REPORT OF THE
OFFICE OF THE ATTORNEY GENERAL AND
THE STATE CORPORATION COMMMISSION ON

Privacy Laws Relating To Personal Rights and Credit

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 33

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

COMMONWEALTH of VIRGINIA

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January 30, 1990

The Honorable L. Douglas Wilder
Governor of Virginia

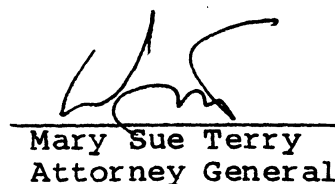
and

Members of the General Assembly

Pursuant to Senate Joint Resolution 192, which was adopted by the General Assembly at its 1989 Session, the Office of the Attorney General and the State Corporation Commission were requested to study jointly the privacy laws relating to personal rights and credit. The purpose of the study was to determine whether existing privacy laws related to personal rights and the opportunity to obtain credit adequately protect the individual.

In fulfilling this request, members of our respective staffs undertook and completed a study of existing privacy laws. We are pleased to submit to you the Report prepared summarizing the activities, conclusions and recommendations of the study.

Respectfully submitted,



Mary Sue Terry
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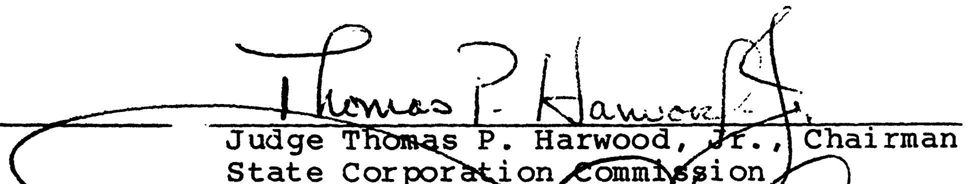

Judge Thomas P. Harwood, Jr., Chairman
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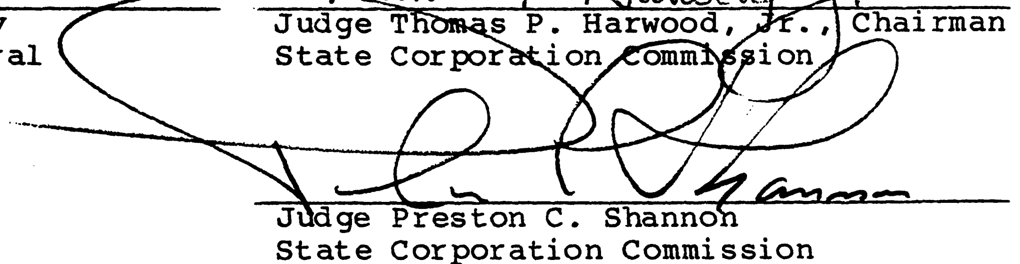

Judge Preston C. Shannon
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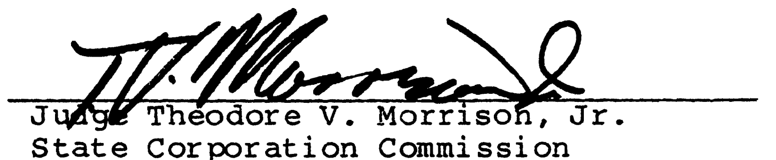

Judge Theodore V. Morrison, Jr.
State Corporation Commission

2:92L11/324

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REPORT OF THE OFFICE OF THE ATTORNEY GENERAL AND THE STATE CORPORATION COMMISSION

STUDY OF PRIVACY LAWS RELATED TO PERSONAL RIGHTS AND CREDIT

TO THE GOVERNOR
AND THE GENERAL ASSEMBLY OF VIRGINIA
RICHMOND, VIRGINIA

JANUARY, 1990

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and
The General Assembly of Virginia

I. INTRODUCTION

In the introduction to the Report of the VALC to the Governor and General Assembly of Virginia, 2 House and Senate Documents, S.Doc. 27 at 3 (1976) 1, the Virginia Advisory Legislative Council stated as follows:

> Man's capacity to gather, order and disseminate information has grown tremendously in the past decades. As this capacity has grown, man has become increasingly aware of the potential dangers to individual liberty posed by possible abuse of this capacity. Not until record-keeping and information dissemination systems acquired a capacity for destroying or severely limiting individual privacy did man come to a full appreciation of his interest in protecting his personal privacy. Despite this developing appreciation, efforts to provide legal weapons for use in defense of personal privacy have not kept pace with technological innovations which continue to make invasion of that privacy even easier.
>
> This revolution in the use of automated data processing equipment - particularly the electronic computer - has given government and private industry the capacity to compile detailed data on individuals in almost all areas of personal activity (education, employ-

ment, credit, taxation, health, government licensing and benefits, law enforcement, and so on). Fears have been expressed as to the possible chilling effect the existence of such collections of automated personal data systems can have upon a free society such as ours.

In the ensuing 14 years, the possiblilities for abuse have become even greater as systems for collecting and disseminating personal data have become more sophisticated and the use of that data more widespread. Although any form of personal information exchange poses risks to the privacy rights of individuals, those rights are particularly, and perhaps most, affected by the extensive collection and dissemination of financial and other credit related information. Recognizing this, the General Assembly adopted Senate Joint Resolution 192 ("SJR 192") at its 1989 Session, requesting the Office of the Attorney General and the State Corporation Commission to undertake jointly a study to determine whether existing privacy laws related to personal rights and the opportunity to secure credit adequately protect the individual. (See Appendix 1.) The staff working group representing the Attorney General and the State Corporation Commission was comprised of: H. Lane Kneedler, Chief Deputy Attorney General; Sidney A. Bailey, Commissioner of the Bureau of Financial Institutions; Gail Starling Marshall, Deputy Attorney General; Frank Seales, Jr., Senior Assistant Attorney General; David B. Irvin, Assistant Attorney General; Mary Lynn Bailey, Director of Information Resources for the State Corporation Commission; and Paul S. West, Regulatory Consumer Compliance Administrator for the Bureau of Financial Institutions.

The Office of the Attorney General and the State Corporation Commission have completed their study and hereby submit their findings and recommendations to the Governor and the General Assembly.

II. EXECUTIVE SUMMARY

Pursuant to SJR 192, adopted by the General Assembly at its 1989 Session, the Office of the Attorney General and the State Corporation Commission were requested to undertake jointly a study to determine whether existing privacy laws related to personal rights and the opportunity to secure credit adequately protect the individual. In undertaking and completing this study, staff of the Office of the Attorney General and State Corporation Commission prepared an overview of existing privacy laws; submitted questionnaires to credit reporting companies, financial institutions and check-guarantee service businesses; and held a public hearing. Staff also monitored ongoing activity at the federal level related to the subject of privacy and credit.

The study resulted in the following conclusions and recommendations:

(1) Education - Many consumers are not aware of the protections provided by state and federal privacy laws already in place. To help educate consumers, the Office of Consumer Affairs, the Office of the Attorney General, the Bureau of Financial Institutions and their counterparts at the federal level should continue to respond to consumer privacy inquiries and to alert consumers to the protections currently available to them. Private organizations and consumer groups also are encouraged to continue their efforts to educate consumers about their rights and currently available protections.

(2) Recordation by Merchants of Credit Card Numbers on Checks - The practice by some merchants of recording credit card numbers on checks when those checks are accepted for payment constitutes an invasion of privacy and promotes opportunities for credit card fraud. Legislation prohibiting that practice is recommended as one step to prevent fraud, particularly in connection with telephonic credit card purchases.

Potential problem areas that were studied but for which legislation is not being recommended at this time for the reasons indicated in the body of this report, include: extending the privacy protections of the Fair Credit Reporting Act; placing limitations on the use of credit information for marketing purposes; prohibiting merchants and others from recording personal information on credit card sales slips; and regulating the disclosure of individual financial records by financial institutions.

III. OVERVIEW OF EXISTING PRIVACY LAWS

An overview of current Virginia and federal law revealed the existence of both a number of privacy statutes specifically related to the exchange of financial or credit information and other privacy statutes of a more general nature, including the following Virginia privacy laws:

(1) Virginia Freedom of Information Act, Va. Code §§ 2.1-340 through 2.1-346.1 -- This statute provides members of the public with access to most records that were either prepared by or are in the possession of a public official or body. There are 39 categories of records listed in the statute as potentially exempted from disclosure. One of those categories includes state income, estate and personal property tax returns containing information about identifiable individuals. Va. Code § 2.1-342(B)(3). Another category applies in part to personal information filed with the Virginia Housing Development Authority concerning individuals who have applied for loans. Va. Code § 2.1-342(B)(33). The statute also provides the public with free access to most meetings of public bodies.

