REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

Credit Card Fraud

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 22

COMMONWEALTH OF VIRGINIA
RICHMOND
1991

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Report of the
Joint Subcommittee Studying
Credit Card Fraud (SJR 131)
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January 1, 1991

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

AUTHORITY FOR STUDY

Senate Joint Resolution No. 131 was introduced during the 1990 Session of the General Assembly by Senator Moody E. Stallings of Virginia Beach, upon request of the Attorney General. The resolution called for an eleven-member joint subcommittee to "...determine whether Virginia's statutes relating to credit card fraud adequately provide courts and prosecutors with the [necessary] tools..." to deter and effectively and efficiently prosecute the growing credit card fraud problem. Annual losses of between $100 to $300 million suffered by financial institutions as a result of fraudulent telemarketing schemes are cited in the resolution as evidence of the extent of the problem. The increasing use of fraudulent applications and brokering and factoring schemes is also mentioned.

The membership of the joint subcommittee was appointed as follows: the Senate Committee on Privileges and Elections appointed Senators Moody E. Stallings, Thomas J. Michie, Jr., Joseph B. Benedetti and Mark L. Earley from the Senate Committee for Courts of Justice; the Speaker of the House of Delegates appointed James F. Almand, W. Roscoe Reynolds, Glenn R. Croshaw, Joseph P. Johnson, Jr. and Thomas G. Baker, Jr., from the House Committee for Courts of Justice; the Governor appointed Thomas G. Rosenthal of Richmond from the public-at-large. The resolution also designated the Attorney General, or her representative, as a member of the subcommittee. The Attorney General designated Stephen D. Rosenthal, Deputy Attorney General for the Public Safety and Economic Development Division.

The subcommittee held two meetings in Richmond. Additionally, staff for the subcommittee met with representatives of the Virginia Retail Merchants Association, the Virginia Bankers Association, including a fraud investigator for a Richmond bank, the Commonwealth's Attorneys Services and Training Council and the Consumer Fraud and Criminal Divisions of the Office of the Attorney General. The subcommittee is grateful for the information and invaluable assistance of Walter Felton, Sumpter Priddy, Leton Harding, Mike O'Quinn, Bill Coleman, David Irvin and Mark Bowles.

BACKGROUND

Since World War II credit cards have replaced cash as the payment method of choice for many individuals and businesses. This growth in use has led to a growth in abuse, although it is generally believed that losses resulting

from fraudulent or other improper use of credit cards is minimal in relation to the dollar volume of credits and payments made in this manner.[1]

In recognition of this growing use and potential for abuse, the General Assembly in 1968 enacted credit card-specific criminal statutes. Chapter 480 of the 1968 Acts of Assembly specifically covered credit card theft, credit card forgery, fraudulent use of credit cards and many ancillary procedural and evidentiary issues. Most of these statutes have not been significantly amended since their enactment.

SUMMARY OF RECOMMENDATIONS

1. The current statute governing false statements to obtain property or credit statute should be clarified and amended to (i) stress that the false statement must be material, (ii) include conspiring to make a false statement as punishable activity, (iii) increase the penalty for simply making the false statement from a Class 4 to a Class 2 misdemeanor and from a Class 4 to a Class 1 misdemeanor if value of less than $200 is actually obtained.

2. A new statute should be added to deal exclusively with applications for credit cards and should authorize a lesser penalty where a false statement is made in response to a written solicitation to apply for credit.

3. The definitional section of the article governing credit card offenses should be amended to include "acquirer" to reflect the destinction between the entity which initially issued a credit card to a cardholder and the entity which provides the authority and the payment mechanism for merchants to accept credit cards.

4. The general credit card fraud statute should be clarified and amended to cover false representations and remittances made by a merchant to an issuer.

5. A new offense of conspiracy to commit any credit card fraud, whether a felony or misdemeanor, should be enacted and made punishable as a felony to allow for extradition.

6. A new offense should be created proscribing factoring and clearly distinguishing between simple factoring and factoring with intent to defraud.

7. A new venue statute is added to facilitate prosecution of interstate fraudulent credit card schemes and avoid confusion in cross-jurisdictional intrastate cases.

8. The National Conference of Commissioners on Uniform State Laws should be encouraged to consider promulgation of a uniform act to deter interstate telemarketing schemes.

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[1]Nelson and Andover, Credit Manual of Commercial Laws, 1986, 12-1.

DISCUSSION OF ISSUES

Over the past few years, the credit card industry has sustained major losses due to fraudulent schemes which did not exist or were not widely used when Virginia's credit card laws were enacted. As a result of a 1988 study by the Office of the Attorney General and the State Corporation Commission into credit card fraud and its effects on individual privacy, the Attorney General identified three significant problems facing the law enforcement community when seeking to apply current Virginia law to these new forms of fraud. These schemes involve credit card "brokering" or "factoring," telemarketing fraud and fraudulent applications for credit cards. The Attorney General also determined that, for prosecutors, the biggest problem which arises with each of these schemes is establishing venue.

