

Approved: February 14, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 1, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative John Edmonds - Excused
Representative Tony Powell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Senator Stan Clark
David Porter, Identity Theft Victim
Jim Welch, Assistant Attorney General, Consumer Protection Division
Ron Gaches, Associated Credit Bureaus of Kansas
Eric Ellman, Association of Credit Bureaus
Mike Stewart, Trans Union Credit Reporting
Marlee Bertholf, Kansas Chamber of Commerce & Industry
George Barbee, Kansas Association of Financial Services

Representative Pauls had four bill requests:

- ◆ allowing the courts to admit a statement or confession by video or audio tape
- ◆ regarding the Department of Corrections monitoring parolees
- ◆ having certain records from the Department of Corrections being open records
- ◆ requiring the Secretary of Corrections to compile a list of identifiable inmates who are charged with a felony while on parole or post-release supervision

Representative Pauls made the motion to have the requests introduced as committee bills. Representative Loyd seconded the motion. The motion carried.

Hearing on **HB 2685 - Kansas Fair Credit Reporting Act**, was opened.

Senator Stan Clark appeared as the sponsor of the bill. A criminal will typically use victims personal information, such as his Social Security number, or date of birth to establish credit and run up debt. The victim usually becomes aware of this when he receives a poor credit report. Only to have a difficult time clearing up the mistakes on his report. (Attachments 1 & 2)

The Kansas Fair Credit Reporting Act has not been amended since its enactment in 1973. The suggested changes in the bill would mirror current Federal law. The changes are necessary so people can be notified that someone is inquiring about the credit history and be able to stop the identity theft before it happens.

David Porter, Identity Theft Victim, told the committee his story and how hard it had been to get help from authorities who were in a position to help. Theft of identity is a misdemeanor and therefore law enforcement would not get involved because there were more important crimes to deal with. He said that it was very difficult to talk to personnel at credit bureaus and banks, because when he called he would usually get an automated answering system. He has also contacted the Attorney General's Office and eventually got help when he refused to leave the office until he talked to the Attorney General. (Attachment 3)

Jim Welch, appeared on behalf of the Attorney General. He explained that the Judiciary Interim Committee requested the Division draft proposed language to update the Kansas Fair Credit Reporting Act. The proposed bill was its end result.

The Federal Credit Reporting Act supercedes states acts unless state law gives greater protection to the consumer than they could receive under the Federal Act. Over the past several years, the Federal Act has had numerous changes and it is important for States to mirror those changes.

CONTINUATION SHEET

The proposed bill not only addresses the Federal changes but also includes two provisions from the Colorado Fair Credit Reporting Act. If either one of the following happens: (1) consumer reporting agency receives three credit inquiries pertaining to that consumer, or (2) the consumer reporting agency receives a report that would add adverse information to a consumer's file, they must send a copy of the consumer's report at no charge to the consumer. (Attachment 4)

Ron Gaches, introduced several conferees from credit bureaus and reporting agencies.

Eric Ellman, supported moving the enforcement of the Act to the Attorney General's office and the Federal provisions but opposed the mandatory notice and free report provisions that have been included in the bill. He believes that this would be confusing to consumers who could have three inquiries at the beginning of the year and be sent their credit report, and not receive another one the rest of the year, even if adverse information had been placed in their file. He was also concerned that the notice would not prevent identity fraud. It would require the notice being sent to the consumer's home, which increases the probability that personal information could be stolen from their mailbox. The last concern was the issue of free reports. To receive a report the consumer must currently pay \$8.50. The bill would cause a financial burden on the credit industry. Consumers can currently receive free records if: the consumer is unemployed and seeking employment, if the consumer is on public assistance, if the consumer has been denied credit or if the consumer considers himself to be a victim of fraud. (Attachment 5)

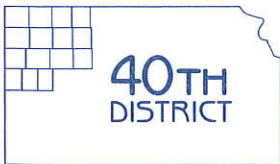
Mike Stewart, was also in opposition of the bill. He explained that a consumer who has been a victim of identity theft could contact the consumer provision and place a statement in their file, which states that fraudulent applications could be made under his name and that they should contact him personally to see that it is legitimate. The notice would stay in his credit file for a period of 7 years. (Attachment 6)

Marlee Bertholf, supported many of the provisions of the bill except for the mandatory notice provision. She requested an amendment that would remove it from the bill. She stated that the Federal Act already addresses allowing consumers to receive a copy of their credit report if they are a victim of fraud. (Attachment 7)

George Barbee, appeared in opposition to the Colorado provisions. In Colorado the free notice provision has caused credit reporting companies to add a \$.75 service charge to those who are requesting credit reports. He believes this is unfair to consumers to have to pay so others can receive "free reports". (Attachment 8)

Hearing on **HB 2685** was closed.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for February 2, 2000.



