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SENATE BILL NO. 18

Offered January 10, 2018
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A BILL to amend and reenact §§ 59.1-444.2 and 59.1-444.3 of the Code of Virginia, relating to security freezes on credit reports; fees for placement.

Patrons—Spruill and Petersen; Delegates: Aird, Ayala, Boysko, Carr, Carroll Foy, Carter, Convirs-Fowler, Delaney, Guzman, Heretick, Hurst, James, Jones, J.C., Kory, Krizek, Levine, Lindsey, Rasoul, Rodman, Roem, Simon, Turpin, Tyler and Watts

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-444.2 and 59.1-444.3 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-444.2. Security freezes.

A. As used in this section, "security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the consumer's credit report or score relating to the extension of credit.

B. A consumer may request that a security freeze be placed on his or her credit report by sending a request in writing by certified mail, or such other secure method authorized by a consumer reporting agency, to a consumer reporting agency at an address designated by the consumer reporting agency to receive such requests. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

C. A consumer reporting agency shall place a security freeze on a consumer's credit report no later than three business days after receiving from the consumer:

1. A written request described in subsection B;

2. Proper identification; and

3. Payment of a fee not to exceed $10, if applicable.

A consumer reporting agency shall place a security freeze on a consumer's credit report no later than one business day after receiving such a request, if such request is made electronically at an address designated by the consumer reporting agency to receive such requests.

D. The consumer reporting agency shall send a written confirmation of the placement of the security freeze to the consumer within 10 business days. Upon placing the security freeze on the consumer's credit report, the consumer reporting agency shall provide the consumer with a unique personal identification number or password~~,~~ or similar device to be used by the consumer when providing authorization for the release of his credit report for a specific period of time or for a specific party.

E. If the consumer wishes to allow his credit report to be accessed for a specific period of time or for a specific party while a freeze is in place, he shall contact the consumer reporting agency using a point of contact designated by the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

1. Proper identification;

2. The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection D; and

3. The proper information regarding the time period or the specific party for which the report shall be available to users of the credit report.

F. A consumer reporting agency:

1. Shall comply with a request made under subsection E:

a. Within three business days after receiving the request if the request is made at a postal address designated by the agency to receive such requests; or

b. Within 15 minutes after the consumer's request is received by the consumer reporting agency through the electronic contact method chosen by the consumer reporting agency in accordance with this section;

2. Is not required to temporarily lift a security freeze within the time provided in subdivision 1 b if:

a. The consumer fails to meet the requirements of subsection E; or

b. The consumer reporting agency's ability to temporarily lift the security freeze within 15 minutes is prevented by:

(1) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

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

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

(4) Governmental action, including emergency orders or regulations, judicial or law-enforcement action, or similar directives;

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

(6) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; and

3. May develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection E 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 a consumer request, pursuant to subsection E or subsection J; or

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 consumer 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 or her credit report to be accessed for that period of time, the third party may treat the application as incomplete.

I. If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a period of time while the freeze is in place.

J. A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer reporting agency, that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides:

1. Proper identification; and

2. The unique personal identification number or password or similar device provided by the consumer reporting agency pursuant to subsection D.

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

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

1. A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

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

3. Any state or local agency, law-enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;

4. A child support agency acting pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 654 et seq.);

5. The Commonwealth or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities provided such responsibilities are consistent with a permissible purpose under 15 U.S.C. § 1681b;

6. The use of credit information for the purposes of prescreening or postscreening as provided for by the federal Fair Credit Reporting Act;

7. Any person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed;

8. Any person or entity for the purpose of providing a consumer with a copy of his credit report or

score upon the consumer's request;

9. Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes; or

10. Any employer in connection with any application for employment with the employer.

M. This section does not prevent a consumer reporting agency from charging a fee of no more than $10 to a consumer to ~~place~~ ~~each~~ *(i) temporarily lift or to remove a security* freeze~~, except that a~~ *or (ii) place a security freeze if the consumer has previously requested the placement of a security freeze from the consumer reporting agency. A* consumer reporting agency may not charge a fee to *a consumer who (a) is* a victim of identity theft who has submitted a valid police report to the consumer reporting agency *or (b) requests the placement of a security freeze if the consumer has not previously requested the placement of a security freeze from the consumer reporting agency*.

N. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. 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 to the former address.

O. The following entities are not required to place a security freeze on a credit report:

1. A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent database of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

2. A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

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

4. A consumer reporting agency's database or file that consists of information concerning, and used for, one or more of the following: criminal record information, fraud prevention or detection, personal loss history information, and employment, tenant, or background screening.

P. At any time a consumer is required to receive a summary of rights required under 15 U.S.C. § 1681g (d), the following notice shall be included:

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

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. 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 authorize the release of your credit report for a period of time or for a specific party 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 personal identification number or password;

2. Proper identification to verify your identity; and

3. The proper information regarding the period of time or the specific party for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than three business days after receiving the above information. A consumer credit reporting agency must authorize the release of your credit report no later than 15 minutes after receiving the request.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in

your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.

Unless you are a victim of identity theft with a police report to verify the crimes *or you have not previously requested the placement of a security freeze from the consumer reporting agency*, a consumer reporting agency has the right to charge you up to $10 to place a *security* freeze on your credit report *or to temporarily lift or to remove a security freeze on your credit report*."

