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HOUSE BILL NO. 785

Offered January 9, 2008

Prefiled January 8, 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; penalties.

 Patron—Brink

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. *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 that, 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, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"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 any consumer, and includes any information that 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, 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 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. If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily removing a freeze and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place. A consumer reporting agency shall require proper identification of the person making a request to establish a security freeze. 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.

C. The consumer reporting agency shall develop a contact method to receive and process a consumer's request to place, remove, or temporarily remove a security freeze. The contact method shall include:

1. A postal address;
2. An electronic contact method chosen by the consumer reporting agency, which may include the use of fax, Internet, or other electronic means; and
3. The use of a telephone in a manner that is consistent with any federal requirements placed on the consumer reporting agency.

D. 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 removal or lifting of such consumer's credit report to a specific party or for a period of time.

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 and provide:

1. Proper identification;
2. The unique personal identification number or password 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.

F. Any consumer reporting agency that receives a request from a consumer to temporarily lift his security freeze shall do so within 48 hours after the business day on which the request was received by the consumer reporting agency.

G. A consumer reporting agency shall remove or temporarily lift a security freeze placed on a consumer's credit report only upon consumer request pursuant to subsection E or I or if the consumer's

182 credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer
183 reporting agency intends to remove a security freeze because the credit report was frozen due to a
184 material misrepresentation of fact by the consumer, the consumer reporting agency shall notify the
185 consumer in writing prior to removing the security freeze.

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

190 I. A security freeze shall remain in place until the consumer requests that the security freeze be
191 removed or lifted. A consumer reporting agency shall remove or lift a security freeze from a consumer's
192 credit report within:

193 1. Forty-eight hours after the business day on which the consumer's request to remove or lift the
194 security freeze is received by the consumer reporting agency; or

195 2. On or after September 1, 2008, 15 minutes or less after the consumer's request is received by the
196 consumer reporting agency through the electronic contact method chosen by the consumer reporting
197 agency in accordance with subsection C, or the use of telephone during normal business hours,
198 provided the request includes the consumer's proper identification and correct personal identification
199 number or password.

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

201 1. A person with whom the consumer has or had an account, contract, or debtor-creditor
202 relationship, or the person's subsidiary, affiliate, agent, or assignee, for the purpose of (i) reviewing the
203 account, including activities related to account maintenance, monitoring, credit line increases, and
204 account upgrades and enhancements; (ii) conducting activities related to account maintenance,
205 monitoring, credit line increases, and account upgrades and enhancements; or (iii) collecting the
206 financial obligation owing for the account, contract, or debt;

207 2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has
208 been granted under subsection G for purposes of facilitating the extension of credit or other permissible
209 use;

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

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

213 5. A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid
214 fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and
215 penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities;

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

218 7. A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C.
219 § 1681, et seq.;

220 8. Any person for the sole purpose of providing for a credit file monitoring subscription service to
221 which the consumer has subscribed;

222 9. A consumer reporting agency for the purpose of providing a consumer with a copy of the
223 consumer's credit report upon the consumer's request;

224 10. Any depository financial institution for checking, savings, and investment accounts; and

225 11. Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a
226 claim, or underwriting for property and casualty insurance purposes.

227 K. This section shall not prevent a consumer reporting agency from charging a fee of no more than
228 \$5 to a consumer for establishing a security freeze and \$5 for removing a security freeze. A consumer
229 reporting agency shall not charge any fee for temporarily lifting a security freeze for a period of time
230 or temporarily lifting a security freeze for a specific party, regarding access to a credit report. A
231 consumer reporting agency shall not charge any fee to a victim of identity theft who has submitted a
232 copy of a valid investigative or incident report or complaint with a law-enforcement agency about the
233 unlawful use of the victim's identifying information by another person.

234 L. The following persons are not required to place a security freeze on a consumer's credit report
235 pursuant to this section:

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

239 2. A deposit account information service company that issues reports regarding account closures due
240 to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer
241 to inquiring banks or other financial institutions for use only in reviewing a consumer request for a
242 deposit account at the inquiring bank or financial institution; and

243 3. A consumer reporting agency that does all of the following:

a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies; and

b. Does not maintain a permanent database of credit information from which new credit reports are produced.

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

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

O. Nothing in this section shall be construed to require a consumer reporting agency to remove or lift a security freeze within the time specified in subsection I if:

1. The consumer fails to comply with the requirements of subsections D and I; or

2. The consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

a. An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon;

b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

d. Governmental action, including emergency orders or regulations, judicial or law-enforcement action, or similar directives;

e. Regularly scheduled maintenance during other than normal business hours of, or updates to, the consumer reporting agency's systems;

f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or

g. Receipt of a removal or lift request outside of normal business hours.

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

§ 59.1-444. Damages.

A person aggrieved by a violation of any provision of this chapter, except §§ 59.1-443.2 and 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.).