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HOUSE BILL NO. 1339

Offered January 9, 2008

Prefiled January 9, 2008

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 freezing access to credit reports; penalty.

 Patron—Barlow

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

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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;
44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; ~~and~~
45. (Effective January 1, 2007) Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1; *and*
46. *Violating any provision of § 59.1-443.3.*
- 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 any individual residing in the Commonwealth.
- "Consumer reporting agency" means any person who, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties.
- "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes; (ii) employment purposes; or (iii) any other purpose authorized under 15 U.S.C. § 1681b.
- "Security freeze" means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing 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 on his credit report by any of the following, at the option of the consumer:
1. Making a request by mail;
 2. Making a request by telephone by providing certain personal identification; or
 3. Making a request directly to the consumer reporting agency through a secure website or secure electronic mail connection. Consumer reporting agencies shall make a secure website or secure electronic mail method available by September 1, 2008.
- C. A consumer reporting agency shall place a security freeze on a consumer's credit report not later than three business days after receipt of a request by mail. Requests by telephone, secure website, or secure electronic mail shall be honored within 15 minutes after the request has been completed beginning September 1, 2008. By July 1, 2009, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than 24 hours after receiving a request for placing the freeze by mail.
- D. The consumer reporting agency shall send a written confirmation of the security freeze to such consumer within three business days of placing the freeze 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, or when permanently lifting the freeze.
- E. 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 via telephone, mail, or secure electronic mail with a request that the freeze be temporarily lifted and provide:
1. Proper identification;
 2. The unique personal identification number or password provided by the consumer reporting agency as described in subsection D; 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 to users of the credit report.
- F. A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report pursuant to subsection E shall comply with the request no later than three business days after receiving the request by mail or no later than 15 minutes if the request is received, beginning September 1, 2008, by telephone or electronic mail. By July 1, 2009, a consumer

182 reporting agency shall honor such a request no later than one business day after receiving such a
183 request made by mail.

184 G. A consumer reporting agency shall develop procedures involving the use of telephone, fax, or
185 secure electronic connection or method to receive and process a request to temporarily lift a freeze on a
186 credit report or credit score in an expedited manner.

187 H. A consumer reporting agency shall remove or temporarily lift a security freeze placed on a
188 consumer's credit report only (i) upon consumer request or (ii) if the consumer's credit report was
189 frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency
190 intends to remove a security freeze because the credit report was frozen due to a material
191 misrepresentation of fact by the consumer, the consumer reporting agency shall notify the consumer in
192 writing five business days prior to removing the security freeze.

193 I. If a third party requests access to a credit report on which a security freeze is in effect, and the
194 consumer does not allow his credit report to be accessed for that specific party or period of time, the
195 third party may treat the application as incomplete.

196 J. A security freeze shall remain in effect without assessment of any fees, unless a fee for a lost
197 personal identification number or password is charged, until the consumer requests that it be removed.
198 A consumer reporting agency shall remove a security freeze within three business days of receiving a
199 request for removal from the consumer, which request shall include both proper identification and the
200 unique personal identification number or password provided by the consumer reporting agency. By July
201 1, 2009, a consumer reporting agency shall remove a credit freeze within 24 hours after receiving such
202 a request.

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

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

207 M. The provisions of this section shall not apply to the use of a credit report by any of the
208 following:

209 1. A person, or the person's subsidiary, affiliate, agent, or assignee, with whom the consumer has or,
210 prior to assignment, had an account, contract, or debtor-creditor relationship, or the person's
211 subsidiary, affiliate, agent, or assignee, for the purpose of reviewing the account or collecting the
212 financial obligation owing for the account, contract, or debt;

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

215 3. Any person acting pursuant to a court order, warrant, or subpoena;

216 4. A state or local agency, or its agents or assigns, that administers a program for establishing and
217 enforcing child support obligations;

218 5. A state or local agency, or its agents or assigns, acting to investigate fraud;

219 6. A federal, state, or local governmental entity, including law-enforcement agency or court or its
220 agents or assigns;

221 7. A consumer reporting agency for its database or file that consists entirely of, and is used solely
222 for, criminal record information, tenant screening, employment screening, or fraud prevention and
223 detection;

224 8. A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C.
225 § 1681, et seq.;

226 9. Any person for the sole purpose of providing for a credit file monitoring subscription service to
227 which the consumer has subscribed; and

228 10. A consumer reporting agency for the purpose of providing a consumer with a copy of the
229 consumer's credit report upon the consumer's request.

230 N. This section shall not prevent a consumer reporting agency from charging a fee of no more than
231 \$5 to a consumer for establishing a security freeze, removing a security freeze, temporarily lifting a
232 security freeze for a period of time, or temporarily lifting a security freeze for a specific party,
233 regarding access to a credit report, except that a consumer reporting agency shall not charge any fee to
234 a victim of identity theft who has submitted a copy of a valid investigative or incident report or
235 complaint with a law-enforcement agency about the unlawful use of the victim's identifying information
236 by another person.

237 O. If a security freeze is in place, a consumer reporting agency shall not change any of the official
238 information in a credit report regarding the name, date of birth, social security number, or address of a
239 consumer without sending a written confirmation of the change to the consumer within 30 days of the
240 change being posted to the consumer's file. Written confirmation is not required for technical
241 modifications of a consumer's official information, including name and street abbreviations, complete
242 spellings, or transposition of numbers or letters. In the case of an address change, the written
243 confirmation shall be sent to both the new address and the former address.

244 P. If a consumer reporting agency erroneously, whether by accident or design, violates the security
245 freeze by releasing credit information that has been placed under a security freeze, the affected
246 consumer is entitled to notification within five business days of the release of the information, including
247 specificity as to the information released and the third party recipient of the information.

248 Q. At any time when a consumer is required to receive a summary of rights required under § 609 of
249 the federal Fair Credit Reporting Act, the consumer shall be provided with a notice that summarizes the
250 provisions of this section.

251 R. The release of information by a consumer reporting agency that has been placed under a security
252 freeze in violation of the provisions of this section constitutes a prohibited practice pursuant to the
253 provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the
254 Virginia Consumer Protection Act (§ 59.1-196 et seq.). Each violation of the security freeze shall be
255 counted as a separate incident for purposes of imposing penalties under this section.

256 § 59.1-444. Damages.

257 A person aggrieved by a violation of any provision of this chapter, except § 59.1-443.2 or
258 59.1-443.3, shall be entitled to institute an action to recover damages in the amount of \$100 per
259 violation. In addition, if the aggrieved party prevails, he may be awarded reasonable attorney's fees and
260 court costs. Actions under this section shall be brought in the general district court for the city or county
261 in which the transaction or other violation that gave rise to the action occurred. A violation of the
262 provisions of § 59.1-443.2 or 59.1-443.3 is a prohibited practice under the Virginia Consumer Protection
263 Act (§ 59.1-196 et seq.).