Venue

Current Conditions

An effective credit card scheme may involve a fraudulent application for a card mailed from New York to a Virginia bank, with the card being used in Washington, D.C., and the bills sent to a post office box in Delaware. In those rare instances where all criminal activity occurs within Virginia, it would rarely, if ever, take place in the same jurisdiction. Much confusion exists over where "...the offense was committed"[2] for purposes of establishing venue. The result is that very few cases have been prosecuted in Virginia.

In interstate cases, the federal government does not always initiate prosecutions. A federal prosecution will be initiated only if fifteen or more credit cards were illegally used in the scheme or if the monetary loss to any individual is at least $1,000.[3] The complex nature of these schemes makes it difficult to establish just how many cards or card numbers were obtained or used illegally. Additionally, many individuals who suffer large losses are too embarrassed to come forward.

Conclusions and Recommendations

Because the uncertainty over venue may be creating a large opening for criminal activity in Virginia, the subcommittee recommends that a separate venue statute be added to the article governing credit card frauds. Section 18.2-198.1[4] is drafted as a specific exception to the general venue provisions of § 19.2-244. The new section will allow prosecutors to reach fraudulent operations set up in other states, as well as those located in other jurisdictions within the Commonwealth. Which cases to prosecute will, of course, remain within the discretion of the Commonwealth's attorney. The subcommittee does not anticipate a rash of prosecutions as a result of this change. However, it is believed that this will remove an artificial barrier and at least free the prosecutors to make their best case. Out-of-state operations will continue to be a problem for Virginia consumers. But the

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[2]Section 19.2-244, Code of Virginia.

[3]Testimony of Special Agent Ron Shell, U.S. Secret Service to joint subcommittee, September 12, 1990.

[4]Page 7, Appendix B.

expanded venue provision, coupled with effective use of extradition in felony cases, will give prosecutors and law enforcement a much needed tool. A venue statute similar in purpose to the subcommittee's recommendation has been adopted in North Carolina, specifically for use in the credit card area.[5]

Credit Card Brokering/Factoring

Current Conditions

Credit card brokering or factoring occurs when a merchant who has a contract with an "acquirer" to accept credit card payments submits credit card invoices to the acquirer from another merchant, representing them to be his own sales. An "acquirer" is the business organization or financial institution which has authorized a merchant to accept payment by credit card. The other merchant may have been denied credit card authorization from the acquirer because of previous fraudulent activities or billing irregularities or the merchant may not want or may be unable to afford the fee required to obtain the authority. Common practice in the industry is to base the fee on the volume of sales, with the higher volume merchants paying the lower fee. The submitting merchant may not intend to defraud; he may only wish to help a friend who can't get authority or boost his apparent sales volume to obtain a discount from the acquirer.

In a factoring scheme, the submitting merchant may receive a percentage of payments collected or keep payments as satisfaction of a loan to the second merchant. Thus, factoring may foster loan-sharking operations or give a dishonest merchant the opportunity to launder money and/or defraud an acquirer, issuer and/or cardholder. The submitting merchant, whether he intends to defraud or not, is civilly liable for any loss caused by false invoices. However, the criminal liability of both merchants is clouded in Virginia; often there is insufficient evidence to prove the submitting merchant's intent to defraud. This is especially true in schemes involving three or more merchants who send false invoices to the second merchant, who then passes them on to the submitting merchant.

In one case investigated recently by a Virginia bank, a merchant in Europe sent false invoices to a merchant in Chesterfield County. These were forwarded to a merchant in Richmond who submitted them to the Virginia bank for payment. When the cardholders demanded a chargeback because they had not made or authorized the purchase, the bank took the loss. The Commonwealth's attorney's offices in Richmond and in Chesterfield refused to prosecute because of a lack of venue and inability to prove intent by the Virginia merchants. The loss to Virginia institutions in this single scheme was $100,000.

Conclusions and Recommendations

The subcommittee determined that there was no legitimate reason for merchants to engage in factoring. While smaller merchants might like to take advantage of the volume discounts and submit accurate vouchers for actual sales, a fraud has nonetheless occurred. The acquirer is now dealing with someone he never intended to deal with and is providing the authorized

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[5]Section 14-113.13(e), General Statutes of North Carolina.

merchant with a discount to which is not entitled. The subcommittee is also concerned that innocent consumers will be hurt. Credit card issuers are now offering buyer protection or purchase insurance to cardholders. However, this type of protection would not apply to merchandise purchased from a merchant who had no authority to accept the credit card for payment.