COMMITTEE ASSIGNMENTS

VICE CHAIR: UTILITIES
INFORMATION TECHNOLOGY
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS
& INSURANCE
RULES & REGULATIONS

Stan Clark

Before the House Judiciary Committee

House Bill 2685

Tuesday, February 1, 2000

Chairman O'Neal and Members of the Committee:

One of the topics of the 1999 Judiciary Interim Committee was Identity Theft. In studying this topic and actions at the federal level, there are 2 Acts that specifically address this issue.

1. The Identity Theft and Assumption Deterrence Act. This act was signed into law in October 1998, and the U.S. Sentencing Commission was given one year to adopt sentencing guidelines and rules and regulations. My latest information (September 1999) notes that this Commission has not had the minimum 4 member quorum since June of 1998, so their action is delayed.
2. The Fair Credit Reporting Act of 1970 (Attachment 1 which includes amendments through November 12, 1999). In 1973, the Kansas Legislature adopted a Fair Credit Reporting Act, which would have closely resembled the federal act except for national security provisions. The Fair Credit Reporting Act regulates the use of information collected and disseminated by Credit Bureaus for credit, employment, insurance and licensing purposes. Some of the amendments to the act today expand the use of information to include child support enforcement and subpoenas issued in connection with criminal proceedings or under the Kansas Consumer Protection Act. The federal act is enforced primarily by the Federal Trade Commission, the state act by the Consumer Credit Commissioner. The Kansas Act has never been amended in its 27 years of existence.

In the 1970's the victim of fraud was the business or creditor. Today, the victim also includes the person whose identity was stolen to perpetrate the crime. In 1996, Congress added many new provisions to their act, many to assist individuals in putting their life back together. Sonya Allen, General Counsel for the State Bank Commissioner, prepared a comparison of key differences between current Kansas statutes, current Colorado law and the federal act, which I will refer to frequently.

My Attachment 2 is her comparison, and I will refer to it frequently.

This bill updates the Kansas Act to the current Federal Act. Specific important changes include:

1. Section 18 – page 28 at line 21. Changes enforcement from the Kansas Consumer Credit Commissioner to the Attorney General's Consumer Protection Division. In 1996, Congress expanded enforcement from the Federal Trade Commission to the states' Attorney Generals and, with the adoption of this proposed legislation, our Attorney General intends to file charges in Kansas District Court instead of Federal District Court. Last summer, the Kansas Consumer Credit Commission became a part of the Office of the Bank Commissioner, and the Kansas Fair Credit Reporting Act really was not used as violations were also violations at the federal level. Colorado has no enforcement authority and, disputes are civil matters filed by attorneys on behalf of their clients.
2. (Attachment 2 – Item A – *Getting a copy of your report*); (Attachment 1 at page 23-26 - 15 U.S.C. §1681g); Section 7 of this bill (page 16 at line 7) incorporates the federal changes at line 31 by disclosing to the consumer all persons who have received a copy of your credit report within the past year rather than the last 6 months. This bill also adopts provisions in Colorado law on page 17 starting at line 18 by requiring notice by 1st class mail one time per year when one of two things happen:
 1. When a credit reporting agency receives 3 credit inquiries on a consumer within a 12-month period.
 2. The consumer-reporting agency receives a report that would add adverse action to a consumer's file.

