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HOUSE BILL NO. 1311

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 29, 2008)

(Patrons Prior to Substitute—Delegates Byron, Barlow [HB 1339], Brink [HB 785], Eisenberg [HB 607], Lohr [HB 897], Morgan [HB 1307], Oder [HB 35], Plum [HB 345], Tata [HB 4], Ware, O. [HB 175], and Ware, R.L. [HB 16])

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 35.1, consisting of sections numbered 59.1-444.1 and 59.1-444.2, relating to security freezes.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 35.1, consisting of sections numbered 59.1-444.1 and 59.1-444.2, as follows:

CHAPTER 35.1.**SECURITY FREEZES.**

§ 59.1-444.1. Definitions.

As used in this chapter:

"Consumer" means an individual who is also a resident of this state.

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

"Credit report" means a "consumer report," as defined in § 603(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(d)); provided, however, that for purposes of this chapter, a credit report is limited to information that a consumer reporting agency furnishes to a person that it has reason to believe intends to use the information as a factor in establishing the consumer's eligibility for credit to be used primarily for personal, family or household purposes.

"Proper identification" means proper identification as defined in 15 U.S.C. § 1681h(a)(1).

"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.

§ 59.1-444.2. Security freezes.

A. 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.

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

- 1. A written request described in subsection A;*
- 2. Proper identification; and*
- 3. Payment of a fee not to exceed \$10, if applicable.*

C. 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.

D. If the consumer wishes to allow his credit report to be accessed for a specific period of time 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 C;

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

4. A fee not to exceed \$10, if applicable.

E. A consumer reporting agency:

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

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. After September 1, 2008, 15 minutes after the consumer's request is received by the consumer

60 reporting agency through the electronic contact method chosen by the consumer reporting agency in
61 accordance with this section and such request is received between 6:00 a.m. and 9:30 p.m. Eastern
62 Time; and

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

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

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

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

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

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

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

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

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

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

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

86 1. Upon a consumer request, pursuant to subsection D or subsection J; or

87 2. If the consumer's credit report was frozen due to a material misrepresentation of fact by the
88 consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report
89 pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to
90 removing the freeze on the consumer's credit report.

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

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

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

102 1. Proper identification;

103 2. The unique personal identification number or password or similar device provided by the
104 consumer reporting agency pursuant to subsection C; and

105 3. A fee not to exceed \$10, if applicable.

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

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

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

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

121 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 act does not prevent a consumer reporting agency from charging a fee of no more than \$10 to a consumer for each freeze, removal of the freeze, or temporary lift of the freeze, regarding access to a consumer credit report, except that a consumer reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report to the consumer reporting agency.

N. Notwithstanding subsection M, a consumer reporting agency may charge a reasonable fee not to exceed \$10 for a temporary lift in accordance with subdivision E 1 b.

O. 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.

P. 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.

Q. 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 after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

- 183 1. The personal identification number or password;
184 2. Proper identification to verify your identity;
185 3. The proper information regarding the period of time for which the report shall be available; and
186 4. The payment of the appropriate fee.
- 187 A consumer reporting agency must authorize the release of your credit report no later than three
188 business days after receiving the above information.
- 189 A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting
190 on behalf of the person or entity, with which you have an existing account, that requests information in
191 your credit report for the purposes of reviewing or collecting the account. Reviewing the account
192 includes activities related to account maintenance, monitoring, credit line increases, and account
193 upgrades and enhancements.
- 194 You have a right to bring civil action against anyone, including a consumer reporting agency, who
195 improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct
196 inaccurate file data.
- 197 Unless you are a victim of identity theft with a police report to verify the crimes, a consumer
198 reporting agency has the right to charge you up to \$10 to place a freeze on your credit report, up to
199 \$10 to temporarily lift a freeze on your credit report, and up to \$10 to remove a freeze from your credit
200 report."
- 201 R. Any person who willfully fails to comply with any requirement imposed under this chapter with
202 respect to any consumer is liable to that consumer in an amount equal to the sum of:
- 203 1. Any actual damages sustained by the consumer as a result of the failure or damages of not less
204 than \$100 and not more than \$1,000;
- 205 2. Such amount of punitive damages as the court may allow; and
- 206 3. In the case of any successful action to enforce any liability under this section, the costs of the
207 action together with reasonable attorney fees as determined by the court.
- 208 S. Any person who obtains a consumer report, requests a security freeze, requests the temporary lift
209 of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses
210 or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for
211 actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.
- 212 T. Any person who is negligent in failing to comply with any requirement imposed under this chapter
213 with respect to any consumer is liable to that consumer in an amount equal to the sum of:
- 214 1. Any actual damages sustained by the consumer as a result of the failure; and
- 215 2. In the case of any successful action to enforce any liability under this section, the costs of the
216 action together with reasonable attorney fees as determined by the court.
- 217 U. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in
218 connection with an action under this chapter was filed in bad faith or for purposes of harassment, the
219 court shall award to the prevailing party attorney fees reasonable in relation to the work expended in
220 responding to the pleading, motion, or other paper.
- 221 V. Notwithstanding any other provision of law:
- 222 1. The exclusive authority to bring an action for any violation of subdivision E 1 b shall be with the
223 Attorney General. In any action brought under this subsection, the Attorney General may cause an
224 action to be brought in the name of the Commonwealth to enjoin the violation and to recover damages
225 for aggrieved consumers consistent with the limits stated in subsection R and T for such violations.
- 226 2. In any action brought under this subsection, if the court finds a willful violation, the court may, in
227 its discretion, also award a civil penalty of not more than \$1,000 per violation, to be deposited in the
228 Literary Fund of the Commonwealth.
- 229 3. In any action brought under this subsection, the Attorney General may recover any costs, the
230 reasonable expenses incurred in investigating and preparing the case, and attorneys' fees.