For these reasons, the subcommittee believes factoring should be punishable as a criminal offense. However, a clear distinction should be drawn between factoring with intent to defraud and simple factoring without authority. See § 18.2-195.1 of the draft legislation, Appendix B, page 4. In order to define the new offense, a definition of "acquirer" is added to the definitional section of Article 6 of Chapter 6 of Title 18.2 (§ 18.2-191). The definition is identical to the definition enacted in Florida[6] and North Carolina[7] and is accepted by the banking and retail communities. A bank, for example, may be both an "issuer" (a financial institution which supplies credit cards to individuals) and an "acquirer" (a financial institution which agrees to honor a merchants credit card transactions). By adding the definition of acquirer to the credit card fraud statutes, each statute within the article may now clearly differentiate between the two functions.

Subsection A of the new section applies to the merchant who has authority to accept credit card transactions but submits records of sales he did not make. If this merchant submits the sales records with the intent to defraud either the issuer, the acquirer or the cardholder, he would be guilty of a felony. For example, if the authorized merchant submits a voucher for a sale made by an unauthorized merchant knowing the stated amount to be greater than the total actual sale, he is guilty of a Class 5 felony. If he submits an accurate record of an actual sale made but made by another merchant without the acquirer's consent, he is guilty of a Class 1 misdemeanor. The prosecutor need not prove any monetary loss in either case.

Subsection B covers the merchant who does not have authority to accept credit cards. If he is able to convince another merchant to process his credit card sales transactions, the unauthorized merchant is also guilty of a crime. The subcommittee believes that each merchant involved in a factoring scheme should be similarly treated since each is an active participant in the offense. This is the approach taken in the Florida statute[8] used as a model. However, the Florida statute makes no distinction in its penalty between factoring with intent to defraud and simple factoring. The Attorney General suggested to the subcommittee that such a distinction was appropriate. While the subcommittee accepted this suggestion, the members rejected another to make simple factoring punishable as a Class 6 felony.

A majority of the subcommittee believes that the penalty for a Class 1 misdemeanor is appropriate where no intent to defraud can be established. With one dissent,* the subcommittee recommends that the General Assembly adopt the amendment to § 18.2-191 and create a new offense of criminal factoring. The subcommittee does not intend for the criminal offense to alter the civil

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[6]Section 817.58 Florida Statutes.

[7]Section 14-113.3, General Statutes of North Carolina.

[8]Section 817.62(3)(a) and (b), Florida Statutes.

liability which either merchant would have to the issuer, the acquirer or the cardholder.

Telemarketing Fraud

Current Conditions

Nationally, fifteen to twenty percent of all credit card transactions are through telemarketing operations. Mastercard and Visa estimate that telemarketing fraud causes a $100 to $300 million loss to financial institutions each year. The Federal Trade Commission estimates that losses exceed $1 billion each year.[9] The Virginia Division of Consumer Affairs receives numerous complaints, most of which involve telemarketing fraud. During the last two years approximately 1,300 formal complaints were made and the problem is growing.[10]

Financial institutions have observed a dramatic increase in "boiler room" operations. Cardholders call telephone numbers in response to solicitations or printed advertisements. The telephone numbers are assigned to lines operating in one location (the "boiler room"). A credit card number is accepted for a purchase. The boiler room takes the credit card number (and may or may not send the product purchased) and submits false transaction records or inflated amounts to the operation's contract bank (the acquirer), which honors the payment request and forwards it through the banking system to the issuing bank. The boiler room may be set up for the sole purpose of obtaining credit card numbers. Once obtained, the numbers will be used or sold, without the cardholders' consent. By the time the fraud is discovered, the operation has closed down and relocated to begin another similar scheme.

Most telemarketing operations are directed to consumers outside of the state where the boiler room is located. Since all criminal activity occurs outside the Commonwealth, Virginia statutes do not allow for a remedy in Virginia, although Virginia banks and cardholders are the actual victims. As noted above, venue for a criminal prosecution lies "...in the county or city in which the offense was committed."[11] The proposed modifications to the venue statute discussed above, will alleviate this problem as applied to telemarketing and other credit card frauds.

Conclusions and Recommendations

The subcommittee discovered several additional "holes" in current Virginia law when applied to telemarketing and other fraudulent schemes. A minor modification to our current credit card fraud statute[12] will address the problem of boiler rooms established to obtain credit card numbers for

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[9]"Fraud Schemes Huge, say Visa, Mastercard," Richmond Times Dispatch, July 6, 1990.

[10]Testimony of Deborah G. Blakemore, Division of Consumer Affairs, before the joint subcommittee, September 12, 1990.