(2) Privacy Protection Act of 1976, Va. Code §§ 2.1-377 through 2.1-386 -- This statute requires recordkeeping agencies of Virginia and its political subdivisions to adhere to certain principles of information practice to ensure safeguards for personal privacy. Included among these principles are the principle that no information is to be collected unless the need for it is established in advance; the principle that information must be relevant to the purpose for which it is collected; and the principle that information is not to be used unless it is accurate and current. Recordkeeping agencies must have procedures for permitting individuals to learn the purpose for which information has been recorded about them, and procedures for allowing individuals to correct, erase or amend inaccurate, obsolete or irrelevant information.

(3) Insurance Information and Privacy Protection Act, Va. Code §§ 38.2-600 through 38.2-620 -- This statute establishes standards for the collection, use and disclosure of information gathered by insurance institutions. One provision prohibits insurance institutions and their agents from disclosing personal information collected in an insurance transaction to a person whose only use of that information will be for the marketing of a product or service, unless the individual about whom the information was collected has been given an opportunity to indicate that he does not want such information disclosed for that purpose, and has given no indication that he does not want the information disclosed. Va. Code § 38.2-613.11.

(4) Savings Institution Confidentiality Provision, Va. Code § 6.1-194.18 -- This statute provides that the books and records pertaining to the accounts and loans of a savings institution must be kept confidential by the institution, and its directors, officers and employees, except where disclosure is compelled by a court of competent jurisdiction or otherwise required by law.

(5) Tax Information Confidentiality Statute, Va. Code § 58.1-3 -- This statute provides that, except in accordance with a proper judicial order, or as otherwise provided by law, the Tax Commissioner or any other state or local tax or revenue officer or employee may not divulge any information acquired in the performance of his duties with respect to the transactions, property or income of any person or corporation (e.g., information provided in tax returns). A separate statute, Va. Code § 58.1-4, prohibits individuals who prepare tax returns from disclosing information provided to them without the written consent of the person requesting preparation of the return.

The overview also revealed the existence of the following federal privacy statutes related to the exchange of credit or financial information:

(1) Fair Credit Reporting Act, 15 U.S.C. §§ 1681 through 1681t -- This statute provides the primary source of federal consumer protection in the area of

credit reporting. The statute places limitations on to whom and for what purpose a credit reporting agency may provide a credit report about an individual, limits the type and age of the information that may be reported and gives consumers the authority to dispute that information. The statute makes it a criminal act for a user of credit reporting information to obtain such information under false pretenses.

(2) Right to Financial Privacy Act, 12 U.S.C. §§ 3401 through 3422 -- This statute establishes the procedures that federal agencies and officials must follow to obtain access to bank records involving a particular individual. As a general rule, no agency or official may have access to such records unless the records are reasonably described and disclosure is either authorized by the individual, or sought pursuant to a valid subpoena, search warrant or formal written request.

(3) Currency and Foreign Transactions Reporting Act of 1970, 31 U.S.C. §§ 5311 through 5322 -- This statute and its implementing regulations require depository organizations to keep records of transactions above a specific monetary amount and to file written reports with the federal government about those transactions. The stated purpose of the statute is to aid the government in criminal, tax and regulatory proceedings.

In addition to the above statutes, the overview disclosed a number of other federal statutes relating to the general subject of privacy. These statutes include the Privacy Protection Act of 1974, 5 U.S.C. §§ 552a; the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a(o) through § 552a(t); the Video Privacy Protection Act of 1988, 18 U.S.C. § 2710; and the Employee Polygraph Protection Act of 1988, 29 U.S.C. §§ 2001 through 2009.

The staff working group wishes to note that its research in this area was greatly assisted by receipt of a complimentary copy of a new book entitled Privacy In America: Is Your Private Life in the Public Eye? by David F. Linowes of the University of Illinois. Professor Linowes was Chairman of the U.S. Privacy Protection Commission from 1975 through 1977 and is widely recognized as one of the nation's leading experts on the subject of privacy.

IV. STUDY ACTIVITIES

The staff working group held an organizational meeting in July 1989. Discussion at that meeting focused on the state and federal privacy law overview that had been prepared; the types of privacy complaints received in the past by the Office of the

Attorney General and the State Corporation Commission; the existing privacy law framework relating directly to personal rights and the opportunity of individual consumers to obtain credit; and the manner in which the study should be undertaken and completed including the need for industry surveys and a public hearing.

Based on the areas of focus established by SJR 192, and on the types of complaints received in the past by the Office of Attorney General and State Corporation Commission, the staff working group focused its efforts on those privacy concerns raised by the exchange of credit or other financial information about individuals, and on those concerns raised by the exchange of personal information in connection with applications for credit or the extension of credit. To this end, questionnaires were prepared for distribution to members of the credit reporting and financial institution industries. The purpose of these questionnaires was to obtain information about how credit history and other financial information about individuals is obtained and exchanged in Virginia and to learn about the uses made of that information.

A. Questionnaires to Credit Reporting Companies, Financial Institutions and Check-Guarantee Service Businesses

Questionnaires were sent in August 1989 to a sampling of Virginia credit reporting companies, and to financial institutions (banks, savings and loans, credit unions and consumer finance licensees) through their trade associations. A contact person with each financial institution trade association was asked to send the questionnaire to a sampling of their members. They also were asked to make certain that different size institutions were included in the sampling. The Commonwealth's Office of Consumer Affairs also was given an opportunity to comment on a draft of the questionnaires, and the comments of that Office were incorporated into the final questionnaire.

The questionnaire sent to Virginia members of the credit reporting industry sought information about, among other things, the types of credit information they receive about individual consumers, the manner in which they receive this information, the manner in which they transmit information to subscribers of their services, and the procedures they follow to make certain that the credit reports they generate are made available only for those purposes and to those people identified in the federal Fair Credit Reporting Act. Each company also was asked whether it "pre-screens" marketing lists for subscribers. In this process, the credit reporting company combs its databank to find the names and addresses of consumers whose income, debts, bill paying history and other financial information match criteria provided by their subscriber. Appendix 2 to this report contains a copy of the questionnaire sent to members of the credit reporting industry. Prior to sending out this questionnaire, two members

of the staff working group met with Jefferson D. Smith, Jr., former president of the Credit Bureau of Richmond (now The Credit Bureau, Inc., a division of CBI/Equifax), and current president of the Retail Merchants Association of Richmond, and received a tour of the local credit bureau. The Attorney General and the State Corporation Commission wish to thank the Credit Bureau for opening its doors for this purpose.

The questionnaire sent to various financial institutions sought information about, among other things, the types of information those institutions receive on credit applications or in the course of a credit interview, the types of information they report about individuals to credit reporting companies, and the procedures they follow to verify information received in a credit application or credit interview. Each institution also was asked whether it purchases marketing lists from credit reporting companies or other sources, and if it ever prepares marketing lists on its own to sell to others. Appendix 3 to this report contains a copy of the questionnaire sent to financial institutions.

A separate questionnaire was sent to two check-guarantee service businesses in September 1989. These businesses receive information from retail merchants and other sources about individuals who have used checks fraudulently or who have outstanding unpaid checks, and report that information on request to subscribers (typically merchants and financial institutions). Some of the businesses guarantee checks that are approved by them. The Federal Trade Commission has taken the position that these businesses are required to comply with the Fair Credit Reporting Act. The decision to send this additional questionnaire was based on the increasing number of inquiries being received by the Bureau of Financial Institutions about this type of business. Those inquiries typically have involved a consumer who was turned down for an ordinary checking account as a result of information provided to a financial institution by one of these businesses. The questionnaire sought information about, among other things, the types of information that are reported to these businesses, to whom that information is provided or reported, and the manner in which a rating may be eliminated. Appendix 4 contains a copy of the questionnaire sent to these businesses.

B. Responses to the Questionnaires

Responses to the questionnaires were received from 14 banks, 6 savings and loan associations, 34 credit unions, 5 consumer finance licensees, 5 credit reporting agencies and 2 check-guarantee service companies. Those responses provided valuable information about how credit history and other financial information is obtained and exchanged in Virginia, and also about the uses which are made of that information by those who receive it. Among other information provided, the responses revealed that some credit reporting companies in Virginia, like their

counterparts elsewhere, "pre-screen" marketing lists for subscribers. The responses also revealed that a number of financial institutions, particularly the larger ones, purchase such lists from credit reporting companies and other sources.

C. Public Hearing

A public hearing was held on Tuesday, November 21, 1989, at the Federal Reserve Bank Building in Richmond. Notice of the hearing was provided to credit reporting companies, check-quarantee service businesses, financial institutions through their trade associations, consumer organizations, credit counseling centers and other interested parties. An announcement of the hearing also was provided to newspapers throughout the State inviting members of the public to attend and testify. (Appendix 5.)

