

**REPORT OF THE  
VIRGINIA DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES AND THE  
STATE CORPORATION COMMISSION,  
BUREAU OF INSURANCE**

**THE STUDY OF LATE FEES OR  
CHARGES ON ACCOUNTS  
DELAYED IN THE MAIL**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 16**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1996**





**J. Carlton Courter III**  
Commissioner

**COMMONWEALTH of VIRGINIA**  
**Department of Agriculture and Consumer Services**

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Hearing Impaired: 804/371-6344

**DIVISIONS**  
Administration  
Animal Health  
Consumer Affairs  
Dairy & Foods  
Marketing  
Product & Industry Regulation

December 15, 1995

TO: The Honorable George Allen  
Governor of the Commonwealth of Virginia

The Members of the General Assembly of Virginia

It is my privilege to present this report constituting the response of the Virginia Department of Agriculture and Consumer Services (VDACS) and the Bureau of Financial Institutions (BFI) of the State Corporation Commission to Senate Joint Resolution No. 384, passed by the 1995 General Assembly.

The resolution directed VDACS and BFI to study late fees or charges on accounts delayed in the mail, and to provide their findings and recommendations to the Governor and the 1996 Session of the General Assembly.

J. Carlton Courter, III

Enclosure

cc: The Honorable Preston C. Shannon  
State Corporation Commission

The Honorable Theodore V. Morrison, Jr.  
State Corporation Commission

The Honorable Hullahen Williams Moore  
State Corporation Commission

Mr. Sidney A. Bailey  
SCC Bureau of Financial Institutions



## **PREFACE**

This study was undertaken in response to Senate Joint Resolution No. 384, requesting the Virginia Department of Agriculture and Consumer Services and the Bureau of Financial Institutions of the State Corporation Commission to determine whether consumer protection problems exist because of procedures followed by creditors in applying and calculating late fees or charges on accounts delayed in the mail.

We wish to recognize the individuals of the study committee who contributed their time and expertise to this effort. Staff assigned to this study committee were as follows: Paul S. West, Bureau of Financial Institutions; Betty Blakemore Sulzbach, A. E. Hantwerker, Daniel Zipperer, and Perida Giles, Virginia Department of Agriculture and Consumer Services.



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## **EXECUTIVE SUMMARY**

As requested by the 1995 Virginia General Assembly, the Bureau of Financial Institutions (BFI) of the State Corporation Commission and the Virginia Department of Agriculture and Consumer Services (VDACS) conducted a study to determine if legislation is needed to require that postmarks be considered in determining whether a payment by a consumer was made by the due date in order to assess late fees and other charges, accordingly.

Input was requested from the records of the State Corporation Commission, state and local consumer affairs offices, the American Association of Retired Persons, Virginia Citizens Consumer Council, and the Better Business Bureau.

State and federal laws were reviewed to determine whether or not this issue had been previously addressed, as well as how consumer payments are presently required to be handled.

### **Key Findings**

1. There are few documented complaints with respect to payments not being credited to an account in a timely manner.
2. State and federal laws and regulations exist with respect to many finance charges and other charges and fees.
3. No statutory provision now exists to consider or give consumers credit for payments that are delayed in the mail.
4. There may be some confusion on the part of consumers with respect to:
  - a. The grace period which is offered by some, but not all, institutions and companies.
  - b. Payments made at locations different from the location specified in the consumer's contract which may not be credited on the same day, thus possibly incurring a late fee.
5. In most financial institutions, envelopes are machine opened and disposed of. To require that the postmark date of mailing be used in lieu of the date of receipt would result in additional expenses to these institutions.
6. A Bill has been introduced in Congress (H.R. 1963) to address the concerns outlined in Senate Joint Resolution 384.

## **Recommendations**

1. While there are some incidents of consumers being charged late fees on debts owed, there is, at this time, insufficient documentation on file with state and local agencies and other consumer groups with respect to the degree of this problem to warrant a recommendation of additional state legislation.
2. Since federal legislation is now being considered, and since the federal law would most likely preempt any state legislation, it is recommended that further action on this matter be deferred until Congressional action has been determined.

The Virginia Department of Agriculture and Consumer Services and the State Corporation Commission appreciate the opportunity to be of service to the Governor and the General Assembly of the Commonwealth of Virginia.

## **BACKGROUND AND AUTHORITY**

Senate Joint Resolution No. 384, as enacted by the 1995 Session of the Virginia General Assembly, directs the Virginia Department of Agriculture and Consumer Services (VDACS) and the Bureau of Financial Institutions (BFI) of the State Corporation Commission to conduct a study

**. . . to determine whether consumer protection problems exist because of procedures followed by creditors in applying and calculating late fees or charges on accounts which have been delayed in the mail, to which additional charges are imposed when such payments are received after the due date. . . .**

VDACS and BFI were instructed to report their findings to the Governor and the 1996 Session of the General Assembly.

Concerns which led to the request for this study were that, although good faith attempts can be made by consumers to make their payments in a timely manner, they are unable to be assured that these payments will be received or credited to their account prior to the due date because of:

- mail delays;
- intervening holidays;
- inadvertent delays in crediting an account.

Senate Joint Resolution No. 384 questions whether or not it is fair for creditors to assess late fees and charges when it is apparent by the postmark that the payment was mailed in time to normally reach the creditor by the agreed-upon due date, but was received late as a result of actions beyond the consumer's control. The resolution requests this study to determine whether or not these problems do exist and if it would be feasible and appropriate to require that postmarks be considered when imposing late fees and charges.

