

080401652

HOUSE BILL NO. 1307

Offered January 9, 2008

Prefiled January 9, 2008

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; fees for freezing credit report information of certain consumers.

Patrons—Morgan, Carrico and Watts

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

INTRODUCED

HB1307

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;

121 40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;
 122 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
 123 (§ 59.1-525 et seq.) of this title;
 124 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
 125 43. Violating any provision of § 59.1-443.2 or 59.1-443.3;
 126 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; and
 127 45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1.
 128 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
 129 lease solely by reason of the failure of such contract or lease to comply with any other law of the
 130 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
 131 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
 132 such contract or lease.
 133 § 59.1-443.3. *Fees for freezing access to credit reports.*
 134 A. As used in this section:
 135 "Consumer" means any individual residing in the Commonwealth.
 136 "Credit reporting agency" means any entity that, for monetary fees or dues or on a cooperative
 137 nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating
 138 consumer credit information or other information on consumers for the purpose of furnishing credit
 139 reports to third parties.
 140 "Credit report" means any written, oral, or other communication of any information by a credit
 141 reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character,
 142 general reputation, personal characteristics or mode of living that is used or expected to be used or
 143 collected in whole or in part for the purpose of serving as a factor in establishing the consumer's
 144 eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes;
 145 (ii) employment purposes; or (iii) any other purpose authorized under 15 U.S.C. § 1681b.
 146 "Exempt consumer" means a consumer domiciled in the Commonwealth who is a member of the
 147 military services of the United States, the spouse of a member of the military services of the United
 148 States, a member of the Virginia National Guard, or the spouse of a member of the Virginia National
 149 Guard.
 150 "Security freeze" means a restriction that, subject to certain exceptions, prohibits a credit reporting
 151 agency from releasing all or any part of the consumer's credit report or any information derived from it
 152 without the express authorization of the consumer.
 153 B. Any credit reporting agency that permits consumers to place a security freeze on the consumer's
 154 credit report shall not require an exempt consumer to pay any fee or other consideration for
 155 establishing a security freeze for the exempt consumer, removing an exempt consumer's security freeze,
 156 temporarily lifting an exempt consumer's security freeze for a period of time, or temporarily lifting an
 157 exempt consumer's security freeze for a specific party.
 158 C. A violation of this section shall constitute a prohibited practice pursuant to the provisions of
 159 § 59.1-200 and shall be subject to all of the enforcement provisions of the Virginia Consumer Protection
 160 Act (§ 59.1-196 et seq.).
 161 § 59.1-444. Damages.
 162 A person aggrieved by a violation of any provision of this chapter, except § 59.1-443.2 or
 163 59.1-443.3, shall be entitled to institute an action to recover damages in the amount of \$100 per
 164 violation. In addition, if the aggrieved party prevails, he may be awarded reasonable attorney's fees and
 165 court costs. Actions under this section shall be brought in the general district court for the city or county
 166 in which the transaction or other violation that gave rise to the action occurred. A violation of the
 167 provisions of § 59.1-443.2 or 59.1-443.3 is a prohibited practice under the Virginia Consumer Protection
 168 Act (§ 59.1-196 et seq.).