Remarks were presented at the hearing by a representative of the Virginia Citizens Consumer Council, and by various representatives of the credit reporting and financial institution industries. An opportunity also was provided for a question, answer and response dialogue about privacy issues as they relate to credit and personal rights. Appendix 6 to this report contains a copy of the minutes of the hearing.

V. FEDERAL ACTIVITY RELATING TO PRIVACY RIGHTS AND CREDIT

The House of Representatives Banking Committee's Subcommittee on Consumer Affairs and Coinage held a hearing on the Fair Credit Reporting Act ("FCRA") in September, 1989. A member of our staff working group attended the hearing and received preprinted copies of testimony presented by representatives of the Federal Trade Commission, the American Civil Liberties Union, the Special Advisor to the President for Consumer Affairs and the credit reporting industry. Much of the testimony presented dealt with proposed amendments to FCRA that are intended to tighten or clarify the requirements of the statute. A number of the proposed amendments concern the subject of pre-screening and other areas of concern raised by complainants in Virginia.

Following the hearing, one bill has been introduced by a member of the House Banking Committee and three other members have indicated that they will also submit legislation. Each of these bills includes or will include provisions to prohibit credit reporting companies from pre-screening marketing lists on behalf of their subscribers. A number of individuals contacted by the staff working group have indicated that they believe federal legislation amending FCRA is imminent as a result of the recent hearings and the recent issuance by the Federal Trade Commission of a proposed official commentary on FCRA.

The Office of the Special Advisor to the President for Consumer Affairs is also conducting a study on privacy entitled

"A Focus on Consumer Privacy". Aspects of the study concern marketing lists, medical and insurance records, emerging technologies, and consumer education about the mail and telephone preference services offered by the Direct Marketing Association. The group organized to undertake this study includes representatives of industry, consumer groups, Congressional committees and other interested groups. Patricia Fahey, Program Director, Consumer/Industry Relations of the U.S. Office of Consumer Affairs, has indicated that the study will be a lengthy one and that no recommendation for federal legislation will be forthcoming in the near future.

VI. CONCLUSIONS AND RECOMMENDATIONS

The following recommendations are offered as a result of the study:

1. Education:

It is clear that many consumers are not aware of the protections provided by state and federal privacy laws already in place. This conclusion is based, among other things, on the number and types of complaints that have been received concerning these issues by the Office of the Attorney General and the State Corporation Commission, and on comments and representations made by those in attendance at the public hearing held on November 21, 1989, in conjunction with the study. Many consumers are unaware, for example, of the limitations established by FCRA on the purposes for which and to whom credit reports may be issued. Consumers also appear generally to be unaware of the existence of entities such as the Direct Marketing Association ("DMA") to whom they can write to have their names taken off of nationally-based telephone and mail solicitation lists.

A consumer may have his name taken off of such nationally based telemarketing lists by writing to:

Direct Marketing Association
6 East 43rd Street
New York, NY 10017
ATTN: Telephone Preference Service

In the same manner, if a consumer wishes to have his name removed from nationally- based mailing lists, he may write to:

Direct Marketing Association
P.O. Box 3861
Grand Central Station
New York, NY 10163
ATTN: Mail Preference Service

By writing DMA, a consumer will have his name placed on a list that is produced and provided by DMA on a quarterly basis (by magnetic tape) to its subscribers. Subscribers to DMA's

services include, among others, service bureaus such as the Donnelly Corporation (publisher of the Donnelly Directory) and credit reporting companies. According to DMA sources, writing to DMA will not remove a consumer's name from all mailing lists. Certain activities by consumers, such as purchasing goods from a mail order catalog, may place those consumers' names on lists produced by entities that are not subscribers to DMA's services. If a consumer wants further to protect himself from being placed on a marketing list, he should write to those companies from whom he regularly purchases goods by phone or mail and ask them not to "trade or sell" his name.

To help educate consumers, the Office of Consumer Affairs, the Office of the Attorney General, and the Bureau of Financial Institutions should continue to respond to privacy inquiries from consumers and to continue to alert consumers to the protections currently available. Representatives of those offices should also continue to make themselves available for public speaking, interviews with newspapers and appearances on television news segments directed to these and other consumer protection related issues. At the federal level, the Federal Trade Commission, the U.S. Office of Consumer Affairs and the Federal Reserve Bank System should continue to advise consumers of their rights under existing federal consumer protection statutes.

Private organizations such as credit reporting companies and their trade association, and consumer groups such as the Virginia Citizens Consumer Council and BankCard Holders of America, should be encouraged to continue their efforts to provide information to consumers about these issues as well.

2. <u>Recordation by Merchants of Credit Card Numbers on Checks:</u>

Legislation is recommended to prohibit merchants from recording credit card numbers on personal checks when those checks are accepted for payment. Appendix 7 to this report contains the recommended legislation. It should be noted that the proposed statute would not prohibit a merchant from requiring a purchaser to display a credit card as a means of identification, or as evidence of creditworthiness, nor would it prohibit a merchant from recording the type of credit card displayed, the issuer bank or the expiration date of the card.

There are at least four bases for this recommendation. First, many consumers consider it to be an invasion of their privacy to have their credit card number written on a check after their credit card has been accepted as identification, especially when a driver's license with a photograph also has been presented. Second, although the operating rules of the major credit card companies do not specifically address this particular merchant practice, those procedures do strictly prohibit merchants from charging a credit card account to cover a bounced

check. The merchant therefore has no need for this information. Third, the legislation will help prevent fraud in connection with credit card purchases by telephone. A personal check including someone's name, address, social security number, telephone number and credit card number provides all the information needed to engage in this type of fraud. Fourth, the only rationale offered to date for why merchants want to record credit card numbers on checks is so that they can assure themselves that their employees have examined a credit card in accordance with store policy. The proposed statute therefore strikes a balance by providing merchants with the means to obtain that assurance in a manner that is less intrusive and less dangerous (i.e., by recording the type of card, the issuer bank and the expiration date), while at the same time prohibiting the recordation of that item of information that is most susceptible to fraud -- the credit card number itself.

A number of other issues were carefully considered in the study, but no recommendations are being offered for the reasons indicated:

1. Extensions to Fair Credit Reporting Act:

The Fair Credit Reporting Act ("FCRA") preempts "inconsistent" state law but otherwise allows the states to adopt legislation addressing the subject of how credit information may be collected, distributed and used. A number of complaints were received during the study regarding the circumstances under which some credit reporting companies allegedly release credit information to subscribers. A number of those complaints described situations in which the alleged release of information constituted a violation of the FCRA, subjecting the violator to civil and criminal penalties. Education appears to be the answer in these cases. Other complaints, however, addressed the release of credit information which, although probably legal under the existing statute, nevertheless raises privacy concerns. Those complaints related typically to the subjects of "pre-screening" or the "legitimate business need" category of permissible credit report use. In view of ongoing activity at the federal level, however, it was decided to wait and see what Congress does, if anything, to change existing federal law before attempting to duplicate those efforts by enacting laws at the state level that may be preempted in the not too distant future.

2. Uses of Credit Information for Marketing Purpose:

A number of complaints were received during the study concerning the pre-screening service that credit reporting companies provide to subscribers. Those consumers who complained had typically received a letter inviting them to apply for some type of credit card on a pre-approved basis "because of their excellent credit rating". Suggestions were made that Virginia enact legislation requiring that, before a credit reporting company provides personal information it has collected to another

for marketing purposes, the individual about whom the information was collected must be given an opportunity to indicate that he or she does not want the information disclosed for that purpose. Since Congress currently is considering this issue in the proposed amendments to FCRA, however, it was decided to wait and see what Congress does to FCRA to address this issue. Furthermore, as part of the educational information that will continue to be provided to consumers, they will be reminded that they already have the ability to take their names off nationally-based pre-screened marketing lists by writing to DMA.

3. <u>Personal Information on Credit Card Sales Slips:</u>

The Virginia Citizens Consumer Council recommended that legislation be enacted to prohibit merchants from recording telephone numbers, addresses and/or other personal information on credit card sales slips. Information provided during the study indicates that the operating procedures of both VISA and Mastercard do not currently require, encourage or prohibit this merchant practice.[1] Although merchants do not need this information as a general rule for collections purposes, since they are able to collect from the card issuing bank so long as the signature of the customer is verified and authorization is obtained when required (e.g., purchases over a particular amount), there are some limited situations where the merchant may need the information for that purpose. Those situations include where the merchant or his employee fails to follow the procedures of the card company (e.g., fails to verify the signature, fails to check for a bad card number, or fails to obtain authorization for a purchase over particular amount), or where a dispute between the merchant and cardholder about the goods or services purchased is not resolved. In those situations, the merchant may be required to look to the cardholder for payment.