## **INPUT FROM CONSUMER GROUPS**

The State Corporation Commission, VDACS Division of Consumer Affairs, local consumer agencies, Virginia Citizens Consumer Council, American Association of Retired Persons and the Better Business Bureau were requested to provide input with respect to the number of complaints they had received regarding late fees charged when a payment was mailed within the appropriate time frame to reach the creditor by the due date, but was delayed due to postal delays or other problems beyond their control. Their responses, which cover a two-year period, are as follows:

	<u># of Complaints</u>
1. SCC Bureau of Financial Institutions	3 *
2. VDACS Division of Consumer Affairs	2
3. Norfolk Office of Consumer Affairs	1
4. Alexandria Consumer Affairs Division	0
5. Arlington Citizen & Consumer Affairs	0
6. Fairfax Office of Consumer Affairs	0
7. Virginia Beach Consumer Affairs Division	0
8. Better Business Bureau	54
9. Virginia Citizens Consumer Council	0 **
10. American Association of Retired Persons	No Response
11. Roanoke Office of Consumer Affairs	No Response
TOTAL	60

\* Some 19 complaints concerning late charges were received by the Bureau of Financial Institutions during a two-year calendar period ending May 31, 1995, but only two of them were relevant to the study as questioning when the payment was received in relation to the date of postmark. One additional complaint was received by the Bureau while the study was being conducted questioning the date of receipt of the payment by the creditor based on the date of mailing the payment.

Based on the small number of complaints filed by consumers with state and local agencies and consumer groups, there was insufficient documentation to determine if there is a serious problem and, if so, how prevalent this problem is.

\*\* Despite having no records of complaints relating to this issue, the Virginia Citizens Consumer Council shared the following observations with regard to using the postmark date as the date of payment:

1. They know of no systematic, quantitative analysis of the problems caused by delayed bill payment. Anecdotal evidence and the interest of the legislature indicates that there is a problem to be solved. Consumers have no control over

timely bill-payment once they drop the envelope in the mailbox. They cannot reliably calculate how much delivery time is required to assure that a payment will be received by a creditor by the due date of a payment. The result is often a late payment fee tacked onto next month's bill. Since Virginia deregulated late fees a few years ago, the cost to consumers of late receipt of payment is considerable.

2. On occasion, some creditors may delay posting of some payments actually received, causing the imposition of late charges on customers who have, in fact, paid on time.
3. Consumers are at most risk when balances are high and penalties significant, such as with home mortgages and car loans. Mortgages are sold repeatedly over the payment life of the loan. A mortgage payment mailed several days ahead of time to a mortgage processing center on the other side of the continent can be a high risk venture in avoiding late payment penalties.
4. A related problem in prompt crediting of accounts to avoid late-payment fees involves utilities, such as gas, electric, water and telephone companies. As utilities consolidate branch offices and close their business offices to walk-in traffic, they have contracted with a variety of banks and retailers to act as third-party payment agents. These outlets accept cash and check payment of bills, then notify the utility that the bill has been paid. Although the payment may be deposited to the utility's bank account the day the payment was made, the record of that payment may not be entered onto the utility's books until days later. This puts hard-pressed customers who pay their bills in cash right before the due date at risk of black marks on their payment record as well as penalties.
5. The Federal Reserve reports that twenty-five percent of American families do not have checking accounts and must handle bill payment through cash or money orders. Those consumers who can least afford a late-pay penalty will be placed at higher risk as utilities revamp their payment operations to cut costs.

## **INPUT FROM BANKING INSTITUTIONS**

Three banks, two state-chartered and one national bank, were contacted in an attempt to determine the feasibility of checking postmarks to establish date of mailing in relation to the date of receipt. Each institution confirmed that the envelopes are machine-opened and the envelopes disposed of. The number of credit card accounts and closed-end consumer installment accounts of each institution were well into the hundreds of thousands and the screening of each postmark and the attendant costs would probably be prohibitive.

The Virginia Bankers Association (VBA) has expressed the following opinions with respect to using the postmark date as the payment date:

1. The Federal Truth-in-Lending Act (Regulation Z) requires crediting of payments as of the date of receipt and preempts any state law which is inconsistent with the provisions of the regulation.
2. Current law and practices of financial institutions ensure that consumers are not unfairly assessed late fees. Consumers cannot be charged a late fee even if payment is not received by the creditor for up to seven days after the due date.
3. The postmark date would dictate the payment date for not only any late fees, but other finance charges as well.
4. Using the postmark date would require institutions to retain and review each envelope containing a payment. This would increase the institution's cost of doing business, which would ultimately be passed on to the consumers.

## **LAWS AND REGULATIONS GOVERNING CREDIT PAYMENTS AND THE ASSESSMENT OF FEES AND OTHER CHARGES**

It should be noted that there are different requirements in the laws and regulations for different kinds of credit, e.g., open-end/revolving credit agreements, closed-end installment credit agreements, and open accounts where there is no written agreement for closed-end or open-end credit.

### **Open-end Credit**

Section 6.1-330.63 and Section 6.1-330.78 of the Code of Virginia deal with open-end/revolving credit. Relevant portions of each follow:

Section 6.1-330.63-1. Notwithstanding any other provision of this chapter, any bank or savings institution may impose finance charges and other charges and fees at such rates and in such amounts as may be agreed by the borrower under a contract for revolving credit or any plan which permits an obligor to avail himself of the credit so established....

2. No finance charge shall be imposed unless the bill is mailed not later than eight days (excluding Saturdays, Sundays and holidays) after the billing date, except that such time limitation shall not apply in any case where the lender has been prevented, delayed, or hindered in mailing or delivering the bill within such time period because of an act of God, war, civil disorder, natural disaster, strike, or other excusable or justifiable cause.

3. In the event of the extension of credit by a bank or savings institution hereunder to be effected by the use of a credit card for the purchase of merchandise or services, no finance charge shall be imposed upon the cardholder or borrower on such extension of credit if payment in full of unpaid balance owing for all extensions of credit under the revolving credit contract or plan is received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date).

