security freeze to such consumer within five business days and shall provide 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 credit report to a specific party or for a period of time.

D. If the consumer wishes to authorize the disclosure of his 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:

1. Proper identification;
2. The unique personal identification number or password described in subsection C; and
3. 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.

E. Any consumer reporting agency that receives a request from a consumer for a disclosure of his credit report to a third party, or for a period of time, while such security freeze is in effect, shall lift such security freeze not later than three business days after receipt of such request.

F. A consumer reporting agency may develop procedures involving the use of telephone, fax, Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to this subsection in an expedited manner.

G. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

1. Upon consumer request, pursuant to subsection D or J; and
2. If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

H. If a third party requests access to a credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his credit report to be accessed for that specific party or period of time, then (i) the third party may treat the application as incomplete and (ii) the consumer reporting agency shall disclose to the consumer that the third party requested access to the consumer's credit report and that such access was denied as a result of the security freeze. The consumer reporting agency shall maintain records regarding the frequency with which it denies third parties' requests for access to consumers' credit

182 report as a result of a security freeze.

183 I. If a consumer requests a security freeze pursuant to subsection B, the consumer reporting agency
184 shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing
185 access to information from the consumer's credit report for a specific party or period of time while the
186 freeze is in place.

187 J. A security freeze shall remain in place until the consumer requests that the security freeze be
188 removed. A consumer reporting agency shall remove a security freeze within three business days of
189 receiving a request for removal from the consumer who provides both proper identification and the
190 unique personal identification number or password that was provided to the consumer by the consumer
191 reporting agency as described in subsection C.

192 K. A consumer reporting agency shall require proper identification of the person making a request to
193 place or remove a security freeze.

194 L. The provisions of this section shall not apply to the use of a credit report by any of the following:

195 1. A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or,
196 prior to assignment, had an account, contract, or debtor-creditor relationship for the purpose of (i)
197 reviewing the account, including activities related to account maintenance, monitoring, credit line
198 increases, and account upgrades and enhancements; (ii) conducting activities related to account
199 maintenance, monitoring, credit line increases, and account upgrades and enhancements; or (iii)
200 collecting the financial obligation owing for the account, contract, or debt;

201 2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has
202 been granted for the purpose of facilitating the extension of credit or other permissible use;

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

204 4. Any person for the purpose of using such credit information to prescreen as provided by the
205 federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.;

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

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

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

212 M. This section does not prevent a consumer reporting agency from charging a fee of no more than
213 \$20 to a consumer for each freeze, removal of the freeze, or temporary lift of the freeze.

214 N. The following persons shall not be required to place a security freeze on a consumer's credit
215 report, provided such persons shall be subject to any security freeze placed on a credit report by
216 another consumer reporting agency:

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

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

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

227 O. A consumer reporting agency shall not suggest or otherwise state or imply to a third party that
228 the consumer's security freeze reflects a negative credit score, history, report, or rating.

229 § 59.1-444. Damages.

230 A person aggrieved by a violation of any provision of this chapter, except §§ 59.1-443.2 and
231 59.1-443.3, shall be entitled to institute an action to recover damages in the amount of \$100 per
232 violation. In addition, if the aggrieved party prevails, he may be awarded reasonable attorney's fees and
233 court costs. Actions under this section shall be brought in the general district court for the city or county
234 in which the transaction or other violation that gave rise to the action occurred. A violation of the
235 provisions of § 59.1-443.2 or 59.1-443.3 is a prohibited practice under the Virginia Consumer Protection
236 Act (§ 59.1-196 et seq.).