No recommendation on this issue is included as part of this study primarily because of the fact that situations exist where the merchant may need the information requested. In addition, this type of information request is less intrusive than that of a request for a credit card number since the information most typically requested generally may be obtained from the local telephone book, and is, therefore, less likely to result in consumer fraud.

4. <u>Financial Record Confidentiality Statute:</u>

Legislation similar to the Illinois Financial Record Confidentiality Statute, Title 17, ¶ 360, of the Illinois Code, which would regulate the disclosure by financial institutions of

[1]The operating procedures of MasterCard allow the requirement of an address when a card is used (typically at a bank) to obtain a cash advance.

individual financial records, was considered as part of the study. Appendix 8 to this report contains a copy of the Illinois Statute. Under existing law, the Virginia Savings Institution Act requires that books and records pertaining to the accounts and loans of every savings institution be kept confidential by the institution, its directors, officers and employees, with certain limited exceptions. See Va. Code § 6.1-194.18. There is currently no similar statute applicable to state banks, industrial loan associations, consumer finance companies or credit unions.

The exceptions to disclosure allowed by the Savings Institution Act arguably are more narrow than those allowed by the Illinois statute. Among other exceptions, the Illinois statute allows the disclosure of information where disclosure is compelled by law (e.g., the furnishing of information pursuant to the federal Currency and Foreign Transactions Recovery Act), and allows those forms of disclosure recognized in the general course of business (e.g., the furnishing of information to credit reporting agencies, and the furnishing of information concerning the dishonor of any negotiable instrument permitted to be disclosed under the Uniform Commercial Code).

No recommendation concerning this proposed legislation is included in this study because of the fact that very few complaints have been received involving or claiming an unwarranted release of personal information by Virginia financial institutions. This finding is consistent with statements made at the public hearing by representatives of the financial industry. If the number of complaints in this area increases in the future, the General Assembly should consider the need for legislation similar to the Illinois statute, but no such legislation is recommended at this time.

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1989 SESSION

LD9178139

1 SENATE JOINT RESOLUTION NO. 192
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee on Rules
4 on February 20, 1989)
5 (Patron Prior to Substitute—Senator Miller, Y.B.)

6 *Requesting the Office of the Attorney General and the State Corporation Commission to*
7 *study jointly privacy laws related to personal rights and credit.*

8 WHEREAS, an individual's privacy is directly affected by the extensive collection,
9 maintenance, use and dissemination of personal information; and
10 WHEREAS, an individual's personal rights, opportunity to secure credit and other legal
11 protections are endangered by the misuse of personal information; and
12 WHEREAS, a study should be undertaken to determine whether existing privacy laws
13 related to personal rights and the opportunity to obtain credit adequately protect the
14 individual; now, therefore, be it
15 RESOLVED by the Senate, the House of Delegates concurring, That the Office of the
16 Attorney General and the State Corporation Commission are requested to study jointly the
17 privacy laws related to personal rights and credit.
18 The Office of the Attorney General and the State Corporation Commission shall
19 complete their study in time to submit jointly their findings and recommendations to the
20 Governor and the 1990 Session of the General Assembly as provided in the procedures of
21 the Division of Legislative Automated Systems for processing legislative documents.
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Official Use By Clerks

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substitute w/amdt	☐	substitute w/amdt	☐

Date: ______________________ Date: ______________________

Clerk of the Senate Clerk of the House of Delegates

CREDIT REPORTING AGENCY QUESTIONNAIRE

1. Please describe the process by which your credit reporting agency obtains information pertaining to individuals. Include in your answer the various sources from which this information comes and the manner in which it is sent (i.e., by computer or otherwise).

2. What information (e.g., name, address, social security number, credit extension, payment history, delinquentcy status) is received by you about individuals from creditors or other information sources?

3. Does your credit reporting agency attempt to verify the information received about an individual before receipt of a complaint from that consumer challenging information in a credit report? If so, please describe the verification procedures that you use, and indicate whether those procedures are used in connection with each item of information reported to your reporting agency, or on some less frequent basis.

4. Does your credit reporting agency make any notation on an individual's credit report to information being challenged by the individual while the investigation is underway but not yet completed?

5. When an individual challenges information in his or her credit report, what procedures does your credit reporting agency use to verify that information?

6. How are credit reports generated by your credit reporting agency sent to persons who request a copy of the report?

7. What procedures does your credit reporting agency follow to make sure that the credit reports it generates are made available only for those purposes and to those individuals identified in the Fair Credit Reporting Act?

8. Is the credit information received by your credit reporting agency shared with or eventually became a part of any other data storage bank or computer? If so, with whom is this information shared, and/or what data storage bank or computer receives it?

9. Does your credit reporting agency screen marketing lists prepared by others to determine the creditworthiness of the individuals listed? If so, for whom are these services provided, and how much are you paid for providing this service?

10. Does your credit reporting agency provide account-monitoring services to credit grantors, the purpose of which is to warn subscribers when activity in a particular individual's file indicates that a reexamination for creditworthiness may be warranted? If so, please indicate the number of individuals or entities for whom you provide this service, and the amount you are paid for providing the service.

11. Does your credit reporting agency prepare and sell to others any marketing list that is based on information you receive in the course of your credit reporting business? If so, please describe the nature of any marketing list that you have prepared, and the amount that you were paid for that list.

12. What does your credit reporting agency do with a credit report it has generated on a particular consumer when, before issuing the report, it receives information that the consumer has decided not to seek credit (i.e., in that instance, do you destroy, keep or transfer the report to the party that requested it)?

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FINANCIAL INSTITUTION QUESTIONNAIRE

1. What information do you receive from individuals on credit applications or in the course of a credit interv ew? Include a copy of any form applications you use n connection with applications for credit cards, mortgage loans, home equity loans, car loans or personal loans.

2. Do you ever seek information about an individual beyond that specifically requested on a written credit application?. If so, what type of information is sought, and why is the additional information requested?

3. What do you do with an application for credit you have received from a particular individual when the individual decides not to obtain the credit initially sought or the credit sought is denied (i.e., in that instance, do you keep, destroy or do something else with the application)?

4. What information do you report about individuals to credit reporting agencies?

5. When and how do you report information about individuals to credit reporting agencies?

6. What procedures do you follow to verify information received in a credit application or credit interview?

7. Do you ever purchase marketing lists from credit reporting agencies or other sources? If so, please indicate from whom those lists are purchased, and the use that you make of them.

8. Do you ever prepare and sell marketing lists to others that are based on information received in a credit application or credit interview? If so, please describe the nature of any marketing list that you have prepared, or to which you have contributed, and the amount for which the list or information was sold.

CHECK-GUARANTEE SERVICES QUESTIONNAIRE

1. Who are your subscribers or clients?

2. What information is reported to your organization?

3. Who reports the information?

Do you have a rating system for consumers? If so, please describe how it works.

5. How do you verify the information you receive?

6. To whom do you report the information you collect?

7. Are your records corrected when outstanding unpaid checks reported to you are paid?

8. Does your organization act as a collection agency for checks reported as outstanding and unpaid?

9. Can an adverse rating be eliminated in any manner other than the passage of time? If so, please state the manner.

10. Does your organization insure or guarantee the honoring of a check for a subscriber or client?

11. Are your records corrected when you learn that information has been erroneously reported to you?

COMMONWEALTH of VIRGINIA

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Richmond 23219

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PRESS RELEASE **November 14, 1989**

The Study Committee studying privacy laws related to personal rights and credit has scheduled the following public hearing:

Tuesday, November 21, 1989 - 1:00 p.m.
Federal Reserve Bank Building
701 E. Byrd Street
23rd Floor, Room 23E
Richmond, Virginia

The Study Committee was established by Senate Joint Resolution No. 192 which was agreed to at the 1989 Session of the General Assembly. Members of the Committee include representatives of the Office of the Attorney General and the State Corporation Commission. The resolution establishing the committee states that the purpose of the committee is to determine whether existing privacy laws related to personal rights and the opportunity to obtain credit adequately protect the individual. After review of existing privacy laws and issuance of questionnaires to credit reporting companies and financial institutions, the committee would be interested in receiving comments about the following issues:

(1) the adequacy of procedures followed by credit reporting companies to make sure credit reports are made available only for those purposes and to those individuals identified in the Fair Credit Reporting Act;

(2) the use by credit reporting companies and financial institutions of credit information for marketing purposes;

(3) the circumstances under which financial institutions release information pertaining to consumer deposit and loan accounts; and

(4) the general awareness of the public of the protections provided by existing privacy laws related to credit.