4. Any payment, in full or in part, received by the bank or savings institution shall be credited in the manner specified in the contract within two banking days. (No comparable subsection appears in Sec. 6.1-330.78.)

On the Federal level the Truth in Lending Act and Regulation Z implementing the act do not address the imposition or assessing of late charges other than for disclosure purposes. However, Section 164 of the act and Section 226.10 of the regulation address the crediting of payments. Pertinent portions of the act and regulation follow:

Truth in Lending Act. Section 164. - Prompt crediting of payments. Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulation shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid imposition thereof.

Regulation Z. Section 226.10. - Prompt crediting of payments.

(a) General rule. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section....

It should be noted that the Truth in Lending Act preempts state law where it is in conflict with the Federal act except in the case where state law is more favorable to the consumer.

Section 6.1-330.78. Open-end sales and loan plans. - A. 1. Notwithstanding any provision of this chapter other than Sec. 6.1-330.71, any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a finance charge is imposed upon the cardholder or consumer, if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date), may impose finance charges and other charges and fees at such rate and in such amounts as may be agreed upon by the seller or lender and cardholder or consumer....

2. No finance charges shall be imposed unless the bill is mailed not later than eight days (excluding Saturdays, Sundays and holidays) after the billing date, except that such time limitation shall not apply in any case where the seller or lender has been prevented delayed, or hindered in mailing or delivering the bill within such time period because of an act of God, war, civil disorder, natural disaster, strike, or other excusable or justifiable cause.

### **Closed-end Credit**

Section 6.1-330.80 of the Code of Virginia deals with closed-end installment credit agreements. The section reads as follows:

Section 6.1-330.80. Amount of late charge; when charge can be made. - A. Any lender or seller may impose a late charge for failure to make timely payment of any installment due on a debt, whether installment or single maturity, provided that such late charge does not exceed five percent of the amount of such installment payment and that the charge is specified in the contract between the lender or seller and the debtor. For the purposes of this section, "timely payment" is defined as one made by the date fixed for payment or within a period of seven calendar days after such due date....

Sections 6.1-330.63 and 6.1-440.78 each refer to "receipt" of the payment while Section 6.1-330.80 refers to the "making" of the payment by the consumer or cardholder.

The Federal Trade Commission Act and Regulation AA of the Federal Reserve implementing the act address "unfair late charges" and deal with the pyramiding of late charges but is not relevant to the study being conducted.

### **Open Accounts with No Written Agreement**

Accounts with utility companies, doctors' offices, trash collectors, etc., would fall into this category and are addressed in Section 6.1-330.77:1 of the Code of Virginia, which reads as follows:

Section 6.1-330.77:1. Charge on open accounts. In the event of a sale of goods or the provision of services on open accounts where there is no written agreement for closed end credit under 6.1-330.77 and no open end credit plan under 6.1-330.78, the seller or provider shall be entitled to and may collect interest at the rate specified in 6.1-330.53 upon the unpaid balance if the purchaser or recipient of such goods or services fails to make payment in full within sixty days after mailing or presentation of a billing statement or invoice. Such interest shall begin to accrue on the day following such sixty-day period.

It should be noted that Section 6.1-330.77:1 addresses finance charges, but not late charges.



## **POSSIBLE MISUNDERSTANDINGS BY CONSUMERS OF THEIR CREDIT CONTRACT**

### **Grace Periods**

Some creditors allow a grace period on credit contracts. These grace periods vary with creditors and are spelled out in the contract which is agreed upon by both the creditor and the consumer. In those cases where grace periods are allowed, it appears that some consumers mistakenly believe that this grace period is their due date and mail their payments on that date, rather than mailing it in time for it to be received by the creditor on that date, without incurring additional finance charges or late fees. This is a misunderstanding by the consumer which could be corrected by reading thoroughly and understanding their individual contract before signing.

### **Point of Payment**

Regulation Z, Section 226.10 requires that a creditor shall credit a payment to the consumer's account as of the date of receipt. However, some consumer contracts require that, in order for a payment to be credited to the consumer's account on the same day, that payment must be received in the creditor's office at a place designated by the creditor. In some cases, we have found that consumers mistakenly believe that if they take or mail their payments to a branch office or some other establishment designated to receive payments, their payments will still be credited on the day of payment. This, again, is a misunderstanding which could be corrected by the consumer reviewing thoroughly his/her individual contract.

## **PROPOSED FEDERAL LEGISLATION ON LATE FEES**

The concerns addressed by SJR 384 are also being considered at the national level. HR 1963, the "Postmark Prompt Payment Act of 1995," has been introduced in Congress by New York Representative John M. McHugh and addresses the concerns enumerated in SJR 384.

Senator Maxwell's original Bill (SB 762), introduced during the 1995 General Assembly Session, was very concise and would have added a section numbered 11-2.1:1 to the Code of Virginia as follows:

11-2.1:1. Bill payment by mail; postmarks; late charges.

Notwithstanding any other provision of law, whenever payment of any billing statement or invoice is made by mail, the date of postmark shall be deemed the date of payment for the purpose of determining or calculating any late fees or charges in conjunction therewith.

This Bill appears to capture the primary thrust of the proposed federal legislation in that postmarks serve as the criteria for establishing the date of payment for bills that are subject to late fees or charges. The federal legislation covers "payment of a bill, invoice, or statement of account due," whereas Senator Maxwell's Bill covered "any billing statement or invoice" and did not include "statement of account due." The HR 1963 also addresses the following areas which SB 762 does not address:

- designates a short title for the proposed law ("Postmark Prompt Payment Act of 1995"),
- lists exclusions from the law,
- defines "payee" and "United States,"
- specifies that regulations to carry out the law may be prescribed by the Postal Service, and
- provides an effective date for implementation of the Act.

