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SENATE BILL NO. 95

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 7, 2018)

(Patron Prior to Substitute—Senator Surovell)

A *BILL to amend and reenact § 59.1-444.3 of the Code of Virginia, relating to security freezes for protected consumers.*

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-444.3 of the Code of Virginia is amended and reenacted as follows:

§ 59.1-444.3. Security freezes for protected consumers.

A. As used in this section, unless the context requires a different meaning:

"Protected consumer" means a consumer who is either:

1. Under the age of ~~16~~ 18 years at the time a request for the placement of a security freeze is made; or

2. An incapacitated person for whom a guardian or conservator has been appointed in accordance with Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

"Record" means a compilation of information regarding a specific identified protected consumer, which compilation is created by a consumer reporting agency solely for the purpose of complying with the requirement for a record's establishment set forth in subsection D.

"Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

"Security freeze" means:

1. If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that (i) is placed on the protected consumer's record in accordance with this section and (ii) prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

2. If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that (i) is placed on the protected consumer's credit report in accordance with this section and (ii) prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in this section.

"Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer. "Sufficient proof of authority" includes (i) an order issued by a court of law ~~and~~, (ii) a lawfully executed and valid power of attorney, (iii) *a birth certification; or (iv) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of the protected consumer.*

"Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer. "Sufficient proof of identification" includes (i) a social security number or a copy of a social security card issued by the U.S. Social Security Administration; (ii) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate; (iii) a copy of a driver's license, an identification card issued by the Department of Motor Vehicles, or any other government-issued identification; or (iv) a copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

B. This section does not apply to the use of a protected consumer's credit report or record by:

1. A person administering a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;

2. A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's credit report on request of the protected consumer or the protected consumer's representative; or

3. An entity listed in subsection O of § 59.1-444.2.

C. A consumer reporting agency shall place a security freeze for a protected consumer if:

1. The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

2. The protected consumer's representative:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

b. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

60 c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the
61 protected consumer; and

62 d. Pays to the consumer reporting agency a fee as provided in subsection J.

63 D. If a consumer reporting agency does not have a file pertaining to a protected consumer when the
64 consumer reporting agency receives a request under subsection C from the protected consumer's
65 representative for the placement of a security freeze, the consumer reporting agency shall create a record
66 for the protected consumer. A record may not be created or used to consider the protected consumer's
67 creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or
68 mode of living for the purpose of serving as a factor in establishing the consumer's eligibility for (i)
69 credit or insurance to be used primarily for personal, family, or household purposes or (ii) employment.

70 E. Within 30 days after receiving a request that meets the requirements of subsection C, a consumer
71 reporting agency shall place a security freeze for the protected consumer.

72 F. Unless a security freeze for a protected consumer is removed in accordance with subsection H or
73 K, a consumer reporting agency may not release the protected consumer's credit report, any information
74 derived from the protected consumer's credit report, or any record created for the protected consumer.

75 G. A security freeze for a protected consumer placed under subsection E shall remain in effect until:

76 1. The protected consumer or the protected consumer's representative requests the consumer reporting
77 agency to remove the security freeze in accordance with subsection H; or

78 2. The security freeze is removed in accordance with subsection K.

79 H. If a protected consumer or a protected consumer's representative wishes to remove a security
80 freeze for the protected consumer, the protected consumer or the protected consumer's representative
81 shall:

82 1. Submit a request for the removal of the security freeze to the consumer reporting agency at the
83 address or other point of contact and in the manner specified by the consumer reporting agency;

84 2. Provide to the consumer reporting agency:

85 a. In the case of a request by the protected consumer:

86 (1) Proof that the sufficient proof of authority for the protected consumer's representative to act on
87 behalf of the protected consumer is no longer valid; and

88 (2) Sufficient proof of identification of the protected consumer; or

89 b. In the case of a request by the representative of a protected consumer:

90 (1) Sufficient proof of identification of the protected consumer and the representative; and

91 (2) Sufficient proof of authority to act on behalf of the protected consumer; and

92 3. Pay to the consumer reporting agency a fee as provided in subsection J.

93 I. Within 30 days after receiving a request that meets the requirements of subsection H, the consumer
94 reporting agency shall remove the security freeze for the protected consumer.

95 J. A consumer reporting agency may not charge a fee for any service performed under this section,
96 except for a reasonable fee, not exceeding \$10, for each placement or removal of a security freeze for a
97 protected consumer. Notwithstanding the foregoing, a consumer reporting agency shall not charge any
98 fee for the placement or removal of a security freeze for a protected consumer if:

99 1. The protected consumer's representative has obtained, and provides to the consumer reporting
100 agency, a report of alleged identity fraud against the protected consumer under § 18.2-186.3:1 or an
101 Identity Theft Passport issued for the protected consumer under § 18.2-186.5; or

102 2. A request for the placement or removal of a security freeze is for a protected consumer who is
103 under the age of 16 18 years at the time of the request, and the consumer reporting agency has a credit
104 report pertaining to the protected consumer.

105 K. A consumer reporting agency may remove a security freeze for a protected consumer or delete a
106 record of a protected consumer if the security freeze was placed or the record was created based on a
107 material misrepresentation of fact by the protected consumer or the protected consumer's representative.

108 L. Any person who obtains a consumer report, requests a security freeze, requests the temporary lift
109 of a freeze, or requests the removal of a security freeze from a consumer reporting agency under false
110 pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency
111 for damages sustained by the consumer reporting agency as provided in subsection R of § 59.1-444.2.

112 M. Notwithstanding any other provision of law:

113 1. The exclusive authority to bring an action for any violation of subsection E shall be with the
114 Attorney General. In any action brought under this subsection, the Attorney General may cause an action
115 to be brought in the name of the Commonwealth to enjoin the violation and to recover damages for
116 aggrieved protected consumers.

117 2. In any action brought under this subsection, if the court finds a willful violation, the court may, in
118 its discretion, also award a civil penalty of not more than \$1,000 per violation, to be deposited in the
119 Literary Fund.

120 3. In any action brought under this subsection, the Attorney General may recover any costs, the
121 reasonable expenses incurred in investigating and preparing the case, and attorney fees.