[11]Section 19.2-244, Code of Virginia.

[12]Section 18.2-195, Code of Virginia.

future, unauthorized use. The subcommittee believes the statute proscribes that type of activity, but found that some confusion existed over interpretation of the statute.[13] The amendment to subsection (1)(b) of § 18.2-195 clarifies that a person who has legitimately obtained a credit card or credit card number but then uses or sells it without the consent of the cardholder, is guilty of credit card fraud. This amendment is not related exclusively to telemarketing fraud and covers persons who obtain the number as a result of a face-to-face transaction between the merchant and the consumer.

Subdivision (2)(b) of § 18.2-195 currently covers the merchant who submits a payment voucher to the issuer for a sale which he made, but who then, with intent to defraud the issuer or the cardholder, fails to furnish the goods or services sold. The statute also covers the situation involving a telephone order for merchandise which is never received; the customer's account, however, is charged and the merchant (or telemarketer) is nowhere to be found. The cardholder who scrutinizes his bill and identifies the erroneous charge in a timely manner can have the charge reversed. Because payment has already been made to the merchant, the issuing bank bears the loss.

The subcommittee believes amendments to this subdivision are needed to ensure that all participants in a telemarketing scheme to commit fraud in this manner are covered. By addition of the phrase "causes to be represented" the statute will cover the person who set up the phone bank or hired the telephone operator, provided the person has the requisite intent to defraud, and not just the person who remits the false sales record. The subcommittee also recommends that this subsection be amended in recognition of modern commercial practices. The statute currently refers only to false representations made in writing. Many payment systems are now automated, so false payment requests made by "any means" should be covered.

The subcommittee found that a favorite tactic of fraudulent telemarketers was not covered in Virginia's fraud statute. A consumer may order and receive a five dollar woolen cap; the merchant or telemarketer requests payment from the issuer or acquirer for a $500 Stetson hat. The addition of subdivision (c) to subsection (2) of § 18.2-195 clearly addresses this type of fraud.

New subsection 4 will most directly affect the growing telemarketing fraud problem. Telemarketers utilize various fraudulent tactics, but do so through the concerted efforts of two or more people. Virginia law does not allow for conviction of conspiracy unless the target offense is a felony.[14] Subsection 4 creates a new conspiracy offense, which includes conspiracy to commit a credit card fraud which is punishable as a misdemeanor. The subcommittee believes that this deviation from general conspiracy law is justified by the fact that this type of conspiracy is equivalent to organized crime activity and facilitates other criminal activity (e.g., money laundering in support of drug offenses). More important, however, is the need to make

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[13]See the language of the current statute at page 4, lines 9-12 of Appendix B.

[14]Section 18.2-22, Code of Virginia.

the extradition process available to effectively combat out-of-state telemarketers. Extradition is not available for misdemeanors.[15]

Even with these tools, Virginia will remain at a disadvantage unless all the states act. Recognizing the need for concerted action, Congress is considering legislation requiring the Federal Trade Commission to "prescribe rules regarding telemarketing activities" and to prohibit "fraudulent telemarketing acts or practices." Senate Bill 2494 has been pending on the Senate Calendar since July of 1990. A similar house measure[16] was discharged from committee in October 1989, but the committee report has not been filed and the bill has not been placed on the House Calendar. It does not appear that federal action is imminent.

In 1986, California enacted the Telephonic Sellers Registration Act, which requires the registration of virtually all sellers who utilize telephone calls, whether or not initiated by the seller, and offer gifts or prizes or sell offices supplies. All registrants must disclose the names, addresses and driver's license numbers of each principal; each business location; each telephone number used; the names, home addresses and telephone numbers of all salespersons; and whether any principal had filed for bankruptcy or had entered against him any civil or criminal judgment involving fraud, theft, dishonesty, or misrepresentation, or is subject to any injunction initiated by any governmental agency. Particular types of sellers must submit additional information. For example, a gift or prize offeror is required to state the basis for valuation, the price it paid to the supplier, and the odds of receiving each. The Act also mandates disclosures to those solicited.

Any seller that fails to register, provides incorrect and incomplete information, fails to provide periodic addenda, continues marketing after the one-year registration has lapsed without seeking renewal, fails to provide the required disclosures to consumers, or otherwise complies but engages in schemes of deception can be criminally prosecuted. The lack of registration also provides probable cause for a search warrant, often producing enough information to support a prosecution with little or no additional evidence.

In 1988 alone, there were 220 state convictions, most based upon nonregistrations, brought by county district attorneys.[17] Many telemarketers are located out-of-state, however, and even with legislation such as this remain effectively beyond the reach of state control.