If either happens, the consumer can obtain a free report if they ask within 60 days after notification. (See 10(b) which is page 23 starting at line 12.) Identity theft occurs when thieves steal credit card numbers, social security numbers, mothers' maiden names or other personal identifying information to tap into the good credit histories of consumers. They then set up new credit accounts, charge purchases by tapping into existing accounts or drain bank accounts. Frequently, victims don't know that their credit identities have been stolen – until they learn that new credit card accounts have been set up. The Secret Service reports that the identity fraud cases it tracks cost \$745 million in 1997 versus \$450 million in 1996. The Social Security Administration reported a threefold increase in improper use of Social Security numbers from 1996 to 1997. Credit reporting firms say fraud inquiries have soared from less than 12,000 a year in 1992, to more than 500,000 in 1998. Officials say these statistics probably understate the problem, mainly because identity fraud can go on for years before it is detected. Congress originally gave enforcement authority to the Federal Trade Commission. In the mid-1990's, the FTC was overwhelmed with cases and the citizens became extremely frustrated with the lack of action. In October, 1997, Congress gave additional enforcement authority to all state

attorney generals. Remembering that over 1,000 citizens in our nation discover that they are victims of identity theft and the trauma they endure to put their lives back together, these 2 notices – when there are 3 credit inquiries within a 12-month period and when a report would add adverse action to a consumer’s file – are extremely important in serving as an “early warning signal” that someone might be tampering with your credit history. This is one notice per 12-month period, even if more than one event triggers such notice.

3. (Attachment 2 – Item C – *Procedure for disputed information*). See section 9 of this bill (page 18 beginning at line 42). Current law gives the credit-reporting agency a “reasonable period of time” (page 19 at line 4). The proposed legislation gives “30 days” (page 19 at line 8) with a 15-day extension if the consumer provides additional information (page 19 at line 20). On page 20 starting at line 19 is an important provision – “If . . . an item of information is found to be inaccurate or incomplete or cannot be verified, it shall be “promptly deleted” or “modified” and at line 25 “If any information is deleted . . . the information may not be reinserted unless the person who furnishes the information certifies that the information is complete and accurate” and at line 31 “the consumer reporting agency has notified the consumer of the reinsertion in writing.” Also, this section provides written notice to the consumer of the results of the reinvestigation within “5 business days” (page 21 at line 16).
4. (Attachment 2-Item D. *Standard of Proof* page 3) – See Section 12 of this bill (page 26 beginning at line 35). This section addresses WILLFUL failure. Current law allows actual damages, punitive damages, attorney fees and court costs. We are proposing to adopt the federal provisions of the greater of actual damages or \$1,000 (page 27 at line 3). NOTE: Colorado law allows 3 times actual damages. This bill also adds section at line 14, “bad faith or for purposes of harassment “. . . “awarding prevailing party attorney fees.”
5. Section 15 (page 28 beginning at line 2) addresses “knowingly and willfully obtaining information under false pretense is a severity level 7, person felony” and Section 16 (page 28 beginning at line 8) provides the same penalty to “any officer or employee . . who knowingly or willfully provides information.” Both of these formerly were Class A misdemeanors.
6. Section 3(b)(1) – (page 7 beginning at line 19) is an important section regarding employment. Formerly an individual that applied for employment did not have to be told of detrimental information on a credit report if they were turned down when they applied for employment. Under this bill and in federal law, an individual has to authorize in writing (page 7 at line 40) an employer obtaining a credit report and (page 8 at line 18) “before taking any adverse action based in whole or in part on the credit report, the person intending to take adverse action shall provide:
 1. A copy of the credit report;
 2. A form of summary of rightsThis allows an applicant for a job, notice of adverse information on a credit report and provides the necessary information on how to dispute the accuracy of the report.

Prior to those provisions, individuals were continually turned down for employment and not told a reason why. In one case, a person was turned down over 100 times after his identity was stolen and the thief was arrested for burglary, theft and arson, all of which went on the job applicant's credit record which he was completely innocent of.

7. In the way of technical amendment, I think "15 U.S.C. §609(c)(3)" on page 7, line 32; page 8, lines 23 & 24; page 9, line 8 should be: "15 U.S.C. §1681g(c)(3)". Also on page 8, line 30, "home" should be "whom."

We have only proposed those items that either are current law or are items in current Colorado law. In some instances I would like to go further than this act. 15 U.S.C. §1681(c)(3) restricts our ability to go further than the federal law. On page 46 of my 1st Attachment (d)(2)(A) tells us that, in many cases if we go further, our statutes will have to have an effective date of January 1, 2004.

