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HOUSE BILL NO. 1877

Offered January 10, 2007

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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—Caputo

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 or 59.1-443.3;

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

45. (Effective January 1, 2007) Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1.

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 freezes.*

A. An identity theft victim may place a security freeze on his credit report by making a request in writing by certified mail to a consumer reporting agency. A security freeze shall prohibit, subject to exceptions in subsection L, the consumer reporting agency from releasing the identity theft victim's credit report or any information from it without the express authorization of the identity theft victim. When a security freeze is in place, a consumer reporting agency may not release the identity theft victim's credit report or information to a third party without prior express authorization from the identity theft victim. 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 identity theft victim's credit report.

B. A consumer reporting agency shall place a security freeze on an identity theft victim's credit report no later than five business days after receiving a written request from the identity theft victim.

C. The consumer reporting agency shall send a written confirmation of the security freeze to the identity theft victim within 10 business days of placing the freeze and at the same time shall provide the identity theft victim with a unique personal identification number or password, other than the identity theft victim's social security number, to be used by the identity theft victim when providing authorization for the release of the identity theft victim's credit report for a specific period of time.

D. If the identity theft victim wishes to allow his credit report to be accessed for a specific period of time while a freeze is in place, the identity theft victim shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide all of the following:

1. Proper identification,

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

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

E. A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from an identity theft victim to temporarily lift a freeze on a credit report pursuant to subsection D in an expedited manner.

F. A consumer reporting agency that receives a request from an identity theft victim to temporarily lift a freeze on a credit report pursuant to subsection D shall comply with the request no later than three business days after receiving the request.

G. A consumer reporting agency shall remove or temporarily lift a freeze placed on an identity theft victim's credit report only in the following cases:

1. Upon the identity theft victim's request, pursuant to subsections D or J; or

2. If the identity theft victim's credit report was frozen due to a material misrepresentation of fact by the identity theft victim; however, if a consumer reporting agency intends to remove a freeze upon an identity theft victim's credit report pursuant to this subdivision, the consumer reporting agency shall notify the identity theft victim in writing prior to removing the freeze on the identity theft victim'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 identity theft victim does not allow the identity theft victim's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

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

J. A security freeze shall remain in place until the identity theft victim 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 identity theft victim, who provides all of the following:

1. Proper identification and

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

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 the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the identity theft victim has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt;

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

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

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

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

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

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

8. Any person for the sole purpose of providing for a credit file monitoring subscription service to which the identity theft victim has subscribed;

9. A consumer reporting agency for the purpose of providing an identity theft victim with a copy of the identity theft victim's credit report upon the identity theft victim's request;

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

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

M. 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, and address of an identity theft victim without sending a written confirmation of the change to the identity theft victim within 30 days of the change being posted to the identity theft victim's file. Written confirmation is not required for technical modifications of an identity theft victim'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.

N. The following persons are not required to place on a credit report a security freeze pursuant to this section; however, any person that is not required to place a security freeze on a credit report under the provisions of subdivision 3 of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

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

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

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 or

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

O. A consumer reporting agency shall not charge a fee to an identity theft victim for establishing a credit freeze, removing the freeze, or temporarily lifting the freeze.

P. As used in this section:

"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 individuals 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 an individual'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 individual's eligibility for credit or insurance to be used primarily for personal, family, or household purposes.

"Identity theft victim" means an individual who has submitted a copy of a valid investigative or incident report or complaint with a law-enforcement agency about the unlawful use of the victim's identifying information by another person.

§ 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.).