The subcommittee believes that adoption of a uniform registration act by all the states should be considered. Therefore, the subcommittee recommends that the 1991 General Assembly adopt a resolution asking the National Conference of Commissioners on Uniform State Laws to promulgate a uniform registration act for consideration by the states. See Appendix C.

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[15]Article IV, § 2 of the Constitution of the United States and the Uniform Criminal Extradition Act, e.g., § 19.2-86.

[16]H.R. 1354.

[17]Testimony of Jerry Smilowitz, Deputy Attorney General for Los Angeles to members of the Commerce, Consumer and Monetary Affairs Subcommittee of the Committee on Government Operations (California), July 11, 1990.

Fraudulent Application

Current Conditions

Groups of individuals usually work a fraudulent application scheme. The groups are transient and have organized "safe houses" and access to numerous sources of false identifications. The group obtains postal box service and telephone services and then sends numerous applications to credit card issuers throughout the country, listing the postal box service as the home address and the telephone numbers as work and home phone numbers for the applicants. The scheme is perfected in one of two ways.

Actual information on a real individual may be supplied to the issuer. This information is obtained from employees of banks, car dealerships or credit bureaus, for example, who are connected to the scheme. When the credit card issuer attempts to confirm the information supplied, it appears that the applicant is financially sound and has an established credit record. The alternative approach involves totally false information supplied in the application. When the issuer discovers that no credit history exists, calls are made to confirm employment and residence. Members of the group involved in the scheme are assigned to the telephones and represent themselves as employers or family members and provide employment and salary confirmation or residence information. When issued, the cards are mailed to the post office box service address. As many as twenty cards per day may be received. The credit limit on each card averages from $1,000 to $3,000.

A small purchase is usually made and paid for in the first billing period. This convinces the issuer and law enforcement that subsequent activity on the card is a civil problem, as opposed to a criminal act, i.e., a breach of the cardholder's obligation to make timely payments, rather than intentional fraud.

Eventually, the cards obtained by these methods are used at banks and money machines for cash advances to the full credit limit of the card. As soon as these cash withdrawals are completed, the group or individuals in the group move to a "safe house" in another area of the country, where they repeat the scheme using different identifying information and possibly different credit card issuers. A well-organized group can net more than $100,000 in less than two months.

In Virginia, false pretenses or false application for credit[18] has not been used as a prosecutorial remedy for this offense. False application for credit has been interpreted as relating to bank loans and salary or wage information. The specific provisions in the Code of Virginia defining credit card offenses do not include any prohibitions on the activities described above. Additionally, where payment is made, the "offense" is viewed as civil in nature.

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[18]Section 18.2-186, Code of Virginia.

Conclusions and Recommendations

The subcommittee concluded that § 18.2-186 could be construed to apply to credit cards but the statute is confusing. The subcommittee recommends that the statute be clarified to avoid further confusion and that a separate credit card-specific statute be adopted.

The existing fraudulent application statute has been revised to clarify its intended coverage. Subsection A specifies that making a loan application, for example, with a materially false statement intended to facilitate approval of the loan (i.e., with "intent that it shall be relied upon") is a crime; the applicant need not receive the loan or credit. The substantive offense has been modified by the subcommittee to include conspiracy to make the application. Again, the subcommittee felt this was needed because Virginia law does not recognize conspiracy to commit a misdemeanor. It allows for prosecution of all actors in a fraudulent application scheme including, for example, the phony employer who confirms a phony employment history and salary for the applicant.

The offense described in subsection B requires knowledge of the false statement, an intent to defraud, receipt of the loan or credit and a failure to pay. A person who knows that a false statement has been made by another to obtain a joint loan may avoid criminal prosecution by disclosing the truth or by making payment.

The subcommittee believes that intent to defraud is what is meant by the phrase "...procures with like intent" found in the current statute. It is somewhat confusing, however, since the only prior reference is to intent that "...[the false application] be relied upon...." The change found on page 2, line 6 of Appendix B eliminates the confusion.

For purposes of applying the penalty provision, the word "procured," page 2, line 12, has been changed to "obtained" to clarify that the dollar amount refers to the amount which the defendant failed to pay, rather than the amount of credit, property or money made available. A defendant who borrows $199 on $5,000 line of credit, obtained by a false application, would be guilty of a misdemeanor.

The subcommittee felt the penalties prescribed were not severe enough. The subcommittee recommends that the penalty for making, causing or conspiring to make a false application be increased from a Class 4 misdemeanor (maximum fine of $250) to a Class 2 misdemeanor (maximum fine of $1,000 and/or the possibility of up to six months in jail). The actual penalty imposed will reflect the severity of the offense committed, but the subcommittee felt that in cases involving applications for large, multi-million dollar loans, for example, a $250 fine was much too low. Greater latitude is needed if the penalty is to appropriately deter and punish.