Tom Clark - Attachment 2 - By S. Allen -
General Counsel
Office of the State
Bank Commissioner

FAIR CREDIT REPORTING- COMPARISON OF KEY LAW PROVISIONS

A. GETTING A COPY OF YOUR CREDIT REPORT

Kansas: (K.S.A. 50-708) Upon request and proper ID, CRA must disclose a list of everyone who has requested the consumer's information within the past 6 months, or if they have requested it for employment purposes, in the past 2 years

Colorado: (12-14.3-104) Upon consumer's written or verbal request and proper ID, CRA must disclose:

- *A list of everyone who has requested the consumer's information within the past 6 months
- *Instructions for reading the report
- *A toll free number for dispute resolution

Also, if either three credit inquiries have been made in a 12 month period, or the CRA has received a report which would add negative information to the report, then the CRA must notify the consumer by mail of this fact, and their right to a free copy of their credit report.

Federal: (15 U.S.C. §1681g) Upon request, CRA must disclose to the consumer:

- *Everything in their report, including medical information, and in most cases, the source of the information.
- *A list of everyone who has requested the consumer's report within the past year, or if they have requested it for employment purposes, in the past 2 years

B. CHARGES FOR CERTAIN DISCLOSURES

Kansas: (K.S.A. 50-711) Free report if it's requested within 30 days after adverse action is taken. Otherwise, a reasonable charge may be imposed.

Colorado: (12-14.3-105) One free report per year, then up to \$8 for each additional request; or, it's free if requested within 60 days after adverse action is taken (i.e., a consumer has been denied credit based on credit report info) Also free if either three credit inquiries have been made in a 12 month period, or the CRA has received a report which would add negative information to the report

Federal: (15 U.S.C. §1681j) One free report per year if consumer indicates : (1) he/she is unemployed and plan to look for a job within 60 days (2) he/she is on welfare; or (3) his/her report is inaccurate because of fraud. Also free if requested within 60 days of receiving a notice of adverse action.

C. PROCEDURE FOR DISPUTED INFORMATION

Kansas: (K.S.A. 50-710) If the completeness or accuracy of any item is disputed by a consumer, and such dispute is directly conveyed to the CRA, the CRA shall within a reasonable period of time reinvestigate the dispute and record the current status of the information unless the dispute is frivolous or irrelevant. If the information is found to be inaccurate or can no longer be verified, the CRA shall promptly delete such information. The CRA must note that the consumer has disputed the information in a report unless the dispute has been found to be frivolous or irrelevant.

The presence of contradictory information does not constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute, and the statement can be limited to 100 words.

When the CRA deletes inaccurate information, it must notify the consumer of the correction and notify any person the consumer has designated who has within 2 years prior received a consumer report for employment purposes, or within 6 months for any other purpose. The CRA shall clearly and conspicuously disclose to the consumer his or her rights to make such a request and shall be done prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

Colorado: (12-14.3-106) Consumer must notify CRA of any inaccurate item in the file. CRA is to reinvestigate the item free of charge and record the status of the disputed item before 30 days after the CRA receives notice from the consumer. *CRA shall provide the option of speaking directly to a representative to notify the CRA of the disputed information.*

The CRA must notify all persons who supplied disputed information within 5 days of receiving a consumer notice of a dispute.

The CRA may terminate a reinvestigation of information by a consumer if the CRA believes the dispute is frivolous or irrelevant. CRA must notify the consumer in writing by mail if they make such a determination.

The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for determining that a dispute is frivolous or irrelevant.

If, after a reinvestigation, the dispute information is found to be inaccurate or cannot be verified, the CRA shall promptly delete the information, provide the consumer and any one who requested the consumer's credit report within the last 12 months, a revised copy of their report indicating that it is a revised credit report and refrain from reporting the information in subsequent reports. The CRA also must advise the consumer that they have the right to have a copy of the revised report sent to any one who requested it within the last 12 months.

Information deleted from a report may not be reinserted into the consumer's file unless the person who furnishes the information reinvestigates and states in writing or by electronic record to the CRA that the information is complete and accurate.