## **FINDINGS**

1. There are few documented complaints with respect to payments not being credited to an account in a timely manner.
2. State and federal laws and regulations exist with respect to many finance charges and other charges and fees.
3. No statutory provision now exists to take into account or give consumers credit for payments that are delayed in the mail.
4. There may be some confusion on the part of consumers with respect to:
  - a. The grace period which is offered by some, but not all, institutions and companies.
  - b. Payments made at locations different from the location specified in the consumer's contract which may not be credited on the same day, thus possibly incurring a late fee.
5. In most financial institutions, envelopes are machine opened and disposed of. To require that the postmark date of mailing be used in lieu of the date of receipt would result in additional expenses to these institutions.
6. A Bill has been introduced in Congress (H.R. 1963) to address the concerns outlined in Senate Joint Resolution 384.

## **RECOMMENDATIONS**

While there are some incidents of consumers being charged late fees on debts owed, there is, at this time, insufficient documentation on file with state and local agencies and other consumer groups with respect to the degree of this problem to warrant a recommendation of additional state legislation.

Since these concerns are being considered at the national level, and if the federal law were enacted, it would most likely preempt any state law, it is recommended that further action on this matter be deferred until Congressional action has been determined.

**APPENDIX A**

**COPY OF SENATE JOINT RESOLUTION NO. 384**

# 1995 SESSION

ENROLLED

1

## SENATE JOINT RESOLUTION NO. 384

2 *Requesting the Department of Agriculture and Consumer Services and the Bureau of Financial*  
3 *Institutions of the State Corporation Commission to determine whether consumer protection*  
4 *problems exist because of procedures followed by creditors in applying and calculating late fees*  
5 *or charges on accounts delayed in the mail.*

6

Agreed to by the Senate, February 23, 1995

7

Agreed to by the House of Delegates, February 22, 1995

8 WHEREAS, the citizens of the Commonwealth, particularly low and moderate income citizens,  
9 find it increasingly difficult to avoid the payment of late fees and charges on debts owed; and

10 WHEREAS, notwithstanding good faith attempts to make timely payments, it is impossible to  
11 guarantee that a payment mailed by a debtor, prior to the due date, will be received by the creditor in  
12 a timely fashion; and

13 WHEREAS, intervening holidays, other weekdays on which mail is not delivered, and other postal  
14 problems further exacerbate the dilemma for many consumers; and

15 WHEREAS, many entities will begin to assess late fees and charges immediately upon the due  
16 date, although it is apparent from the postmark that the payment was delayed through no fault of the  
17 debtor; and

18 WHEREAS, the accrual of additional charges on a debt where the delay is not in any way  
19 attributable to or preventable by the debtor is unfair; and

20 WHEREAS, in the opinion of many persons, the procedures followed by some creditors in  
21 applying and calculating late fees or charges on accounts which have been delayed in the mail, to  
22 which additional charges are imposed when such payments are received after the due date, is  
23 particularly burdensome for poor consumers, and that such procedures may not afford consumers the  
24 protection and consideration they seek from creditors to resolve this predicament; now, therefore, be it

25 RESOLVED by the Senate, the House of Delegates concurring, That the Department of  
26 Agriculture and Consumer Services and the Bureau of Financial Institutions of the State Corporation  
27 Commission be requested to determine whether consumer protection problems exist because of  
28 procedures followed by creditors in applying and calculating late fees or charges on accounts delayed  
29 in the mail. The department and the bureau are requested to (i) determine whether such problems  
30 exist and the magnitude and prevalence of such problems; (ii) identify the factors which contribute to  
31 the problems, if any, including the means of determining or calculating late fees or charges vis-a-vis  
32 the payment of debts by mail; (iii) determine the feasibility and appropriateness of requiring that  
33 postmarks be considered when imposing late fees and charges; (iv) review the relevant federal and  
34 state laws pertaining to the levying of late charges and consumer protection relative to the issues  
35 noted herein and determine the feasibility and advisability of recommending modifications or changes;  
36 and (v) recommend such remedy as may be necessary and appropriate within the parameters  
37 established by federal and state laws.

38 All agencies of the Commonwealth shall provide assistance to the department and the bureau,  
39 upon request.

40 The Department of Agriculture and Consumer Services and the Bureau of Financial Institutions of  
41 the State Corporation Commission shall complete their work in time to submit their findings and  
42 recommendations to the Governor and the 1996 Session of the General Assembly as provided in the  
43 procedures of the Division of Legislative Automated Systems for the processing of legislative  
44 documents.

## **APPENDIX B**

### **LETTERS FROM LOCAL CONSUMER AGENCIES**

1. City of Alexandria Consumer Affairs Division
2. Arlington County Citizen and Consumer Affairs
3. City of Norfolk Office of Consumer Affairs
4. City of Virginia Beach Consumer Affairs Division
5. Better Business Bureau of Central Virginia, Inc.

The Fairfax Office of Consumer Affairs provided its response by telephone only.



# City of Alexandria, Virginia



(703) 838-4350

*Citizen Assistance Office*

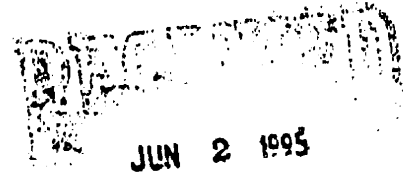
*Consumer Affairs Division*

*P. O. Box 178*

*Alexandria, Virginia 22313*

Fax (703) 838-6426

May 31, 1995



Ms. Betty Blakemore Sulzbach  
Director  
Commonwealth of Virginia  
Department of Agriculture and  
Consumer Services  
Division of Consumer Affairs  
P.O. Box 1163  
Richmond, Virginia 23209

Dear Ms. Sulzbach:

This is in response to your May 22 letter asking the Alexandria Office of Consumer Affairs to assist your office in a study to determine if problems exist with creditors applying and calculating late fees or charges on accounts delayed in the mail. Specifically, the number of complaints the office may have received.