The penalty for obtaining a loan on the basis of a fraudulent application and failing to pay, where the value obtained is less than $200, is similarly increased from a Class 4 to a Class 1 misdemeanor (a maximum $2,500 fine and/or up to twelve months in jail). This parallels the punishment for petit larceny.

New § 18.2-195.2 covers credit cards only. The statute draws heavily from § 18.2-186, with one major distinction. The penalty for making a false application is reduced to a Class 4 misdemeanor if the issuer suffers no loss in those cases where the issuer solicited the application. The subcommittee believes that the penalties must differentiate between credit cards and other forms of credit in this regard. Credit card issuers engage in practices involving mass mailings, inviting the recipient to apply for a credit card and, in many instances, providing a "pre-approved" line of credit. The issuer makes a business decision to use this marketing strategy based upon an evaluation and acceptance of the incidental loss exposure. Public policy does not demand that the criminal law deal as harshly with those who take advantage of a situation not of their making, particularly where no monetary loss is incurred and the opportunity is created by the "victim" after assessing the relative risks.

Miscellaneous

The 1990 General Assembly, on recommendation of the Attorney General, approved legislation prohibiting merchants from recording the purchaser's credit card number on a check presented in payment.[19] Supporters of the bill successfully argued that (i) the merchant had no need for this information since the credit card was not, and could not be, used to guarantee payment of the check and (ii) because a check includes identifying information such as name, address, telephone number, etc., and passes through so many hands during the payment process, the security of the credit card number is severely compromised.

The subcommittee was advised that New York and California recently enacted legislation prohibiting merchants from recording identifying information on charge card receipts. The rationale for this type of legislation is the same. The subcommittee concluded that the merchant had no need for this type information. Merchants are now able to electronically obtain prior approval from the issuer for a purchase. A merchant who fails to do so has made a business decision to assume the risk that the issuer will deny payment.

It was felt that "civil fines," as authorized in the New York statute,[20] were not appropriate. The proscribed conduct does not justify criminal or quasi-criminal penalties and would certainly be a low priority for law enforcement. Furthermore, a majority of the subcommittee felt that private enforcement, by means of a civil action, would be more trouble than it was worth to the cardholder. Because the subcommittee was unable to agree on an appropriate penalty, no recommendation is made on this issue.

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[19]Section 11-33.1, Code of Virginia.

[20]Section 530-a, New York General Business Law, eff. 1-8-90.

Respectfully submitted,

Senator Moody E. Stallings, Jr., Chairman
Delegate James F. Almand, Vice-Chairman
Senator Thomas J. Michie, Jr.
Senator Joseph B. Benedetti
Senator Mark L. Earley
Delegate W. Roscoe Reynolds
Delegate Glenn R. Croshaw
Delegate Joseph P. Johnson, Jr. *
Delegate Thomas G. Baker, Jr.
Stephen D. Rosenthal
Thomas G. Rosenthal

* Delegate Johnson dissents from the portion of the report which recommends legislation proscribing factoring because he believes the statute is unnecessary.

Appendices

LD4179345

SENATE JOINT RESOLUTION NO. 131

Offered January 23, 1990

Establishing a joint subcommittee to study credit card fraud.

Patrons--Stallings, Gray, DuVal, Fears, Saslaw and Holland, R.J.

Referred to the Committee on Rules

WHEREAS, over the past several years the credit card industry has been sustaining increasing losses due to fraudulent credit card schemes; and

WHEREAS, there is reason to be concerned about the growing number of banks and consumers in Virginia who are defrauded by groups who conspire to obtain credit cards through fraudulent applications for credit cards; and

WHEREAS, credit card brokering or factoring schemes foster loan sharking operations and give a dishonest merchant the opportunity to submit false invoices for payment through unsuspecting merchants; and

WHEREAS, telemarketing fraud results in $100 to $300 million in losses to financial institutions each year from groups who operate "boiler room" operations, and who submit false and inflated amounts to contract banks from credit card numbers obtained from unsuspecting consumers; and

WHEREAS, there is a need to determine whether Virginia's statutes relating to credit card fraud adequately provide courts and prosecutors with the tools necessary to address those who perpetrate such frauds in Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the need to amend the Virginia Code sections relating to laws which prohibit credit card fraud and venue considerations that result from credit card schemes located in jurisdictions outside the Commonwealth. The joint subcommittee shall consist of eleven members to be appointed as follows: four members from the Senate Committee for Courts of Justice, to be appointed by the Senate Committee on Privileges and Elections; five members from the House Committee for Courts of Justice, to be appointed by the Speaker of the House; the Attorney General or her designee; and one member from the general public to be appointed by the Governor. The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

The indirect costs of this study are estimated to be $10,650; the direct costs of this study shall not exceed $7,920.