A CRA shall provide written notice of the reinvestigation or reinsertion to the consumer within 5 business days of the reinsertion or reinvestigation. Such notice shall include the fact that the reinvestigation is complete, a statement from the CRA on the completeness or accuracy of the disputed information, a copy of the consumer's file or consumer report and a description of the results of the reinvestigation, a notice that tells the consumer who provided the information to the CRA, and a notice that the consumer has rights under the Fair Credit Reporting Act to dispute the accuracy and completeness of the information.

Federal: (15 U.S.C. §1681i) A consumer may dispute the completeness or accuracy of information to a CRA by notifying the CRA. The CRA shall reinvestigate free of charge and record the current status of disputed information or delete the item from the file before the end of the 30 day period beginning on the date on which the CRA received notice of the dispute from the consumer. The 30 day period described above can be extended no more than 15 days if the CRA receives information from the consumer during that reinvestigation period that is relevant to the reinvestigation.

The CRA shall notify any person who provided disputed information of the consumer's dispute within 5 days of receiving consumer's notice of dispute.

The CRA may terminate a reinvestigation of information if the agency believes the dispute by the consumer is frivolous or irrelevant, including by reason the consumer's failure to provide sufficient information to the CRA to investigate the disputed information. CRA must notify the consumer of such a finding within 5 days of making such a finding and provide consumer notice of the reasons why the CRA found the dispute frivolous or irrelevant. CRA shall maintain reasonable procedures to prevent the reappearance of deleted information from the consumer's file. Whenever a dispute is filed by a consumer, unless it is found to be frivolous or irrelevant, the CRA shall clearly note the dispute in the file.

The CRA shall provide notice of the results of a reinvestigation within 5 business days of completing the process. There is also an expedited procedure.

Following any deleted information which is found to be inaccurate or whose accuracy can no longer be verified, the CRA shall furnish the consumer notice that the disputed item has been deleted and furnish the same information to any person designated by the consumer who has within 2 years prior received a consumer report for employment purposes, or within 6 months prior received a consumer report for any other purpose, which contained deleted or disputed information.

D. STANDARD OF PROOF

Kansas: (K.S.A. 50-715, 716) If consumer shows *willful* failure to comply on the part of the CRA, consumer is entitled to actual damages, punitive damages in such amount as the court may allow, attorney fees and court costs.

If consumer shows *negligent* failure to comply on the part of the CRA, consumer is entitled to actual damages and attorney fees and court costs.

Colorado: (12-14.3-108) If consumer shows *willful* failure to comply on the part of the CRA, consumer is entitled to three times the amount of actual damages or \$1000, whichever is greater, for each inaccurate entry in the consumer's file that was disputed by the consumer, plus reasonable attorney fees and court costs.

If consumer shows *negligent* failure to comply on the part of the CRA, consumer is entitled to actual damages or \$1000, whichever is greater, for each inaccurate entry in the consumer's file that was disputed by the consumer and affects the consumer's creditworthiness, plus reasonable attorney fees and court costs.

Colorado law also imposes fines if the CRA fails to take certain actions to correct the consumer's file.

Federal: (15 U.S.C. § 1681n) If consumer shows *willful* failure to comply on the part of the CRA, consumer is entitled to actual damages in an amount not less than \$100 nor more than \$1000, punitive damages in such amount as the court may allow, attorney fees and court costs..

If consumer shows a person obtained his/her report under false pretences or knowingly without a permissible purpose, consumer is entitled to actual damages or \$1000, whichever is greater. In addition, the person who obtained the report can be held liable to the CRA for actual damages or \$1000, whichever is greater.

TO: Kevin Glendening, Deputy Commissioner
FROM: Ezra Ginzburg, Staff Attorney
RE: Colorado Fair Credit Reporting Act information/ other information

According to Mary Geesling (sp) at 303-866-4495 and Stan Lechman 303-866-4500 or 303-866-5706, no state agency in Colorado enforces the Fair Credit Reporting Act. Consumers are referred to the FTC or can sue privately. There is a Collection Agency Board which does regulate the Fair Debt Collections Practices Act, but this does not deal with credit report issues (i.e.—charges for reports, negative information on reports, etc..) Laura Udis, at 303-866-5544, also confirmed that no state agency enforces the act; consumers may sue in federal or state court with a private right of action.