Please be advised that a complete search of our records shows that we have had no complaints filed against creditors for applying late fees or charges on accounts delayed in the mail.

Thank you for allowing the City of Alexandria to be a part of the study. If you have any questions, please call me at (703) 838-4350.

Sincerely,

Prescott Barbash

Consumer Affairs Administrator



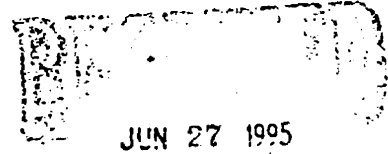
ANTON S. GARDNER  
COUNTY MANAGER  
  
WILLIAM T. DONAHUE  
DEPUTY COUNTY MANAGER

**ARLINGTON COUNTY, VIRGINIA**  
**OFFICE OF THE COUNTY MANAGER**  
PUBLIC AFFAIRS DIVISION  
#1 COURTHOUSE PLAZA, SUITE 314  
2100 CLARENDON BOULEVARD  
ARLINGTON, VIRGINIA 22201  
(703) 358-3969 • FAX (703) 358-3295



SALLY A. S. MICHAEL  
DIRECTOR

June 23, 1995



Ms. Betty Blakemore Sulzbach  
Director  
Division of Consumer Affairs  
P. O. Box 1163  
Richmond, VA 23209

DIVISION OF CONSUMER AFFAIRS

Dear Betty:

This letter is a follow-up to your request for the number of complaints received in our office that will meet the criteria of Senate Joint Resolution 384.

We do not have any complaints filed with this office concerning late fees or charges to accounts delayed by the mail.

Thank you for contacting our office.

Sincerely,

Jacqueline Baglivio  
Investigator  
Citizen and Consumer Affairs





# City of Norfolk

JUN 2 1995

May 30, 1995

Mrs. Betty Sulzbach, Director  
Division of Consumer Affairs  
P. O. Box 1163  
Richmond, Virginia 23209

Re: Senate Joint Resolution No. 384

Dear Betty,

We have searched our records and was able to find one complaint from the past year concerning late fees. This complaint pertained to payment of a mortgage payment which the consumer alleges was mailed on time.

If additional information is needed, please let me know.

Sincerely,

R. L. Gill, Sr.  
Director  
Office of Consumer Affairs

RLG:ds



ROBERT J. HUMPHREYS  
Commonwealth's Attorney

CATHY TOWNSEND PARKS  
Director

**OFFICE OF THE COMMONWEALTH'S ATTORNEY**

CITY OF VIRGINIA BEACH  
**CONSUMER AFFAIRS DIVISION**  
MUNICIPAL CENTER  
VIRGINIA BEACH, VIRGINIA 23456  
(804) 426-5836  
FAX (804) 427-8779

DAVID J. McDONALD  
KENT T. WRIGHT  
Investigators

May 30, 1995

Mrs. Betty Blakemore Sulzbach  
Director  
Division of Consumer Affairs  
P. O. Box 1163  
Richmond, VA 23209

Re: Senate Joint Resolution 384

Dear Mrs. Sulzbach:

This is to acknowledge receipt of your request for information regarding the above referenced resolution.

Research of our files does not reveal complaints dealing with procedures of creditors in applying and calculating of late fees or charges on accounts delayed in the mail.

If this office can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Nancy J. Corley CPS  
Administrative Aide

njc



# Better Business Bureau Of Central Virginia, Inc.

701 East Franklin Street, Suite 712  
Richmond, Virginia 23219

(804) 648-0030

Fax # (804) 648-3115

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WRVA Radio

### LEE P. DUDLEY

A.G. Edwards & Sons, Inc.

### RANDY ELLINGTON

Security Systems

### PAGE EWELL, JR.

Richmond Window Co.

### DAVID JEFFERSON

W. S. Pinchback Realtors

### ROGER KAIN

Richmond Newspapers

### WAVERLY KING, III

Automotive Rebuilders

### ROBERT KRISTOFAK

Trigon-Blue Cross/Blue Shield

### RON J. LAMBERT

EMME Associates

### ANNE MARIE LAURANZON

Health Corporation of Virginia

### WALTER L. NICHOLS

Eastgate Exxon

### MONA NUNNALLY

Nunnally & Robertson

### ROBERT TAPHORN

S & K Famous Brands

### MITCHELL W. WARD

Sears Roebuck & Co.

November 6, 1995

Ms. Betty Blakemore Sulzbach, Director  
Office of Consumer Affairs  
Washington Building, Suite 101  
1100 Bank Street  
Richmond, Virginia 23219

Dear Ms. Sulzbach:

I am writing in response to an inquiry relative to the complaint patterns received by this Better Business Bureau relating to the imposition of penalties or fees for late payments.

Since March of 1995, this BBB has received 7417 inquiries on banking institutions. These calls are almost exclusively "pre-purchase" inquiries placed by prospective customers or borrowers. Richmond is the home of major credit card marketing activities, consequently our call volume is very high.

During the same period, we have received 179 complaints filed by consumers against the same companies. Of that number, 54 related directly to the imposition of late fees or rate adjustments based upon tardy payment receipt. To the best of my knowledge, all of the complaints filed have been adjusted to the customer's satisfaction or the company has replied with a reasonable explanation to the dispute.

Please call if you need additional information.