Official Use By Clerks	
Agreed to By The Senate	**Agreed to By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

D 10/29/90 Devine C 12/7/90 jds

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 18.2-186, 18.2-191 and 18.2-195 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-195.1, 18.2-195.2 and 18.2-198.1, relating to credit card fraud; venue; conspiracy; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-186, 18.2-191 and 18.2-195 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-195.1, 18.2-195.2 and 18.2-198.1 as follows:

§ 18.2-186. False statements to obtain property or credit.-- A. ~~Any~~ A person ~~who~~ ~~(1)~~ ~~shall~~ shall be guilty of a Class 2 misdemeanor if he knowingly ~~make~~ makes ~~or cause~~, causes to be made, or conspires to make ~~either~~ directly ~~or~~, indirectly ~~,~~ or through ~~any~~ an agency, any materially false statement in writing, ~~with intent~~ knowing it to be false and intending that it ~~shall~~ be relied upon, concerning the financial condition or means or ability to pay of himself, or of any other person for whom he is acting, or any firm or corporation in which he is interested or for which he is acting, for the purpose of procuring, for his own benefit or for the benefit of such person, firm or corporation, the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of

exchange or promissory note ~~,-or,-(2)-Knowing-~~.

B. Any person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of himself or of any ~~such~~ person ~~,~~ for whom he is acting, or any firm or corporation in which he is interested or for which he is acting ~~has been made,~~ and who, with intent to defraud, procures ~~with like intent~~, upon the faith thereof, for his own benefit, or for the benefit of ~~such~~ the person, firm or corporation, any such delivery, payment, loan, credit, extension, discount making, acceptance, sale or endorsement, and fails to pay for such loan, credit or benefit so procured, shall, if the value of the thing or the amount of the loan, credit or benefit ~~procured~~ obtained is $200 or more, be guilty of a Class 6 felony ~~,~~ or , if the value ~~be~~ is less than $200, be guilty of a Class 4-1 misdemeanor.

§ 18.2-191. Definitions.--The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

"Acquirer" means a business organization, financial institution or an agent of a business organization or financial institution that authorizes a merchant to accept payment by credit card or credit card number for money, goods, services or anything else of value.

"Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

"Credit card" means any instrument or device, whether known as a credit card, credit plate, payment device number, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of

value on credit. For the purpose of this article, "credit card" shall also include a similar device, whether known as a debit card, or any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value by charging the account of the cardholder with a bank or any other person even though no credit is thereby extended.

"Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

"Issuer" means the business organization or financial institution or its duly authorized agent which issues a credit card.

"Payment device number" means any code, account number or other means of account access, other than a check, draft or similar paper instrument, that can be used to obtain money, goods, services or anything else of value, or to initiate a transfer of funds. "Payment device number" does not include an encoded or truncated credit card number or payment device number.

"Receives" or "receiving" means acquiring possession or control of the credit card number or payment device number or accepting the same as security for a loan.

"Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

"Sales draft" means a paper form evidencing a purchase of goods, services or anything else of value from a merchant through the use of a credit card.

"Cash advance/withdrawal draft" means a paper form evidencing a cash advance or withdrawal from a bank or other financial institution through the use of a credit card.

§ 18.2-195. Credit card fraud; conspiracy; penalties.--(1) A person is guilty of credit card fraud when, with intent to defraud ~~the issuer, a person or organization providing money, goods, services or anything else of value, or~~ any ~~other~~ person, he :

(a) Uses for the purpose of obtaining money, goods, services or anything else of value a credit card or credit card number obtained or retained in violation of § 18.2-192 or a credit card or credit card number which he knows is expired or revoked; ~~or~~

(b) Obtains money, goods, services or anything else of value by representing (i) without the consent of the cardholder that he is the holder of a specified card or credit card number or ~~by representing~~ (ii) that he is the holder of a card or credit card number and such card or credit card number has not in fact been issued; ~~or~~

(c) Obtains control over a credit card or credit card number as security for debt; or

(d) Obtains money from an issuer by use of an unmanned device of the issuer or through a person other than the issuer when he knows that such advance will exceed his available credit with the issuer and any available balances held by the issuer.

(2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by the cardholder, or any agent or employee of such person, is guilty of a credit card fraud when, with intent to defraud the issuer or the cardholder, he :

(a) Furnishes money, goods, services or anything else of value upon presentation of a credit card or credit card number obtained or retained in violation of § 18.2-192, or a credit card or credit card number which he knows is expired or revoked; ~~or~~

(b) Fails to furnish money, goods, services or anything else of value which he represents or causes to be represented in writing or by any other means to the issuer that he has furnished ~~,~~; or

(c) Remits to an issuer or acquirer a record of a credit card or credit card number transaction which is in excess of the monetary amount authorized by the cardholder.

