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HOUSE BILL NO. 3056

Offered January 15, 2007

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.

 Patron—Callahan

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 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 or 59.1-443.3;

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.

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 who, for monetary fees or 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 credit reports to third parties.

"Credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, 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 consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes; (ii) employment purposes; or (iii) any other purpose authorized under 15 U.S.C. § 1681b.

"Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

"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 to place a security freeze on his credit report, which request shall be submitted by mail or telephone, or by secure electronic mail connection if made available by the consumer reporting agency, and shall include certain personal identification. 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 by a specific party or for a specific 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 a request by mail or telephone, or three business days after receiving a secure electronic mail request. By July 1, 2008, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than three business days after receiving a written or telephone request from a consumer and one business day after receiving a secure electronic mail request.

C. The consumer reporting agency shall send a written confirmation of the 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 release of such consumer's credit report to a specific party or for a period of time or when permanently lifting the freeze.

D. 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 via telephone, mail, or secure electronic mail with a request that the freeze be temporarily lifted and provide:

1. Proper identification;

2. The unique personal identification number or password provided by the consumer reporting agency as described in subsection C; 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 to users of the credit report.

E. Any consumer reporting agency that receives a request from a consumer to temporarily lift his security freeze shall do so no later than three business days after receiving the request. By July 1, 2008, a consumer reporting agency shall honor such a request no later than one business day after receiving such a request made by telephone or electronic mail. A consumer reporting agency shall develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner

182 required by the Electronic Signatures in Global and National Commerce Act for legally required
183 notices, by Internet, e-mail, or other electronic media for receiving and processing such requests from
184 consumers.

185 F. A consumer reporting agency shall remove or temporarily lift a security freeze placed on a
186 consumer's credit report only upon consumer request pursuant to subsection D or H or if the consumer's
187 credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer
188 reporting agency intends to remove a security freeze because the credit report was frozen due to a
189 material misrepresentation of fact by the consumer, the consumer reporting agency shall notify the
190 consumer in writing five business days prior to removing the security freeze.

191 G. If a third party requests access to a credit report on which a security freeze is in effect:

192 1. In connection with an application for credit or any other use, and if the consumer does not allow
193 his credit report to be accessed for that specific party or period of time, the third party may treat the
194 application as incomplete; or

195 2. For the purpose of receiving, extending, or otherwise utilizing the credit within, and not solely for
196 the purpose of account review, the consumer reporting agency shall notify the consumer that an attempt
197 has been made to access the credit report.

198 H. A security freeze shall remain in effect until the consumer requests that it be removed. A
199 consumer reporting agency shall remove a security freeze within three business days of receiving a
200 request for removal from the consumer, which request shall include both proper identification of the
201 person making the request to remove the security freeze and the unique personal identification number
202 or password provided by the consumer reporting agency as described in subsection C. By July 1, 2008,
203 a consumer reporting agency shall remove a credit freeze within one business days after receiving such
204 a request.

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

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

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

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

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

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

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

223 7. A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C.
224 § 1681, et seq.;

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

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

229 J. This section shall not prevent a consumer reporting agency from charging a fee of no more than
230 \$5 to a consumer for establishing a security freeze, removing a security freeze, temporarily lifting a
231 security freeze for a period of time, or temporarily lifting a security freeze for a specific party,
232 regarding access to a credit report.

233 K. At any time when a consumer is required to receive a summary of rights required under § 609 of
234 the federal Fair Credit Reporting Act, the following notice shall be included:

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

236 You have a right to place a "security freeze" on your credit report pursuant to Virginia law. The
237 security freeze will prohibit a consumer reporting agency from releasing any information in your credit
238 report without your express authorization.

239 The security freeze is designed to prevent credit, loans, and services from being approved in your
240 name without your consent or approval.

241 When you place a security freeze on your credit report, you will be provided a personal
242 identification number or a password to use when you want to remove or lift temporarily the security
243 freeze.

244 A freeze does not apply when you have an existing account relationship and a copy of your report is
245 requested by your existing creditor or its agents or affiliates for certain types of account review,
246 collection, fraud control, or similar activities.

247 You should plan ahead and lift a freeze if you are actively seeking credit or services, as a security
248 freeze may slow your application, as mentioned above.

249 You can remove a freeze or authorize temporary access for a specific period of time by contacting
250 the consumer reporting agency and providing all of the following:

- 251 1. Your personal identification number or password,
- 252 2. Proper identification to verify your identity, and
- 253 3. Proper information regarding the period of time you want your report available to users of the
254 credit report.

255 A consumer reporting agency that receives a request from you to temporarily lift a freeze on a credit
256 report shall comply with the request no later than three business days after receiving the request. A
257 consumer reporting agency may charge you up to \$5 each time you freeze, remove the freeze, or
258 temporarily lift the freeze for a period of time."

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

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

263 N. A violation of this section shall constitute a prohibited practice pursuant to the provisions of
264 § 59.1-200 and shall be subject to all of the enforcement provisions of the Virginia Consumer Protection
265 Act (§ 59.1-196 et seq.).

266 § 59.1-444. Damages.

267 A person aggrieved by a violation of any provision of this chapter, except §§ 59.1-443.2 and
268 59.1-443.3, shall be entitled to institute an action to recover damages in the amount of \$100 per
269 violation. In addition, if the aggrieved party prevails, he may be awarded reasonable attorney's fees and
270 court costs. Actions under this section shall be brought in the general district court for the city or county
271 in which the transaction or other violation that gave rise to the action occurred. A violation of the
272 provisions of § 59.1-443.2 or 59.1-443.3 is a prohibited practice under the Virginia Consumer Protection
273 Act (§ 59.1-196 et seq.).