All interested persons are invited to attend and make their views known to the committee.

Those who wish to address the committee are requested to register prior to the hearing. They may do so my contacting: Paul S. West, Regulatory Consumer Compliance Administrator, Bureau of Financial Institutions, 701 E. Byrd Street, P. O. Box 2AE, Richmond, Virginia 23205, telephone 804/786-3657; or David B. Irvin, Assistant Attorney General, Office of the Attorney General, 101 N. Eighth Street, Richmond, Virginia 23219, telephone 804/786-2116.

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For information contact: Bert L. Rohrer
(804) 786-3518

Appendix 6

MINUTES OF PUBLIC HEARING

STUDY GROUP STUDYING PRIVACY LAWS RELATED TO CREDIT AND PERSONAL RIGHTS

Public Hearing, Tuesday, November 21, 1989-1:00 p.m
Federal Reserve Bank Building,
23rd Floor, Room 23A
Richmond, Virginia

Members Present:

Gail Starling Marshall
Frank Seales, Jr.
Paul S. West
David B. Irvin

I. Opening Remarks - Gail Marshall, Deputy Attorney General for the Judicial Affairs Division of the Office of the Attorney General, called the public hearing to order and introduced the study group members in attendance. Deputy Attorney General Marshall explained the activities of the study group, and invited comments from the public about the adequacy of privacy laws in general, and specifically about the topics set forth in the news release announcing the hearing.

II. Public Witnesses

A. Jean Ann Fox, President of Virginia Citizens Consumer Council - Ms. Fox spoke from prepared remarks, a copy of which are attached to these minutes. Summarizing, she addressed the topics set forth in the news release announcing the hearing. She also addressed the practice followed by some retailers of asking for credit card numbers as means of identification when presented with a check for payment, and the practice of other retailers requiring that customers write their telephone number and address on their credit card sales slip. Ms. Fox indicated that she would forward to the study group copies of laws passed in Iowa and New York, respectively, prohibiting these practices.

QUESTION: A member of the study group asked Ms. Fox to describe the benefits offered by TRW Credentials Service. Ms. Fox indicated that, according to her best information, recipients of this service receive a copy of their credit report, have their name added to several marketing lists, receive notice of inquiries to their credit file, and receive prepared "financial

profiles" that can be provided to credit grantors to provide basic credit application information. The annual cost of this service is $35.00.

COMMENT: N. W. "Don" Adams, Regional Vice-President of CBI/Equifax, indicated that he recently received an offer from Shell Oil Company for something they called Safeguard Services. He indicated that Safeguard Services was advertised as being a product somewhat similar to TRW Credentials Service. The cost of the product is $25.00.

COMMENT: Jeff Smith, Jr., former President of the Credit Bureau of Richmond, and current President of Retail Merchants of Richmond, addressed the role of credit reporting companies in "pre-screening" marketing lists. Describing this service, he indicated that subscribers provide criteria selected by them to the credit bureau, and those criteria are cross-referenced with the data bank of the credit bureau. The result of this process is a list that is produced and transmitted to the subscriber. He emphasized that no individual credit reports are extracted and forwarded to the subscriber. Mr. Smith also addressed the "other legitimate business need" component of the Fair Credit Reporting Act (FCRA). One example he used of how this "catch-all" category is used in practice was that of a landlord obtaining a credit report about a prospective tenant.

B. Robert Gill, Director of the Division of Consumer Affairs for City of Norfolk - Mr. Gill did not speak from prepared remarks, but relayed a story about how an individual in Tidewater, whose job included obtaining credit reports from the local credit bureau, was caught taking a computer access terminal home at night for purposes of obtaining credit reports under false pretenses.

COMMENTS: Several individuals in the audience and on the study group indicated that the activity described was a violation of the FCRA, and that persons committing such acts are subject to both criminal and civil penalties. Mr. Smith stated that each computer terminal having access to a credit bureau is required to have a serial number, and that an access number must be used to retrieve information from the credit bureau. When information is obtained under false pretenses, those requirements would help identify who obtained the information.

III. Open Discussion/Questions and Comments

QUESTION: There was some discussion about the fact that credit applications routinely contain a statement indicating that the applicant's signature at the bottom of the page authorizes the credit grantor to investigate and to verify the credit information provided. A member of the study group asked whether a credit grantor may obtain a credit report about a prospective purchaser or borrower absent written authorization.

ANSWER/COMMENT: Jeff Smith, Jr. of the Retail Merchants stated that it was his understanding that FTC letter rulings allow credit grantors to obtain a credit report on an individual who displays "obvious" interest in a particular product or type of credit. The examples he used were car and real estate salesmen. The rationale for allowing access to a credit report without written authorization was to let the salesman know at an early stage whether someone who has displayed obvious interest has the ability to follow through with a purchase.

QUESTION: A member of the study group noted that a provision in the Insurance Information and Privacy Protection Chapter of Title 38.2 of the Code, Virginia Code § 38.2-600 through § 38.2-620, provides that an insurance institution, agent, or support organization may not release medical-record information, privileged information, or other personal information about an individual for marketing purposes, until the individual about whom the information was collected has been given an opportunity to indicate that he does not want such information disclosed for marketing purposes. Va. Code § 38.2-613.11. The question was asked whether the credit reporting industry would object to legislation placing similar restrictions on their ability to use credit information for marketing purposes.

ANSWER/COMMENT: Don Adams, Regional Vice-President of CBI/Equifax, indicated that he believed consumers already have the ability to indicate that they do not want credit information about them to be used for marketing purposes through the Direct Marketing Association (DMA). He stated that individuals may write DMA and ask that their names not be placed on any mail or telephone solicitation lists. DMA provides lists of all people who write to it to, among others, the Donnelly Corporation and credit reporting companies. As a result, the names of individuals who have written to DMA should not appear on a marketing list generated by a credit reporting company.

COMMENT: Sumpter T. Priddy, Jr., President of the Virginia Retail Merchants Association, commented that it was his understanding that any legislative restrictions adopted by Virginia on the exchange of credit information would only be effective in Virginia. Jeff Smith, Jr. noted it was his understanding the state may enact laws which are not inconsistent with the provisions of the FCRA.

COMMENT: There was some discussion about check-quarantee services and the amount of information placed on checks by financial institutions. John W. Edmonds, III, counsel for the Virginia Bankers Association, noted that banks are required to place the date the account was opened on checks. Part of the reason for this is to inform retailers of the duration of the relationship between the bank and its account holder. Jeff Smith, Jr. noted that retailer subscribers of the telecheck service are only able to obtain information about an individual

and his or her historical use of checks.

COMMENT: In response to remarks made earlier by Ms. Fox, Jeff Smith, Jr. stated that no law should be passed prohibiting a retailer from recording a credit card number on a check as a means of identification. One reason stated for this was that the retailer would not be assured that sources of identification were obtained unless his employee actually writes the number on the check. Those in attendance, including John Edmonds, III, counsel for the Virginia Bankers Association, agreed that a retailer who obtains a bad check cannot charge the amount of the purchase to the credit card identified by the purchaser.

COMMENT: Sumpter Priddy, Jr., President of the Virginia Retail Merchants, indicated that placing additional restrictions on the exchange of credit information may result in the exclusion of some segments of society from being able to obtain credit. This comment was echoed in part by Walter Ayers, Executive Director of the Virginia Bankers Association and John Edmonds, III, counsel to the Virginia Bankers.

COMMENT: Don Adams, Regional Vice-President of CBI/Equifax, noted that he had been a part of the credit reporting industry for 25 years, and that it was his experience that credit grantors were not out to misuse information. In his view, the answer to most of the problems discussed was education and prosecution. He suggested that high school students should be offered an elective course dealing in part with credit, the need for a good credit record, credit counseling and consumer protection laws in general. In terms of prosecution, he thought there should be more vigorous prosecution of the laws that are already on the books.

COMMENT: Jeff Smith, Jr. described the efforts of the local Retail Merchants Association and consumer credit counseling center to assist in the education process. Both of those entities, along with the International Association of Credit Bureaus, have donated money to be used in educating consumers about credit reporting and their building a better credit record. He noted that in 1989 alone he had participated on 23 stories by local media about credit. In closing, he invited the Virginia Citizens Consumer Council to participate in some joint effort directed to that end. Jeff Smith, III described the efforts of the Consumer Credit Counseling Center in this area. The local center services 12,000 Virginia citizens living in 23 counties.