There appear to be three areas of difference between the Federal Law and the Colorado statute. As background information, the Colorado law was amended in 1997. The three key differences are: 1) Colorado allows one free credit report per year to every consumer when certain events take place or if a consumer requests one, See 12-14.3-104(2)(e); 2) the amount of damages appears greater in Colorado than under Federal law, see 12-14.3-108; and finally, 3) a provision allows a Colorado consumer to essentially speak to a person at the consumer reporting agency when they have a problem with their credit report, see 12-14.3-106 (8). There may be more differences but these were some of the main ones we discovered. Laura Udis, at the Colorado AG's Office, 303-866-5544, also informed us that the Colorado statute was highly opposed by credit companies in Colorado and was challenged in federal district court there and was upheld by the district court. It was not appealed beyond that and she will be mailing our agency a copy of that decision. She also stated that no state agency enforces that act and it is left to private legal action in state or federal court.

The Colorado statute dealing with Fair Credit Reporting appears in many respects similar to the Federal Law. There is a provision in the Colorado law which states that any consumer reporting agency that willfully violates any provision of this article shall be liable for three times the amount of actual damages or one thousand dollars for each inaccurate entry in the consumer's file that was disputed by the consumer, whichever is greater. Also, there is a provision which states that in addition to the damages referenced, if ten days after the entry of judgment for damages, the consumer's file is still not corrected by the consumer reporting agency, such assessed damages shall be increased to one thousand dollars per day per inaccurate entry that remains in the consumer's file until the inaccurate entry is corrected. See 12-14.3-108.

**Before the House Judiciary Committee
House Bill 2685**

Mr. Chairman, members of the committee, thank you for the opportunity to address this committee concerning the subject of identity fraud, my name is David Porter.

As I testified before the Judiciary Interim Committee I am a victim of identity fraud (See Attachment 1). Without my knowledge in the Spring of 1994 my name and SS# were verified by a credit bureau as valid and with excellent credit history. Eight months later my credit history was destroyed because a foreign national filed bankruptcy to keep from being evicted from his apartment lease that was put under my name. My credit cards were canceled, the credit bureaus were uncooperative and blamed me, the police accused me of perpetrating some kind of scam, and I was being sued for back rent in LA. Further investigation on my part alone revealed a false drivers license number, stolen license plates on his 1994 green jaguar, the name and address of a CPA who certified his income at \$65,000 a year, the name of an export/import company for whom he worked, a bank account in Moscow and San Francisco, the name of his Beverly Hills attorney, his apartment phone number, addresses of friends, and many more tidbits of information. Even with this information I was turned down for help from the Los Angeles Police Department, California Bureau of Investigation, Lawrence Police Department, Kansas Bureau of Investigation, Los Angeles FBI, Topeka FBI, Secret Service, INS, and even the Social Security Inspector Generals office. Two weeks later he disappeared and has not been seen again. But this was only the beginning of my problems. Since then I have found that privacy is no longer the right of every American "to be left alone" and freedom does not include your identity. It isn't even the ability to withhold personal information. How many would forego a home mortgage rather than fill out a loan application that is no longer just between you and the lender? How many would

rather refuse medical treatment, not have car insurance, give up their drivers license, or lose the ability to obtain credit or conduct trade by not divulging their Social Security Number (SSN). It was because he has my name and SS# he was able to do this to me and can strike again anytime.

That is why I am before you today in support of House Bill 2685. I feel that this bill supports the expectation and demand of individuals that they have access and control over their personal and financial information. I also strongly urge you to adopting the Colorado provision on page 17 starting at line 18 by requiring notice by 1st class mail one time per year when one of two things happen:

1. Three credit reporting agencies receiving three credit inquiries on a consumer within a 12 month period.
2. The consumer-reporting agency receives a report that would add adverse action to a consumers file.