Q. Any person who willfully fails to comply with any requirement imposed under this section or § 59.1-444.3 with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000;

2. Such amount of punitive damages as the court may allow; and

3. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.

R. Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or *requests* the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

S. Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure; and

2. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.

T. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

U. Notwithstanding any other provision of law:

1. The exclusive authority to bring an action for any violation of subdivision F 1 b shall be with the Attorney General. In any action brought under this subsection, the Attorney General may cause an action to be brought in the name of the Commonwealth to enjoin the violation and to recover damages for aggrieved consumers consistent with the limits stated in subsections Q and S for such violations.

2. In any action brought under this subsection, if the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than $1,000 per violation, to be deposited in the Literary Fund of the Commonwealth.

3. In any action brought under this subsection, the Attorney General may recover any costs, the reasonable expenses incurred in investigating and preparing the case, and attorney fees.

§ 59.1-444.3. Security freezes for protected consumers.

A. As used in this section, unless the context requires a different meaning:

"Protected consumer" means a consumer who is either:

1. Under the age of 16 years at the time a request for the placement of a security freeze is made; or

2. An incapacitated person for whom a guardian or conservator has been appointed in accordance with Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

"Record" means a compilation of information regarding a specific identified protected consumer, which compilation is created by a consumer reporting agency solely for the purpose of complying with the requirement for a record's establishment set forth in subsection D.

"Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

"Security freeze" means:

1. If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that (i) is placed on the protected consumer's record in accordance with this section and (ii) prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

2. If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that (i) is placed on the protected consumer's credit report in accordance with this section and (ii) prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in this section.

"Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer. "Sufficient proof of authority" includes (i) an order issued by a court

of law and (ii) a lawfully executed and valid power of attorney.

"Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer. "Sufficient proof of identification" includes (i) a social security number or a copy of a social security card issued by the U.S. Social Security Administration; (ii) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate; (iii) a copy of a driver's license, an identification card issued by the Department of Motor Vehicles, or any other government-issued identification; or (iv) a copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

B. This section does not apply to the use of a protected consumer's credit report or record by:

1. A person administering a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;

2. A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's credit report on request of the protected consumer or the protected consumer's representative; or

3. An entity listed in subsection O of § 59.1-444.2.

C. A consumer reporting agency shall place a security freeze for a protected consumer if:

1. The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

2. The protected consumer's representative:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

b. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

d. Pays to the consumer reporting agency a fee as provided in subsection J.

D. If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under subsection C from the protected consumer's representative for the placement of a security freeze, the consumer reporting agency shall create a record for the protected consumer. A record may not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living 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 or (ii) employment.

E. Within 30 days after receiving a request that meets the requirements of subsection C, a consumer reporting agency shall place a security freeze for the protected consumer.

F. Unless a security freeze for a protected consumer is removed in accordance with subsection H or K, a consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer.

G. A security freeze for a protected consumer placed under subsection E shall remain in effect until:

1. The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with subsection H; or

2. The security freeze is removed in accordance with subsection K.

H. If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

1. Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

2. Provide to the consumer reporting agency:

a. In the case of a request by the protected consumer:

(1) Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; and

(2) Sufficient proof of identification of the protected consumer; or

b. In the case of a request by the representative of a protected consumer:

(1) Sufficient proof of identification of the protected consumer and the representative; and

(2) Sufficient proof of authority to act on behalf of the protected consumer; and

3. Pay to the consumer reporting agency a fee as provided in subsection J.

I. Within 30 days after receiving a request that meets the requirements of subsection H, the consumer reporting agency shall remove the security freeze for the protected consumer.

J. A consumer reporting agency may not charge a fee for any service performed under this section,

except for a reasonable fee, not exceeding $10, for each placement, *temporary lift*, or removal of a security freeze for a protected consumer. Notwithstanding the foregoing, a consumer reporting agency shall not charge any fee for the placement, *temporary lifting*, or removal of a security freeze for a protected consumer if:

1. The protected consumer's representative has obtained, and provides to the consumer reporting agency, a report of alleged identity fraud against the protected consumer under § 18.2-186.3:1 or an Identity Theft Passport issued for the protected consumer under § 18.2-186.5; ~~or~~

2. A request for the placement, *temporary lift*, or removal of a security freeze is for a protected consumer who is under the age of 16 years at the time of the request, and the consumer reporting agency has a credit report pertaining to the protected consumer*; or*

3. The protected consumer requesting the placement of a security freeze has not previously requested the placement of a security freeze from the consumer reporting agency.

K. A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

L. Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or requests the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for damages sustained by the consumer reporting agency as provided in subsection R of § 59.1-444.2.

M. Notwithstanding any other provision of law:

1. The exclusive authority to bring an action for any violation of subsection E shall be with the Attorney General. In any action brought under this subsection, the Attorney General may cause an action to be brought in the name of the Commonwealth to enjoin the violation and to recover damages for aggrieved protected consumers.

2. In any action brought under this subsection, if the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than $1,000 per violation, to be deposited in the Literary Fund.

3. In any action brought under this subsection, the Attorney General may recover any costs, the reasonable expenses incurred in investigating and preparing the case, and attorney fees.