COMMENT: Robert Gill, Director of the Division of Consumer Affairs for the City of Norfolk, stated that there needs to be some balance between the rights of credit related businesses and the consumer. He emphasized education and continued efforts to scrutinize and prosecute violations of laws that are already on the books. He noted that individuals are coming up with new scams and tricks in this area all the time. An example he used

was an entity out of Texas that apparently sells credit profiles to individuals who have bad credit records. This particular company apparently finds its victims from those who are moving from one location to another.

COMMENT: Jeff Smith, III, Executive Director of the Virginia Financial Services Association, and Jeff Smith, Jr., President of the Retail Merchants, noted that credit repair companies undertake an irresponsible use of the credit system. It was noted that these companies obtain credit reports about their customers and challenge every negative statement on the report. This places the burden on the credit bureau to reinvestigate and support the truth of each adverse statement. The statement was made that complaints had been referred to the Office of the Attorney General but it did not appear that action was taken. A member of the study group from the Attorney General's Office noted that the Office had obtained an Assurance of Voluntary Compliance from one credit repair company in July, 1989, providing for payment of $2,000 in Civil Penalties and $2,150 in reimbursement for investigative costs. It was noted that at least one other investigation was on-going. Additional discussion noted that Georgia has a law which prohibits credit repair companies from operating in that state. It was noted that the law in Virginia has been amended to require credit repair companies to register and file a bond before operation. Jeff Smith, III indicated that he believes some companies are attempting to get around the requirements of the new statute by calling themselves membership organizations.

COMMENT: Walter Ayers, Executive Director of the Virginia Bankers Association, addressed the subject of education, noting that members of the Young Bankers Section of the VBA go through hundreds of classroom hours. He also indicated that additional consumer protection requirements placed on financial institutions may end up serving to restrict the availability of banking services to the poorest segment of our population. He noted that this is a concern that has been raised in connection with a study group investigating the need for low cost checking accounts as well.

COMMENT: A member of the study group asked whether informational material about the protections provided by the FCRA and other consumer statutes could be passed out to consumers at the point of credit application, or at the very least in connection with letters to consumers indicating that they had been denied credit because of adverse information in their credit report.

ANSWER/COMMENT: John Edmonds, III, counsel to the Virginia Bankers Association, indicated that this type of information could be distributed, but that the fact that it is distributed does not mean those who receive it will actually read it. Jeff Smith, Jr. added that the local credit bureau conducts approximatley 60,000 interviews a year with individuals who have had trouble with their credit record. At one time, the Credit

Bureau provided a brochure to those consumers at the time of their interview describing the protections provided by the FCRA. The Credit Bureau stopped providing these when they noticed that most of them wound up as trash in their parking lot.

QUESTION: It was noted that the Virginia Savings Institutions Act contains a provision requiring that the books and records pertaining to the accounts and loans of any savings institution be kept confidential by the institution, its directors, officers and employees, except where disclosure is compelled by a court of competent jurisdiction or otherwise required by law. A member of the study group asked whether any statute served to place a similar restriction on state banks or credit unions.

ANSWER/COMMENT: John Edmonds, III, counsel to the Virginia Bankers Association, indicated that there is no similar law applicable to state banks. He acknowledged that other states have laws containing a restriction, but indicated there is no need for this type of statute in Virginia.

There was no further business before the study group and the meeting was adjourned.

Virginia Citizens Consumer Council
1611 S. Walter Reed Drive • Arlington, Virginia 22204
703-892-0330

SJR 192: STUDY OF PRIVACY LAWS RELATED
TO PERSONAL RIGHTS AND CREDIT

Jean Ann Fox, President VCCC

November 21, 1989

Good afternoon. I appreciate this opportunity to participate in this hearing to collect information on consumers' rights to privacy and the misuse of information in credit reporting agency files. I represent the Virginia Citizens Consumer Council, a statewide volunteer consumer advocacy organization.

The consumer's right to privacy and the right to control personal financial and medical information is being eroded by advances in computers and telecommunications, the lack of effective enforcement of the weak Fair Credit Reporting Act, and lack of consumer awareness of their rights and how to protect themselves. Consumers fill out loan applications, insurance applications and job applications, expecting the information to be used for that purpose alone. Many consumers mistakenly believe that information given to one entity cannot be shared with another without their permission. Many consumers believe that information in their file at the credit bureau can only be accessed when they apply for credit. If consumers understood how information in credit bureau files is packaged and sold for marketing purposes, they would be outraged. If consumers understood how easy it is for unauthorized persons to get personal details from credit files, they would be up in arms. I doubt that very many consumers know their rights under the Fair Credit Reporting Act. And that law has too many loopholes to protect consumers against misuse of personal credit information.

Adequacy of procedures followed by credit reporting companies to make sure credit reports are made available only for those purposes and to those individuals identified in the Fair Credit Reporting Act.

The Fair Credit Reporting Act gives six permissible purposes for which our credit reports may be divulged by a credit bureau:

1. To extend credit to a consumer
2. For employment purposes
3. For underwriting of insurance

4/5 To determine eligibility for license or other government benefit

6. To anyone that has a legitimate business need for the information in connection with a business transaction involving the consumer.

This last purpose creates a large loophole that opens credit files to all sorts of marketing uses. Even if credit reporting companies complied with every provision of FCRA, consumers' privacy and right to control personal information would still be abused.

It is too easy to gain access to credit files. Two examples from the Pensinsula Consumer Credit Counseling Service will illustrate the problems. One client was told by a debt collector that she should ask for financial help from her brother "who is pretty well off." The debt collection company had pulled her brother's credit record although he had no responsibility for her bills and had not applied for credit himself. The counseling service reports that businesses that subscribe to the credit reporting agency can buy or lease terminals that give them access to credit files on site. The business can then pull up information on consumers simply using the name, address, and/or social security number. Although the business with the terminal is supposed to allow access only by trained staff, anyone can find out anything through these terminals. Information on the file can be changed by someone at a business' terminal, making mistakes hard to track down. With widespread deployment of credit reporting company

terminals, it becomes even harder for these companies to safeguard the privacy of consumers' credit information for illegal access.

- The use by credit reporting companies and financial institutions of credit information for marketing purposes.

Credit reporting agencies use the data in their files to compile lists of likely prospects used by directmail and telemarketing companies to sell a wide variety of goods and services. List sales and rentals are common practice and a lucrative line of business. The American Express Company conducted a study of consumers' attitudes about direct mail and telephone marketing and found that 90% do not think that companies disclose enough about their list usage practices, 80% do not think companies should give out personal information to other companies, and over a third think that the federal government should regulate the use of lists. It is unethical for companies to collect information for one purpose and sell it for another without the individual's knowledge or consent. It should also be illegal. Personal financial and medical information should not be a commodity.

It is ironic that consumers' records on video tape rentals is better protected than consumers' credit, medical and insurance records. The federal Video Privacy Protection Act (1988) prevents retailers from disclosing video-rental records without the customers consent or a court order. It also forbids the sale of the records. This same protection should extend to medical and insurance files and to credit report files. The Right to Financial Privacy Act of 1978 while barring federal agencies from rummaging through customers' records in banks does not cover state and local governments or private employers. Laws that should protect the privacy of sensitive personal information are more loophole than protection.

Consumers are bombarded by direct mail advertising and by telemarketers selling everything from rare coins to swampland in Florida. Too often the likely prospect lists come from credit file information. TRW, one of the nation's largest credit-

reporting agencies, went so far as to market a service called the TRW Credentials program to acquire a database to offer to lenders for solicitations. And they charged consumers $35 for the privilege.

- The circumstances under which financial institutions release information pertaining to consumer deposit and loan accounts.

When consumers sign applications for credit cards, they give permission to inquire at their banks for account information. This permission is in the fine print. I seriously doubt whether the majority of credit card applicants know that they have granted this access.

Another practice by banks issuing credit cards causes us concern. Although this may not strictly be a privacy issue, it involves laxity in the identification of consumers that leads to financial harm to unsuspecting people. Since credit card issuers are now prohibited from mailing unsolicited cards, consumers are inundated with direct mail offers for credit cards with preapproved credit limits. This type of marketing is made possible by lists drawn from credit files. To obtain the card and the line of credit, the person named on the application need merely sign and return the form. What happens when the application falls into someone else's hands? The Peninsula Consumer Credit Counseling Service reports several instances where the credit card applications were signed by someone else in the household, the issued card was intercepted, and sizeable debts were incurred, all unknown to the person whose name is being used. In one case, a woman's wages were garnished to pay back a bill owed by her mother through fraudulent misuse of a credit card. The bank involved absolved itself of any responsibility for accepting a credit card application signed by the wrong person. To protect consumers, preapproved credit cards should only be issued if the application is signed using a notarized signature or a guaranteed signature. If banks could not buy lists from credit reporting agencies or other lenders, this type of marketing might wither away.