Very truly yours,

  
Thomas J. Gallagher

President

**LETTER FROM VIRGINIA CITIZENS CONSUMER COUNCIL**

OCT 30 1995

DIRECTOR OF  
CONSUMER AFFAIRS



October 26, 1995

Ms. Betty Blakemore Sulzbach  
Director, Office of Consumer Affairs  
Virginia Department of Agriculture  
and Consumer Services  
1100 Bank Street  
Richmond, VA 23219

Re: SJR 384

Dear Ms. Sulzbach:

The Virginia Citizens Consumer Council is providing the following comments to assist the Department in carrying out SJR 384's mandate to advise the General Assembly on the problems caused to consumers by payments which arrive past the due date because of delays by the United States Postal Service. VCCC applauds the Virginia General Assembly for its concern about the impact and expenses consumers face when the mail does not arrive on time. Congress is also interested in this issue. The Subcommittee on the Postal Service of the Committee on Government Reform and Oversight in the U. S. House of Representatives held hearings October 19 on H. R. 1963 the Postmark Prompt Payment Act of 1995, sponsored by the Chairman of the Subcommittee.

We know of no systematic, quantitative analysis of the problems caused by delayed bill payment. Anecdotal evidence and the interest of the legislature indicates that there is a problem to be solved. Consumers have no control over timely bill-payment once they drop the envelope into the mailbox. They cannot reliably calculate how much delivery time is required to assure that a payment will be received by a creditor by the due date of a payment. The result is often a late payment fee tacked onto next month's bill. Since Virginia deregulated late fees a few years ago, the cost to consumers of late receipt of payment is considerable.

Another related problem is alleged but difficult to document. On occasion some creditors may delay posting of some payments actually received, causing the imposition of late charges on customers who have in fact paid on time. The Truth in Lending Act requires "a creditor to credit a payment to the customer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge..." However, that Act only applies to true credit transactions, those that involve a finance charge or repayment of an obligation in more than four installments. This does not protect consumers with many bill payments or business-to-business transactions.

Consumers are at most risk when balances are high and penalties significant, such as with home mortgages and car loans. Even when a consumer tries to deal with a neighborhood financial institution, mortgages are sold repeatedly over the payment life of the loan. A mortgage payment mailed several days ahead of time to a mortgage processing center on the other side of the continent can be a high risk venture in avoiding late payment penalties.

A related problem in prompt crediting of accounts to avoid late-payment fees involves utilities, such as gas, electric, water and telephone companies. As utilities consolidate branch offices and close their business offices to walk-in traffic, they have contracted with a variety of banks and retailers to act as third-party payment agents. These outlets accept cash and check payment of bills, then notify the utility that the bill has been paid. Although the payment was deposited to the utility's bank account the day the payment was made, the record of that payment may not be entered onto the utility's books until days later. This puts hard-pressed customers who pay their bills in cash right before the due date at risk of black marks on their payment record as well as penalties. The Federal Reserve reports that twenty-five percent of American families do not have checking accounts. These consumers have to handle bill payment through cash or money orders. Those consumers who can least afford a late-pay penalty will be placed at higher risk as utilities revamp their payment operations to cut costs. The SJR 384 study should encompass these questions as well. The State Corporation Commission has not examined these issues since 1977 although utility operations have changed since then.

VCCC recommends that this study result in legislation with the following provisions:

1. All payments of bills, invoices, statements of account due, and fixed loan payment coupons paid by mail are deemed to have been received by the payee on the date of the postmark, provided the payment is deposited in the mails within the United States, in an envelope or other appropriate cover, with postage prepaid, with the postmark affixed by the Postal Service (not the sender) falling on or before the due date.
2. All creditors and payees shall credit the account paid as of the postmark date in order to prevent unwarranted additional fees.
3. All utility bills paid at utility company premises and through third party payment locations such as banks, supermarkets, and other retailers shall be deemed paid on the date the consumer handed money to the utility or its agent. Late payments will not be determined by the date the payment information reached the utility's bookkeeping office.

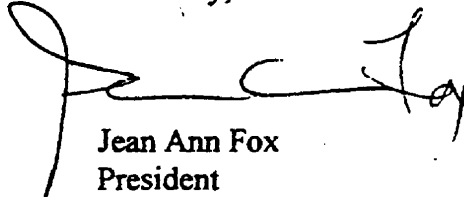
Creditors will undoubtedly argue that they should not bear the cost of slow Postal Service operations. They will argue that it will cost them more to change their payment operations to verify postmarks when bills are opened. While VCCC is not in a position

to quantify the cost to consumers or creditors, we do know that it is unfair and unreasonable for consumers who mail their bill payments on time to be charged late-payment penalties and to be given slow-pay records just because the United States Postal Service does not deliver mail in a timely fashion.

The creditor holds all the cards, being able to set the late-payment fee, the due date on the bill, and the speed with which payments are processed. If creditors find themselves at a disadvantage under this proposal, they certainly have more political clout in Washington than individual consumers to put pressure on the Postal Service to improve its performance. Since the Internal Revenue Service uses the postmark date of tax filings as the payment date, creditors should be able to handle the change.

Thank you for this opportunity to participate in your study of the issues surrounding late-pay penalties imposed on consumers when payments mailed on time are not delivered promptly. Please send me a copy of your report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jean Ann Fox', written over a horizontal line.

Jean Ann Fox  
President

**LETTER FROM VIRGINIA BANKERS ASSOCIATION**





September 6, 1995

Ms. Penida Giles, Staff Assistant  
Office of Consumer Affairs  
Department of Agriculture: Consumer Services  
1100 Bank Street, Suite 101  
Richmond, Virginia 23219

Re: Senate Joint Resolution No. 384

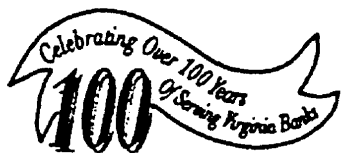
Dear Ms. Giles:

I am writing on behalf of the Virginia Bankers Association to express our thoughts about SJR 384, which has been referred to the Department of Agriculture and Consumer Services for study. SJR 384 would study the potential need for legislation which would require the crediting of any payments made on an account (e.g., credit cards, loans) as of the date of the postmark.

