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HOUSE BILL NO. 345

Offered January 9, 2008

Prefiled January 4, 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 information privacy; credit report security freezes.

Patrons—Plum, Bulova, Scott, J.M. and Shuler

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. 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. Security freeze.

A. Definitions.

As used in this section:

"Consumer" means an individual resident of the Commonwealth.

"Consumer reporting agency" means any person who, for monetary fees, 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 consumer reports to third parties.

"Credit report" or "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, 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, except that nothing in this section authorizes the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance; (ii) employment purposes; or (iii) any other purpose authorized under 15 U.S.C. § 1681b.

"Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

"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. If a security freeze is in place, such a report or information shall not be released to a third party without prior express authorization from the consumer; however, a consumer reporting agency shall not be prevented from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

B. 1. A consumer may elect to place a "security freeze" on his credit report by (i) making a request by certified or overnight mail, (ii) making a request by telephone by providing certain personal identification, or (iii) making a request directly to the consumer reporting agency through a secure electronic mail connection if such connection is made available by the agency. Credit reporting agencies shall make a secure electronic mail method of requesting a security freeze available within 180 days of this Act's effective date.

2. A consumer reporting agency shall place a security freeze on a consumer's credit report no later than two business days after receiving a written, telephone, or electronic request from the consumer or three business days after receiving a secure electronic mail request. By July 1, 2009, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than one business day after receiving a telephone or electronic request.

3. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within two business days of placing the freeze and at the same time 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 his credit for a specific party or period of time, or when permanently lifting the freeze. By July 1, 2009, the consumer reporting agency shall send such a written confirmation and unique personal identification number or password to the consumer no later than one business day after placing the freeze.

4. If the consumer wishes to allow his credit report to be accessed for a specific party or period of time while a freeze is in place, he shall contact the consumer reporting agency via telephone, certified mail, overnight mail, or secure electronic mail, with a request that the freeze be temporarily lifted, and provide the following:

182 a. Proper identification,
183 b. The unique personal identification number or password provided by the consumer reporting
184 agency pursuant to subdivision B 3, and
185 c. The proper information regarding the third party who is to receive the credit report or the time
186 period for which the report shall be available to users of the credit report.

187 5. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze
188 on a credit report pursuant to subdivision B 4 shall comply with the request no later than two business
189 days after receiving the request. By January 1, 2009, a consumer reporting agency shall honor such a
190 request made by electronic mail or by telephone within 15 minutes of receiving the request.

191 6. A consumer reporting agency shall develop procedures involving the use of telephone, fax, or,
192 upon the consent of the consumer in the manner required by the federal Electronic Signatures in Global
193 and National Commerce Act, 15 U.S.C. § 7001 et seq., for legally required notices, by the Internet,
194 e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a
195 freeze on a credit report pursuant to subdivision B 4 in an expedited manner.

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

198 a. Upon consumer request, pursuant to subdivision B 4 or B 10; or
199 b. If the consumer's credit report was frozen due to a material misrepresentation of fact by the
200 consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report
201 pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing five
202 business days prior to removing the freeze on the consumer's credit report.

203 8. If a third party requests access to a consumer credit report on which a security freeze is in effect,
204 and this request is in connection with an application for credit or any other use, and the consumer does
205 not allow his credit report to be accessed for that specific party or period of time, the third party may
206 treat the application as incomplete.

207 9. If a third party requests access to a consumer credit report on which a security freeze is in effect
208 for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole
209 purpose of account review, the consumer reporting agency shall notify the consumer that an attempt has
210 been made to access the credit report.

211 10. A security freeze shall remain in place until the consumer requests that the security freeze be
212 removed. A consumer reporting agency shall remove a security freeze within two business days of
213 receiving a request for removal from the consumer, who provides both of the following:

214 a. Proper identification, and
215 b. The unique personal identification number or password provided by the consumer reporting
216 agency pursuant to subdivision B 3.

217 Not later than July 1, 2009, a consumer reporting agency shall remove a security freeze within one
218 business day after receiving such a request.

219 11. A consumer reporting agency shall require proper identification of the person making a request
220 to place or remove a security freeze.

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

223 13. The provisions of this section do not apply to the use of a consumer credit report by any of the
224 following:

225 a. A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or,
226 prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of
227 reviewing the account or collecting the financial obligation owing for the account, contract, or debt;
228 b. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has
229 been granted under subdivision B 4 for purposes of facilitating the extension of credit or other
230 permissible use;
231 c. Any person acting pursuant to a court order, warrant, or subpoena;
232 d. The Department of Social Services' Division of Child Support Enforcement or other agency that
233 administers a program for establishing and enforcing child support obligations;
234 e. The Department of Health or its agents or assigns acting to investigate fraud;
235 f. The Department of Taxation or its agents or assigns acting to investigate or collect delinquent
236 taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;
237 g. A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act;
238 h. Any person or entity administering a credit file monitoring subscription service to which the
239 consumer has subscribed; or
240 i. Any person or entity for the purpose of providing a consumer with a copy of his credit report
241 upon the consumer's request.

242 14. A consumer shall not be charged for any security freeze services, including but not limited to the
243 placement or lifting of a security freeze. A consumer may be charged no more than \$5 only if the

consumer fails to retain the original personal identification number provided by the consumer reporting agency; however, the consumer may not be charged for a one-time reissue of the same or a new personal identification number, but may be charged no more than \$5 for subsequent instances of loss of the personal identification number.

C. At any time that a consumer is required to receive a summary of rights required under § 609 of the federal Fair Credit Reporting Act or under state law, the following notice shall be included:

"Virginia Consumers Have the Right to Obtain a Security Freeze.

You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to § 59.1-443.3 of the Code of Virginia.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The unique personal identification number or password provided by the consumer reporting agency;

2. Proper identification to verify your identity; and

3. The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than two business days after receiving the request. By January 1, 2009, the consumer reporting agency must temporarily lift the freeze within 15 minutes of receiving the request.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking a new credit, loan, utility, telephone, or insurance account, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze - either completely if you are shopping around, or specifically for a certain creditor - with enough advance notice before you apply for new credit for the lifting to take effect.

You have a right to bring an action against someone who violates your rights under the Virginia Consumer Protection Act."

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

E. Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this section. A violation of the security freeze is a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

§ 59.1-444. Damages.

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