- The general awareness of the public of the protections provided by existing privacy laws related to credit.

Consumers do not understand their rights under the Fair Credit Reporting Act, although the law has been on the books since 1971. If consumers knew their rights to hear their credit reports and to correct mistakes, we would not have a flourishing trade in credit repair businesses. TRW would not be able to sign up 300,000 people for its TRW Credentials program to pay $35 for something you can get for free under FCRA. I believe that many consumers believe that they are protected from misuse of personal financial information. The balance between consumers' rights to privacy and industry's need for reliable information is threatened by the advances in computers that has occured since Fair Credit Reporting was enacted. President Bush's Special Advisor for Consumer Affairs Bonnie Guiton told a Congressional hearing into the Fair Credit Reporting Act that most consumers don't understand their rights under FCRA or how the credit industry works.

- Other protections needed by consumers to prevent exposure to credit card fraud due to disclosure of identifying information.

As you know, VCCC has been working on the SJR 226 study of basic banking services. We are concerned about the frequent requirement that consumers show a credit card to be allowed to pay with a check. Low income consumers without checking accounts almost never have a credit card. Almost a third of low and moderate income consumers who had checking accounts in a statewide study we conducted this summer answered that they had bank credit cards. It is common practice for a retailer to require that a credit card be shown as identification when a check is written. The practice of writing the credit card number and the expiration date on the proferred check exposes consumers unnecessarily to being defrauded.

The check contains all the information needed to run up charges through telephone sales using credit cards. On one piece of paper that passes through several sets of hands on its way to the bank you have the consumer's name, address, telephone number, social security number or drivers' license number, the number and expiration date of the credit card. The Bankcard Holders of America reports numerous complaints from consumers who have been the victims of fraud using this information, from people using the information to run up $250 bills on 900 telephone numbers, clerks who sell the information to friends, and others whose credit cards have been used. We all know to tear up the carbon paper in the credit card bill. Why bother when clerks write it all down on your check every time you buy something at the deparment store. And this exposure is absolutely unnecessary. It violates the agreement between the retailer and Visa, Mastercard and American Express for retailers to bill through the credit card for returned checks. We have nothing against a retailer asking to see your credit card as a form of identification. There is absolutely no reason to write the information down.

A second form of exposure through too much information is the practice of requiring consumers to write their telephone number and address on the credit card sales slip. Once again, this puts too much information on the same piece of paper. Again, credit card rules do not permit this practice. A retailer is not supposed to turn down a sale if the customer refuses to write his telephone number or address on the slip. But it happens anyway.

Iowa adopted a law two years ago that prohibits merchants from recording the credit card <u>number</u> on a personal check. A new law goes into effect in New York on January 1 that prohibits the practice of recording a telephone number or address on a credit card sales slip. We recommend both of these measures to you in preparing your report for the General Assembly.

SENATE BILL NO. ______

A BILL to amend the Code of Virginia by adding in Chapter 6 of Title 11 a section numbered 11-33.1, relating to the prohibition on the practice of recording credit card numbers on checks, and by amending Section 11-34.

BE IT ENACTED by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 6 of Title 11 a section numbered 11-33.1, as follows:

§ 11-33.1. Provision of credit card number as condition of check cashing or acceptance prohibited; penalties.

A. As used in this section, the term "person" means any individual, corporation, partnership or association.

B. A person shall not as a condition of acceptance of a check, as a means of identification or for any other purpose require that a cardholder presenting a check produce a credit card number for recordation.

C. A person shall not record a credit card number in connection with a sale of goods or services in which a cardholder pays by check, or in connection with the acceptance of a check.

D. Any person aggrieved by a violation of this section shall be entitled to institute an action to recover their actual damages, or $100, whichever is greater, and for injunctive relief against any person that has engaged, is engaged or is about to engage in any act in violation of this section. The proceeding shall be brought in the circuit court of any county or city wherein the person made defendant resides or has a place of business. In the case of any successful proceeding, the

aggrieved party may, in addition to any damages awarded, be awarded reasonable attorney's fees and court costs.

E. This section shall not be construed to place any liability on any employee or agent of a person, where that employee or agent has acted in accordance with the directions of his employer. It shall also not be construed to prohibit a person from requesting a purchaser to display a credit card as indicia of credit worthiness or financial responsibility, or as additional identification, but the only information concerning a credit card which may be recorded is the type of credit card so displayed, the issuer of the credit card, and the expiration date of the card. This section does not require acceptance of a check whether or not a credit card is presented.

2. That § 11-34 of Chapter 6 of Title 11 of the Code of Virginia is amended, as follows:

§ 11-34. Certain cards excepted from chapter. - Except for the provisions of § 11-33.1, the provisions hereof shall not apply to any credit card issued by any telephone company that is subject to supervision or regulation by the Virginia State Corporation Commission.

Illinois Banking Act

sum of the fixed fee and the variable fee so determined shall be remitted at the time of each of the quarterly reports of condition provided for in Section 47. In case more than one examination of any bank is deemed by the Commissioner to be necessary in any calendar year, and is performed at his direction, the Commissioner may assess a reasonable additional fee to recover the cost of such additional examination, but any such additional fee shall not exceed the sum of the remittances from the 4 consecutive quarterly reports of condition immediately preceding the date of such additional examination.";

and included the power to impose civil penalties for failure to comply with reporting requirements.

P.A. 85-204, in subpar. (3)(a), substituted "fiscal year" for "calendar year"; and made other nonsubstantive changes.

P.A. 85-211, in subpar. (3)(a), substituted "fiscal year" for "calendar year"; deleted subpar. (4) which read:

"The Commissioner may furnish to the Board of Governors of the Federal Reserve System or the federal reserve bank of the federal reserve district in which the State bank, which is a member of the Federal Reserve System, is located, or to any official or examiner thereof duly accredited for the purpose, a copy or copies of any or all examinations of such bank and of any or all reports made by any such bank. He may give access to and disclose to the Board or federal reserve bank, or any official or examiner thereof duly accredited for the purpose, any and all information possessed by the Commissioner with reference to the condition or affairs of any such State bank. Nothing contained in this Act shall be construed to limit the obligation of any member State bank to comply with the requirements relative to examinations and reports of the Federal Reserve Act and of the Board of Governors of the Federal Reserve System or the federal reserve bank of the federal reserve district in which the bank is located, nor to limit in any way the powers of the Commissioner with reference to examinations and reports.";

redesignated former subpar. (5) as subpar. (4) and deleted from the beginning thereof:

"The Commissioner may furnish to the United States, or any agency thereof which shall have insured a bank's deposits, in whole or in part, or to any official or examiner thereof duly accredited for the purpose, a copy or copies of any or all examinations of such bank and of any or all reports made by such bank. He may also give access to and disclose to the United States or such an agency thereof, or any official or examiner thereof duly accredited for the purpose, any and all information possessed by the Commissioner with reference to the condition or affairs of any such insured bank.";

gave the Commissioner power to conduct hearings; in subpar. (7), preceding "The Board shall make a determination", deleted "At the conclusion of such hearing"; and made other nonsubstantive changes.

P.A. 85-983 added the subparagraph relating to credit cards.

P.A. 85-983, § 4, certified Dec. 18, 1987, provided that the Act was to take effect July 1, 1988. P.A. 85-1028, § 2, deferred such effective date to Jan. 1, 1989.

P.A. 85-1209, the First 1988 Revisory Act, provides in Art. II, for the nonsubstantive revision or renumbering or repeal of certain sections of Acts of the 85th General Assembly through P.A. 85-1014, and corrects errors, revises cross-references and deletes obsolete text in such sections. For provisions of Art. I, § 1-1, relating to intent and supersedure and Art. IV, § 4-1, relating to effective dates and acceleration of Acts with later effective dates or extension or revival of repealed Acts, see Historical Notes following ch. 5, ¶ 804.

P.A. 85-1379, in addition to incorporating changes made by P.A. 85-1209, in the paragraph relating to the special educational fee, inserted "for the preceding quarter".

P.A. 85-1402 made combining revisory changes.

P.A. 85-1440, Art. II, § 2-54, indicated by reference the Public Act which may be relied on to contain the complete current text of paragraphs affected by multiple actions in P.A. 85-1015 through P.A. 85-1427. For provisions of Art. I, § 1-1, relating to intent and supersedure and Art. IV, § 4-1, relating to effective dates and acceleration of Acts with later effective dates or extension or revival of repealed Acts, see Historical Notes following ch. 8, ¶ 37-23.