With this section of the bill the consumer can be more informed and aware of fraudulent or suspicious activity in their financial lives. According to James Bauer, Deputy Assistant Office of Investigation, U.S. Secret Service, law enforcement must wait for an overt fraudulent act or creation of a fraudulent document before it can intercede in a case solely involving identity fraud and reaction time is critical. This section of the bill will increase that response time for the consumer and law enforcement.¹

I have been told that the cost to the credit bureaus would be prohibitive and it would cost the consumer. This argument is invalid for several reasons. In a series of "Washington Post" articles dated March 8-10, 1998, it was reported that personal information is being data mined and released to marketers, database managers, and other interested parties by various credit bureaus (some owned by foreign companies),

¹For further information on the pervasiveness of ID theft as reported by the FTC and Secret Service go to the FTC web site at <http://www.consumer.gov/idtheft/reports.htm>

banking/finance, health care, insurance, real estate, retail marketing, transportation/logistics, and utilities/telecommunications, and even state, and local agencies for profit in the amount of Two "Billion" Dollars a year. So cost to the credit bureaus is of little concern to me as they make more money than many large countries. Also:

1. I never asked them to start a file on me in the first place and;
2. I was never asked to provide this information to them.

Another reason I feel that this argument by the credit bureaus about cost is not valid is that according to Steve Reger of Trans Union I am eligible for a free copy of my credit report any time I want one because I am a victim of identity fraud. So in other words you have to become a victim before you are entitled to a free copy of your credit report any time you ask? What kind of sense does that make? Let me repeat that again.... You have to become a victim first before you can get some semblance of control over your own information.

Today data mining and data warehousing by corporations such as credit bureaus (which are designed to gather, link, and sell personal consumer information for marketing purposes), unintentionally expose this information to criminals. As a professional Demographer who uses this information every day I know these companies are profit motivated, and, as such, are more concerned with gathering information and generating potential customers and profit than with protecting the use of this information from unscrupulous individuals. These data warehouses often obtain their information from consumers themselves, who may not realize that the information they provide in credit card applications or to the merchants they patronize, are valuable commodities in this new age of information trading. By 2002, companies will spend \$113 billion to analyze and mine customer data.²

²American Demographics, July 1999 page 40

For individuals who feel that ID fraud is not a problem, the General Accounting Office reports that consumer inquiries to the Trans Union credit bureau's Fraud Victim Assistance Department increased from 35,235 in 1992 to 522,922 in 1997, and this is only one of the three major credit bureaus.³ Even the credit bureaus admit there is a problem. It is a war on the individuals identity and the citizens of this country are losing. I support this bill not out of altruism but to prevent what happened to me from happening to anyone else. Give us the power to access our own information to provide some security in our lives. Because in today's society your information is your freedom. Do you feel secure knowing that someone else has control over your financial life and that you have to pay to find out that information?

The credit bureaus will be against this bill because it places the burden on them to verify information with each individuals financial history. This is a "burden" that they are happy to assume when it didn't cost them money. All I am asking is to give the individual the power to minimally protect themselves. This legislation does that. I hope in the near future the legislation being offered today is only a small first step toward a more comprehensive and stronger legislation in the future. Our personal and private freedom is our identity and it demands each person's eternal vigilance. These legislative weapons that you have before you are dearly needed to begin the process of protecting ourselves.

This concludes my prepared statement. I would be happy to answer any questions that you or any other member of the committee may have.

³Calls to this department included "precautionary" phone calls, as well as calls from actual fraud or identity theft victims. From testimony from Jodie Bernstein, Director of the Bureau of Consumer Protection, Federal Trade Commission committee on Telecommunications, Trade and Consumer Protection Committee on Commerce United States House of Representatives, Washington, D.C. April 22, 1999

TESTIMONY BEFORE THE SPECIAL COMMITTEE ON JUDICIARY

Study Topic #7 - Identity Theft and Privacy

September 8, 1999

Members of the Committee:

My name is David Porter. My occupation is Project Director of the Cartographic Division for a company in Kansas. I appreciate this opportunity to present my story on identity theft.

Introduction

In the summer of 1964 I was told that I needed a number that would be confidential and only used to provide me with "social security" when I retired. In the fall of 1994 I became a victim of identity theft because my social security number is no longer used just for Social Security. It is now used by over 40 government agencies and a multitude of corporations, including the credit bureaus. Since becoming a victim I have learned I am not alone. The General Accounting Office, reports that consumer inquiries to the Trans Union credit bureau's Fraud Victim Assistance Department increased from 35,235 in 1992 to 522,922 in 1997 and this is just one of the three national credit bureaus. When I turned to the same government that gave me this "social security" number to help me I was told there was nothing they could do. I was presumed guilty because I was a victim and practically accused of some malfeasance on my part and had to prove my innocence time and time again.

