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HOUSE BILL NO. 897

Offered January 9, 2008

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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.

Patrons—Lohr, Athey, Cole, Cosgrove, Gilbert, Massie, Merricks, Morgan and Sherwood

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. *Definitions.*

As used in this section:

"Consumer" means an individual residing in the Commonwealth.

*"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 consumers 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.*

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

B. A consumer is authorized to place a security freeze on his credit report maintained by a consumer
 reporting agency by requesting the consumer reporting agency to place a security freeze on the
 consumer's credit report as provided in this section. If a security freeze is placed on a consumer's credit
 report, the consumer reporting agency shall not release the consumer's credit report or any information
 from the credit report to a third party without the express authorization of the consumer, subject to
 exceptions in subsection L. This section 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.

C. A consumer reporting agency shall place a security freeze on a consumer's credit report no later
 than two business days after receiving a written or telephone request from the consumer or one business
 day after receiving a secure electronic mail request. By July 1, 2009, a consumer reporting agency shall
 place a security freeze on a consumer's credit report no later than one business day after receiving a
 written or telephone request from the consumer or 12 hours after receiving a secure electronic mail
 request.

D. The consumer reporting agency shall send a written confirmation of the security freeze to the
 consumer within two business days of placing the freeze and at the same time 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 his credit for a specific party or period of time or when
 permanently lifting the freeze.

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

F. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze
 on a credit report shall comply with the request (i) made by mail no later than one business day of
 receiving the request or (ii) made by electronic mail or by telephone within 15 minutes of receiving the
 request.

G. A consumer reporting agency shall remove a freeze placed on a consumer's credit report if the
 consumer's credit report was frozen due to a material misrepresentation of fact by the consumer;
 however, if a consumer reporting agency intends to remove a freeze upon a consumer's credit report

182 pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing prior to
183 removing the freeze on the credit report.

184 H. If a third party requests access to a credit report on which a security freeze is in effect and this
185 request is in connection with an application for credit or any other use and the consumer does not
186 allow the consumer's credit report to be accessed for that specific period of time, the third party may
187 treat the application as incomplete.

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

192 J. A security freeze shall remain in place until the consumer requests that the security freeze be
193 removed. A consumer reporting agency shall remove a security freeze within three business days of
194 receiving a request for removal from the consumer, who provides:

195 1. Proper identification and

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

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

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

201 1. A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the
202 consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the
203 purposes of reviewing the active account or collecting the financial obligation owing for the account,
204 contract, or debt;

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

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

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

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

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

215 7. A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C.
216 § 1681, et seq.;

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

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

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

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

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

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

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

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

238 N. A consumer reporting agency shall not charge a fee to a consumer for establishing a credit
239 freeze, removing the freeze, or temporarily lifting the freeze. A consumer may be charged no more than
240 \$5 if the consumer fails to retain the original personal identification number provided by the agency;
241 however, the consumer may not be charged for a one-time reissue of the same or a new personal
242 identification number, but may be charged no more than \$5 for subsequent instances of loss of the
243 personal identification number.

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

§ 59.1-444. Damages.

A person aggrieved by a violation of any provision of this chapter, except § 59.1-443.2 or 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.).

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