(3) Conviction of credit card fraud is punishable as a Class 1 misdemeanor if the value of all money, goods, services and other things of value furnished in violation of this section, or if the difference between the value of all money, goods, services and anything else of value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed $200 in any six-month period; conviction of credit card fraud is punishable as a Class 6 felony if such value exceeds $200 in any six-month period.

(4) Any person who conspires, confederates or combines with another, (i) either within or without the Commonwealth to commit credit card fraud within the Commonwealth or (ii) within the Commonwealth to commit credit card fraud within or without the Commonwealth, is guilty of a Class 6 felony.

§ 18.2-195.1. Credit card factoring; penalties.--A. Any authorized person who presents to the issuer or acquirer for payment a credit card or credit card number transaction record of a sale which was not made by such person or his agent or employee, without the express authorization of the issuer or acquirer and with intent to defraud the issuer, acquirer or cardholder, is guilty of a Class 5 felony. If such act is done without authorization of the acquirer or issuer but without intent to defraud, he shall be guilty of a Class 1

misdemeanor.

B. Any person who, without the express authorization of the acquirer or issuer and with intent to defraud the issuer, acquirer or cardholder, employs or otherwise causes an authorized person to remit to an acquirer or issuer a credit card transaction record of sale that was not made by the authorized person is guilty of a Class 5 felony. If such act is done without the authorization of the acquirer or issuer but without intent to defraud, he shall be guilty of a Class 1 misdemeanor.

C. As used in this section, "authorized person" means a person authorized by the acquirer to furnish money, goods, services or anything else of value upon presentation of a credit card or credit card number by a cardholder and includes an agent or employee of a person having such authority.

§ 18.2-195.2. Fraudulent application for credit card; penalties.--A. A person shall be guilty of a Class 2 misdemeanor if he knowingly makes, causes to be made or conspires to make, directly, indirectly or through an agency, any materially false statement in writing concerning the financial condition or means or ability to pay of himself or of any other person for whom he is acting or any firm or corporation in which he is interested or for which he is acting, knowing the statement to be false and intending that it be relied upon for the purpose of procuring a credit card. However, if the statement is made in response to a written solicitation from the issuer or an agent of the issuer to apply for a credit card, he shall be guilty of a Class 4 misdemeanor.

B. A person who knows that a false statement has been made in writing concerning the financial condition or ability to pay of

himself or of any person for whom he is acting or any firm or corporation in which he is interested or for which he is acting and who (i) with intent to defraud, procures a credit card, upon the faith thereof, for his own benefit, or for the benefit of the person, firm or corporation, and (ii) fails to pay for money, property, services or any thing of value obtained by use of the credit card, shall be guilty of a Class 6 felony if the value so obtained is $200 or more or a Class 1 misdemeanor if the value is less than $200.

§ 18.2-198.1. Venue.--Notwithstanding the provisions of § 19.2-244, a prosecution for a violation of this article may be had in any county or city in which (i) any act in furtherance of the crime was committed or (ii) an issurer or acquirer, or an agent of either, sustained a financial loss as a result of the offense.

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SENATE JOINT RESOLUTION NO.....

Requesting the National Conference of Commissioners on Uniform State Laws to promulgate anti-telemarketing fraud legislation.

WHEREAS, 15 percent to 20 percent of all credit card transactions nationally are conducted through telemarketing operations; and

WHEREAS, financial institutions within and without the Commonwealth have observed dramatic increases in the number of "boiler room" operations set up to accept purchase requests from credit cardholders responding to printed advertisements or to solicitations to buy; and

WHEREAS, these boiler rooms, frequently located outside of the state where the target-market credit cardholders are located, often submit false transaction records or transaction records for inflated amounts and may unlawfully use the cardholder's credit card number in the future, resulting in losses which the Federal Trade Commission estimates exceed one billion dollars annually; and

WHEREAS, the Joint Subcommittee Studying Credit Card Fraud, created by the 1990 General Assembly pursuant to SJR No. 131, heard that California and some other states have had initial success in dealing with telemarketing fraud by enacting registration requirements; and

WHEREAS, the Joint Subcommittee believes that the interstate nature of these fraudulent schemes necessitates concerted action by

the states to effectively deter and prosecute; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the National Conference of Commissioners on Uniform State laws be requested to draft a uniform act to effectively deal with telemarketing fraud for consideration and adoption by the states; and, be it

RESOLVED FURTHER, That a copy of this resolution be presented to the National Conference of Commissioners on Uniform State Laws so that its members may be apprised of the sense of this General Assembly.

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