Our primary concern is that such a state mandated payment credit system would be preempted by federal law. The federal Truth-in-Lending Act (Regulation Z) provides that a creditor is required to credit a payment to a consumer's account as of the day of receipt. Regulation Z also provides that any state law requirements that are inconsistent with the provisions of the regulation are preempted. The regulation states that "[a] state law is inconsistent if it requires a creditor ... to take actions that contradict the requirements of the federal law."

It is clear that requiring creditors to credit payments to consumers' accounts as of the date of postmark is inconsistent with Regulation Z, which requires crediting payments as of the date of receipt, and therefore any such state law would be preempted.

While the preemption issue alone indicates that the need for such legislation is unnecessary, I want to share with you some of the other thoughts and concerns the banking industry has with regard to this issue.



Ms. Penida Giles  
September 6, 1995  
Page 2

First, the current law and the practices of financial institutions in this state ensure that consumers are not unfairly assessed late fees unless payment is received many days after the due date. Virginia Code §6.1-330.80 provides that a lender or seller may not impose a late charge unless payment is made more than seven days after the due date. Therefore, a consumer cannot be charged a late fee even if payment is not received by the creditor for up to seven days after the due date.

Moreover, financial institutions typically extend this "grace period" much longer than the seven day period required by Virginia law. Indeed, most institutions will not impose a late charge unless the payment is received fifteen days or more after the stated due date. Therefore, even if a consumer's payment is postmarked a few days after the date a payment is due, it appears that the consumer generally will not be assessed a late charge since the payment will most likely be received by the institution within the period (after the due date) established by the institution for purposes of late charges.

Furthermore, the date of postmark would dictate the payment date for not only any late fees, but other finance charges as well. We believe that it would be fundamentally unfair to require a creditor to have to credit a customer's account as of the date of postmark, for purposes of standard finance charges (i.e., interest), since the creditor would not have the funds to apply to the debt until some time later when payment is received. A creditor would effectively be precluded from imposing interest on an outstanding debt even though it has not yet received the payment to satisfy the debt. Certainly no one would argue that when a customer sends a check to a bank for deposit to his or her savings account that the customer should begin to earn interest on the amount of the check once the check has been deposited in the mail. We believe that the same principle should apply for purposes of determining when payment is made on a debt.

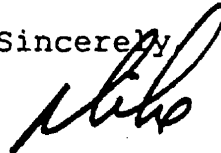
Another concern we have is the operational impact this would have on financial institutions. Several institutions we have talked to indicate that they make use of automation in processing payments. This means that the institution will use a machine to open and sort payments on credit card accounts and other types of loans. Typically, the envelopes

Ms. Penida Giles  
September 6, 1995  
Page 3

containing the consumers' payments are discarded in this process. If institutions were required to determine the postmark date, they would have to disrupt this efficient process by having to manually retain and review each envelope containing a payment. This would increase the costs of doing business to the institutions, which would ultimately be passed on to the consumers. Even if they did handle this manually, financial institutions would have great difficulties because postmarks are sometimes difficult to read or are otherwise unavailable. Should you or any member of your staff desire to tour a bank that processes payments through automation, we would be pleased to arrange such an inspection.

I hope that upon your consideration of our concerns you will see that any change in current state law could not be effective, if for no other reason than that the legislation would be preempted by federal law.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike", written over the word "Sincerely,".

Michael L. Toalson  
Senior Vice President

**LETTER FROM VIRGINIA FINANCIAL SERVICES ASSOCIATION**

# VFSA

Attn:          Init.          Route To          Init.         

## ~~VIRGINIA FINANCIAL SERVICES ASSOCIATION~~

4900 AUGUSTA AVENUE • RICHMOND, VIRGINIA 23230 • TELEPHONE (804) 353-2322 • FAX (804) 355-8986

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         Gen. Correspondence File  
         Record & Info. File Box  
         (Corporate Record)

September 22, 1996

Mr. Bud West, Compliance Administrator  
 Bureau of Financial Institutions  
 1300 East Main St., Ste 800  
 P. O. Box 640  
 Richmond, VA 23205

RE: SJR #384

Dear Bud:

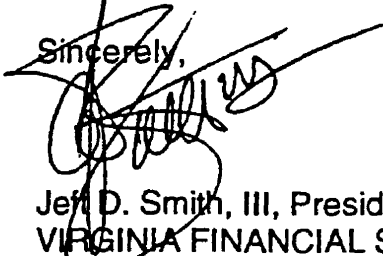
On behalf of the Virginia Financial Services Association, I wish to express our opposition to potential legislation requiring creditors to credit payments made on loans as of the date of postmark.

I truly don't believe that there is any overwhelming support for such legislation by any group. I am certainly unaware of complaints in this area.

There are any number of Federal regulations that this legislative study would be preempted, including Reg Z and it's impact on out of state companies.

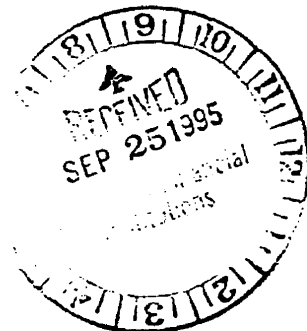
I hope that your findings will be similar and that there would be no reason to pursue this issue further. Thank you.

Sincerely,



Jeff D. Smith, III, President  
 VIRGINIA FINANCIAL SERVICES ASSOCIATION

JDS/mn



**LETTER FROM VIRGINIA RETAIL MERCHANTS ASSOCIATION**



Attn:	Init.	Route To	Init.
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Received from [unclear]  
(Contract # [unclear])

July 28, 1995

Paul S. West  
 Financial Institutions Services Investigator  
 Bureau of Financial Institutions - SCC  
 1300 E. Main Street  
 Richmond, VA 23219

Dear Mr. West:

Your department, in conjunction with the Commission of Agriculture and Consumer Services, is responsible for conducting a study of an issue of extreme importance to the members of the Virginia Retail Merchants Association before the 1996 General Assembly convenes, SJR 384 - A Study as to Whether Consumer Protection Problems Exist Because of Procedures Followed by Creditors in Applying and Calculating Late Fees or Charges on Accounts Delayed in the Mail.