360. Customer financial records—Confidentiality

§ 48.1. Customer Financial Records; Confidentiality. (a) For the purpose of this Section, the term "financial records" means any original, any copy, or any summary of (1) a document granting signature authority over a deposit or account, (2) a statement, ledger card or other record on any deposit or account, which shows each transaction in or with respect to that account, (3) a check, draft or money order drawn on a bank or issued and payable by a bank, or (4) any other item containing information pertaining to any relationship established in the ordinary course of a bank's business between a bank and its customer.

(b) This Section does not prohibit:

(1) The preparation, examination, handling or maintenance of any financial records by any officer, employee or agent of a bank having custody of such records, or the examination of such records by a certified public accountant engaged by the bank to perform an independent audit.

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gave the Commissioner power to conduct hearings; in subpar. (7), preceding "The Board shall make a determination", deleted "At the conclusion of such hearing"; and made other nonsubstantive changes.

P.A. 85-983 added the subparagraph relating to credit cards.

P.A. 85-983, § 4, certified Dec. 18, 1987, provided that the Act was to take effect July 1, 1988. P.A. 85-1028, § 2, deferred such effective date to Jan. 1, 1989.

P.A. 85-1209, the First 1988 Revisory Act, provides in Art. II, for the nonsubstantive revision or renumbering or repeal of certain sections of Acts of the 85th General Assembly through P.A. 85-1014, and corrects errors, revises cross-references and deletes obsolete text in such sections. For provisions of Art. I, § 1-1, relating to intent and supersedure and Art. IV, § 4-1, relating to effective dates and acceleration of Acts with later effective dates or extension or revival of repealed Acts, see Historical Notes following ch. 5, ¶ 804.

P.A. 85-1379, in addition to incorporating changes made by P.A. 85-1209, in the paragraph relating to the special educational fee, inserted "for the preceding quarter".

P.A. 85-1402 made combining revisory changes.

P.A. 85-1440, Art. II, § 2-54, indicated by reference the Public Act which may be relied on to contain the complete current text of paragraphs affected by multiple actions in P.A. 85-1015 through P.A. 85-1427. For provisions of Art. I, § 1-1, relating to intent and supersedure and Art. IV, § 4-1, relating to effective dates and acceleration of Acts with later effective dates or extension or revival of repealed Acts, see Historical Notes following ch. 8, ¶ 37-23.

records—Confidentiality

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: prohibit:

nination, handling or maintenance of any financial records r agent of a bank having custody of such records, or the s by a certified public accountant engaged by the bank to idit.

(2) The examination of any financial records by, or the furnishing of financial records by a bank to, any officer, employee or agent of the Commissioner of Banks and Trust Companies, the Comptroller of the Currency, Federal Reserve Board or Federal Deposit Insurance Corporation for use solely in the exercise of his duties as an officer, employee or agent.

(3) The publication of data furnished from financial records relating to customers where the data cannot be identified to any particular customer or account.

(4) The making of reports or returns required under Chapter 61 of the Internal Revenue Code of 1954.[1]

(5) Furnishing information concerning the dishonor of any negotiable instrument permitted to be disclosed under the Uniform Commercial Code.[2]

(6) The exchange in the regular course of business of credit information between a bank and other banks or financial institutions or commercial enterprises, directly or through a consumer reporting agency.

(7) The furnishing of information to the appropriate law enforcement authorities where the bank reasonably believes it has been the victim of a crime.

(8) The furnishing of information pursuant to the Uniform Disposition of Unclaimed Property Act, as amended.[3]

(9) The furnishing of information pursuant to the Illinois Income Tax Act, as amended,[4] and pursuant to "An Act to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases, and to provide for the collection of the same, and repealing certain Acts therein named", as amended.[5]

(10) The furnishing of information pursuant to the federal "Currency and Foreign Transactions Reporting Act", as amended, Title 31, United States Code, Section 1051 et seq.

(11) The furnishing of information pursuant to any other statute which by its terms or by regulations promulgated thereunder requires the disclosure of financial records other than by subpoena, summons, warrant or court order.

(c) A bank may not disclose to any person, except to the customer or his duly authorized agent, any financial records relating to that customer of that bank unless:

(1) The customer has authorized disclosure to the person;

(2) The financial records are disclosed in response to a lawful subpoena, summons, warrant or court order which meets the requirements of subparagraph (d) of this Section; or

(3) The bank is attempting to collect an obligation owed to the bank and the bank complies with the provisions of Section 2I of the Consumer Fraud and Deceptive Business Practices Act.[6]

(d) A bank shall disclose financial records under subparagraph (c) (2) of this Section pursuant to a lawful subpoena, summons, warrant or court order only after the bank mails a copy of the subpoena, summons, warrant or court order to the person establishing the relationship with the bank, if living, and, otherwise his personal representative, if known, at his last known address by first class mail, postage prepaid, unless the bank is specifically prohibited from notifying such person by order of court.

(e) (1) Any officer or employee of a bank who knowingly and willfully furnishes financial records in violation of this Section is guilty of a business offense, and upon conviction shall be fined not more than $1,000.

(2) Any person who knowingly and willfully induces or attempts to induce any officer or employee of a bank to disclose financial records in violation of this Section is guilty of a business offense, and upon conviction shall be fined not more than $1,000.

(f) A bank shall be reimbursed for costs which are reasonably necessary and which have been directly incurred in searching for, reproducing or transporting books, papers, records or other data of a customer required or requested to be produced pursuant to a lawful subpoena, summons, warrant or court order. The

Commissioner shall determine the rates and conditions under which payment ma made.

Amended by P.A. 82-490, Art. I, § 2, eff. Sept. 16, 1981; P.A. 85-1379, § 1, eff. 1, 1988.

[1] 26 U.S.C.A. § 6001 et seq.
[2] Chapter 26, ¶ 1-101 et seq.
[3] Chapter 141, ¶ 101 et seq.
[4] Chapter 120, ¶ 1-101 et seq.
[5] Chapter 120, ¶ 375 et seq. (repealed).
[6] Chapter 121½, ¶ 2621.

Historical Note

P.A. 82-490, Art. I, added subd. (f).

P.A. 85-1379, in the list of exceptions for disclosure, allowed disclosure where the bank is attempting to collect an obligation owed and the bank complies with the Consumer Fraud and Deceptive Business Practices Act.

Law Review Commentaries

Financial institution disclosure of customer records: A new duty of confidentiality? 1981, 69 Ill.Bar J. 620.

Notes of Decisions

Construction and application
Subpoenas 2

1. Construction and application

Notice provision of the Banking Act (this paragraph) only tries to set out the obligations which a bank owes to its bank customers, but does not attempt to regulate governmental intrusion into a customer's confidential bank records and is not authority for suppressing a grand jury's subpoena for those records. People v. Jackson, App. 1 Dist. 1983, 72 Ill.Dec. 153, 116 Ill.App.3d 430, 452 N.E.2d 85.

Article 1, § 6 of the Constitution securing persons against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means offers protection for the reasonable expectation of privacy which the citizens of Illinois have in their bank records. Id.

The protection offered an individual with a right to privacy in bank records under the Illinois Constitution (Const. Art. 1, § 6) is only against unreasonable searches and seizures and is not against reasonable ones. Id.

2. Subpoenas

Intrusion into defendant's bank records through issuance of a grand jury subpoena on defendant's bank was reasonable and was not violative of defendant's right to privacy in those records under Illinois Constitution in that records were relevant to grand jury's investigation into defendant's alleged unlawful receipt of employment security benefits while gainfully employed and, though defendant asserted that subpoena was overly broad, she presented no evidence to show wh was excessive and why certain documents sh have been excluded. People v. Jackson, Ap Dist. 1983, 72 Ill.Dec. 153, 116 Ill.App.3d 452 N.E.2d 85.

360.1. Prohibition against certain activities

§ 48.2. Prohibition against certain activities. (a) Any bank, subsidiary, affiliate, officer or employee of such bank subject to this Act shall not:

(1) grant any loan on the prior condition, agreement or understanding that the borrower contract with any specific person or organization for the following:

(A) insurance services of an agent or broker;

(B) legal services rendered to the borrower;

(C) services of a real estate agent or broker; or

(D) real estate or property management services;

(2) require that insurance services, legal services, real estate services or property management services be placed with any subsidiary, affiliate, officer or employee of any bank.

(b) Any bank or subsidiary, affiliate, employee, officer, banking house, branch bank, branch office, additional office or agency of such bank shall comply with Section 499.1 of the "Illinois Insurance Code".[1]

(c) Any officer or employee of a bank or its affiliates or subsidiaries who violates this Section is guilty of a business offense, and upon conviction shall be fined not more than $1,000. This Section does not create a private cause of action for civil damages.