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SENATE BILL NO. 295

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 59.1-200 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—Cuccinelli

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 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:

§ 59.1-200. 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 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be

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59 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
60 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
61 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
62 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
63 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
64 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
65 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
66 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
67 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
68 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
69 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
70 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
71 § 46.2-100;

72 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
73 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
74 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
75 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
76 the agreement;

77 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
78 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
79 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
80 receiving overpayments. If the credit balance information is incorporated into statements of account
81 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

82 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
83 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
84 agreement;

85 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
86 title;

87 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
88 seq.) of this title;

89 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
90 seq.) of this title;

91 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
92 (§ 59.1-207.17 et seq.) of this title;

93 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

94 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
95 (§ 59.1-424 et seq.) of this title;

96 24. Violating any provision of § 54.1-1505;

97 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
98 17.6 (§ 59.1-207.34 et seq.) of this title;

99 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

100 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
101 title;

102 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
103 this title;

104 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
105 seq.) of this title;

106 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
107 seq.) of this title;

108 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
109 title;

110 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

111 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

112 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

113 35. Using the consumer's social security number as the consumer's account number with the supplier,
114 if the consumer has requested in writing that the supplier use an alternate number not associated with
115 the consumer's social security number;

116 36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

117 37. Violating any provision of § 8.01-40.2;

118 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

119 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

120 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; and

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; and

45. 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 who is utilizing or seeking credit for personal, family, or household purposes.

"Consumer reporting agency" has the meaning assigned by § 603(f) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).

"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 which 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 place a security freeze on his credit report by making a request to a consumer reporting agency, by certified mail or such other secure method as authorized by a consumer reporting agency, that the consumer reporting agency place a security freeze on such consumer's credit report. 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. Not later than five business days after placing a security freeze on a consumer's credit report, such consumer reporting agency shall send a written confirmation of such security freeze to such consumer that provides 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 third party or for a period of time.

D. Except for the temporary lifting of a security freeze as provided in subsection E, a security freeze authorized pursuant to this section shall remain in effect until such time as such consumer requests such security freeze to be removed. A consumer reporting agency shall remove such security freeze not later than three business days after receipt of such request, if the consumer provides proper identification to the consumer reporting agency and the unique personal identification number or password described in subsection C at the time of such request for removal of the security freeze. 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.

E. If the consumer wishes to authorize the disclosure of such consumer's 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 (i) proper identification, (ii) the unique personal identification number or password described in subsection C, and (iii) 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. Any consumer reporting agency that receives a request from a consumer pursuant to this section shall lift such security freeze not later than three business days after receipt of such request. A consumer reporting agency may develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to this subsection in an expedited manner.

F. A security freeze shall remain in place until the consumer requests 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 both proper identification and the unique personal identification number or password provided by the consumer reporting agency pursuant to subsection C.

G. Nothing in this section shall be construed to prohibit disclosure of a consumer's credit report to:

1. A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or,

182 prior to assignment, had an account, contract, or debtor-creditor relationship for the purpose of (i)
183 reviewing the account, including activities related to account maintenance, monitoring, credit line
184 increases, and account upgrades and enhancements; (ii) conducting activities related to account
185 maintenance, monitoring, credit line increases, and account upgrades and enhancements; or (iii)
186 collecting the financial obligation owing for the account, contract, or debt;

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

189 3. A person acting pursuant to a court order, warrant, or subpoena;

190 4. Any person for the purpose of using such credit information to prescreen as provided by the
191 federal Fair Credit Reporting Act;

192 5. Any person for the sole purpose of providing a credit file monitoring subscription service to which
193 the consumer has subscribed;

194 6. A consumer reporting agency for the sole purpose of providing a consumer with a copy of his
195 credit report upon the consumer's request; or

196 7. A federal, state, or local governmental entity, including a law-enforcement agency, or court, or
197 their agents or assignees pursuant to their statutory or regulatory duties.

198 H. The following persons shall not be required to place a security freeze on a consumer's credit
199 report, provided such persons shall be subject to any security freeze placed on a credit report by
200 another consumer reporting agency:

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

204 2. A deposit account information service company that issues reports regarding account closures due
205 to fraud, substantial overdrafts, automated teller machine abuse, or similar information regarding a
206 consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request
207 for a deposit account at the inquiring bank or financial institution; or

208 3. A consumer reporting agency that (i) acts only to resell credit information by assembling and
209 merging information contained in a database of one or more credit reporting agencies and (ii) does not
210 maintain a permanent database of credit information from which new credit reports are produced.

211 I. A credit reporting agency may charge a fee of not more than \$25 to a consumer for each
212 placement of a security freeze, removal of a security freeze, temporary lift of such freeze for a specific
213 party, or temporary lift of a security freeze for a period of time.

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

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

220 L. A violation of this section shall constitute a prohibited practice pursuant to the provisions of
221 § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer
222 Protection Act (§ 59.1-196 et seq.).