Our membership is comprised of various retailers, both large and small, who rely on payment for the goods and services they provide through the mail system. These members are very interested and concerned in the outcome of this study and the possible effects it could have on their businesses.

Therefore, I am respectfully requesting to be made aware of meetings, reports and other activities on behalf of your agency on SJR 384. In addition, we would be glad to provide information from our industries' perspective or any other support your Department would require to complete your work.

Sincerely,

*William H. Coiner*  
 William H. Coiner  
 President

cc: Russ Lundy - Chairman  
 Buck Weedon - Legislative Committee Chairman

WHC/dgm



**COPY OF H.R. 1963 - FEDERAL BILL BEING CONSIDERED**



104TH CONGRESS  
1ST SESSION

# H. R. 1963

To amend title 39, United States Code, to provide that the payment of a bill, invoice, or statement of account due, if made by mail, shall be considered to have been made on the date as of which the envelope which is used to transmit such payment is postmarked.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1995

Mr. MCHUGH (for himself, Mr. ACKERMAN, Mr. BARRETT of Wisconsin, Mr. BOEHLERT, Mr. EHRLICH, Mr. GILMAN, Mr. GENE GREEN of Texas, Mr. JACOBS, Mrs. KELLY, Mrs. KENNELLY, Mr. KLECZKA, Mr. LIVINGSTON, Mr. PARKER, Mr. ROMERO-BARCELÓ, Mr. SERRANO, Mr. SHAYS, Mr. STOCKMAN, Mr. UNDERWOOD, Mr. TOWNS, Mr. WALSH, and Mr. DAVIS) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

---

## A BILL

To amend title 39, United States Code, to provide that the payment of a bill, invoice, or statement of account due, if made by mail, shall be considered to have been made on the date as of which the envelope which is used to transmit such payment is postmarked.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Postmark Prompt Pay-  
5 ment Act of 1995".

1 SEC. 2. DATE OF POSTMARK TO BE TREATED AS DATE OF  
2 PAYMENT OF A BILL, INVOICE, OR STATE-  
3 MENT OF ACCOUNT DUE.

4 (a) IN GENERAL.—Chapter 26 of title 39, United  
5 States Code, is amended by adding at the end the follow-  
6 ing:

7 “§ 2606. Date of postmark to be treated as date of  
8 payment of a bill, invoice, or statement of  
9 account due

10 “(a) If any payment required to be made on or before  
11 a prescribed date is, after such date, delivered by the Post-  
12 al Service to the payee, such payment shall be deemed re-  
13 ceived by the payee on the date of the United States post-  
14 mark stamped on the envelope or other cover in which  
15 such payment is mailed.

16 “(b) Subsection (a) shall not apply with respect to  
17 any payment—

18 “(1) other than a payment on a bill, invoice, or  
19 statement of account due;

20 “(2) which is required, by law, regulation, or  
21 contract, to be delivered by any method other than  
22 by mail; or

23 “(3) which is subject to any other provision of  
24 Federal law specifying how a postmark date shall be  
25 used in determining the date on which such payment  
26 shall be deemed to have been delivered or made.

1 “(c) Subsection (a) shall apply only if—

2 “(1) the postmark date falls on or before the  
3 prescribed date for making the payment; and

4 “(2) the payment was, on or before such date,  
5 deposited in the mail in the United States in an en-  
6 velope or under other appropriate cover, postage pre-  
7 paid, properly addressed to the payee.

8 “(d) Subsection (a) shall not apply in the case of a  
9 postmark not made by the Postal Service.

0 “(e) For purposes of this section—

1 “(1) the term ‘payee’, as used with respect to  
2 a payment, includes any person duly authorized to  
3 receive such payment; and

4 “(2) the term ‘United States’ means the 50  
5 States, the District of Columbia, the Commonwealth  
6 of Puerto Rico, and any territory or possession of  
7 the United States.

8 “(f) Regulations to carry out this section may be pre-  
9 scribed by the Postal Service.”.

0 (b) CONFORMING AMENDMENT.—The table of sec-  
1 tions for chapter 26 of title 39, United States Code, is  
2 amended by adding at the end the following:

“2606. Date of postmark to be treated as date of payment of a bill, invoice  
or statement of account due.”

1 **SEC. 3. EFFECTIVE DATE.**

2       The amendments made by this Act shall apply with  
3 respect to any mailing postmarked after the end of the  
4 3-month period beginning on the date of enactment of this  
5 Act.

○

**COPY OF S.B. 762 - SENATOR MAXWELL'S ORIGINAL BILL**

1995 SESSION

LD3375705

SENATE BILL NO. 762

Offered January 16, 1995

A BILL to amend the Code of Virginia by adding a section numbered 11-2.1:1, relating to bill payment by mail; postmarks; late charges.

Patrons—Maxwell; Delegates: Barlow, Behm, Cooper, Crittenden, Hamilton and Robinson

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 11-2.1:1 as follows:

§ 11-2.1:1. Bill payment by mail; postmarks; late charges.

Notwithstanding any other provision of law, whenever payment of any billing statement or invoice is made by mail, the date of postmark shall be deemed the date of payment for the purpose of determining or calculating any late fees or charges in conjunction therewith.

LD3375705

SB762

Official Use By Clerks

Passed By The Senate

- without amendment
with amendment
substitute
substitute w/amdt

Passed By

The House of Delegates

- without amendment
with amendment
substitute
substitute w/amdt

Date:

Date:

Clerk of the Senate

Clerk of the House of Delegates

1/2/96 16:31



