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SENATE BILL NO. 40

Offered January 8, 2014

Prefiled December 16, 2013

A *BILL to amend § 59.1-442 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-443.3, relating to the Personal Information Privacy Act; use of driver's license information.*

Patron—Marsden

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-442 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-443.3 as follows:

§ 59.1-442. Sale of purchaser information; notice required.

A. No merchant, without giving notice to the purchaser, shall sell to any third person information which concerns the purchaser and which is gathered in connection with the sale, rental or exchange of tangible personal property to the purchaser at the merchant's place of business. Notice required by this section may be by the posting of a sign or any other reasonable method. If requested by a purchaser not to sell such information, the merchant shall not do so. No merchant shall sell any information gathered solely as the result of any customer payment by personal check, credit card, or where the merchant records the customer's driver's license number. *This subsection shall not be construed as authorizing a merchant to sell to a third person any information concerning a purchaser if the sale or dissemination of the information is prohibited pursuant to § 59.1-443.3.*

B. For the purposes of this section and § 59.1-443.3, "merchant" means any person or entity engaged in the sale of goods from a fixed retail location in Virginia.

§ 59.1-443.3. Scanning information from driver's license or identification card; retention, sale, or dissemination of information.

A. No merchant may scan the machine-readable zone of an individual's identification card or driver's license issued by the Department of Motor Vehicles, except for the following purposes:

1. To verify authenticity of the identification card or driver's license or to verify the identity of the individual if the individual pays for goods or services with a method other than cash, returns an item, or requests a refund or an exchange;

2. To verify the individual's age when providing age-restricted goods or services to the individual if there is a reasonable doubt of the individual having reached 18 years of age or older;

3. To prevent fraud or other criminal activity if the individual returns an item or requests a refund or an exchange and the merchant uses a fraud prevention service company or system. Information collected by scanning an individual's identification card or driver's license pursuant to this subdivision shall be limited to the individual's name, address, date of birth, and driver's license number or identification card number; or

4. To comply with a requirement imposed on the merchant by state or federal law.

B. No merchant shall retain any information obtained from a scan of the machine-readable zone of an individual's identification card or driver's license except as permitted in subdivision A 3 or 4.

C. No merchant shall sell or disseminate to a third party any information obtained from a scan of the machine-readable zone of an individual's identification card or driver's license for any marketing, advertising, or promotional purpose. This subsection shall not prohibit a merchant from disseminating to a third party any such information for a purpose described in subdivision A 3 or 4.

D. Any waiver of a provision of this section is contrary to public policy and is void and unenforceable.

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