Without the help of any law enforcement agency, consumer group, or legal system I was forced to search fruitlessly for legal counsel to defend myself because of the indifference directed toward me by governmental agencies and corporate America. I was required to become an investigator to track down the imposter, provide evidence of my innocence, and spend thousands of dollars and hundreds of hours while attending graduate school full time and working full time. I needed to pay for an attorney, made hundreds of long distance phone calls (95% were not toll free), and spend hundreds of hours writing letters to uninterested State and Federal representatives, credit bureaus, and other companies.

Bankruptcy

My story begins in the fall of 1994 when I had a credit card suddenly canceled. When I called the credit card company they said I had filed bankruptcy and that it had been reported by TRW. When I called TRW I found it to be a maze of voice mails, useless information, and dead ends that would not allow me to talk to a human being. After many hours of persistent phone calls to different places and a few sympathetic people I was finally able to talk to a real live person from TRW who would only verify my name and Social Security Number (SSN). They said their "records" showed that I had indeed filed bankruptcy and the person I was talking to had the attitude that I was a fraud. From then on

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obfuscation was the order of the day for the credit bureau. Since it was my name and SSN TRW would not tell me where the bankruptcy was because I was the one filed it so I obviously already knew the answer. I then had to call every federal bankruptcy court in Kansas and Missouri only to find out that they had no record of a bankruptcy being filed in my name. Only by calling the credit bureau back and demanded to speak with a supervisor was I able to find out that bankruptcy was filed in Los Angeles, California. I immediately requested a copy of my credit report and was told that I would have to write a letter and prove my identity with a copy of a recent utility bill and a letter explaining why I was requesting the report and also told that it would take 10 days to two weeks to receive it. At this time I still did not know what was happening. I assumed it was a clerical error. They went on to explain that they had an address for me in Los Angeles. I tried to explain that I never lived in California and had only visited twice (the latest in 1984) Assuming it was their mistake I emphatically demanded that a copy of my credit report be faxed to me immediately after I faxed the information they requested to their office. The credit bureau only relented after I had issued a diatribe of expletive deletions and threaten to bring down the wrath of the federal government upon them. How naive I was to think that the government would help me.

My next step was to call the bankruptcy court. After speaking with a dozen people and calling a dozen various numbers I was able to speak to a sympathetic person in the clerks office who could only tell me that apparently I had filed bankruptcy and that if it was fraud it was not uncommon in Los Angeles to do this to stay an eviction. I was also further told that in order obtain any documents or to have this bankruptcy dismissed I would to have to engage the services of an attorney.

After hiring an attorney I turn him loose on the bankruptcy court and I began to gather information on the individual who was impersonating me. I was able to obtain that the imposter was being sued by an apartment complex for back payment of rent since March. After contacting the apartment complex I was able to corroborate the information they gave me with the faxed credit report I received from TRW. It showed a SSN check was done in March by an apartment management company in Los Angeles. This was the first and only time that he ever had to verify his SSN. Interestingly a later hard copy of my credit report mailed to me from TRW showed no reference to a SSN verification.

With further investigation on my part I was able to find out that he spoke with a Russian accent, was running prostitutes out of his apartment, and worked for an Import/Export company in Los Angeles. I was able to obtain his address, phone number, a copy of his drivers license ,(drivers license number belonged to some woman in LA), licenses plate number on his 1994 green jaguar (license plates belonged to a 1988 Cadillac), obtain his bank account numbers with Trans America (San Francisco) and the Bank of Lubor (Moscow), and the name and address of a CPA who certified his income at \$65,000 a year. I also tracked down his references who either, I was told, were fired or no longer worked in their electronic and computer stores (which could easily make false ID's). I was able to contact his "next of kin" reference who turn out to be some old woman who did not speak English. I also had another name for the imposter that could possible identify him. It was from a fax I was able

to obtain from his apartment. That fax also contained the phone number of his Beverly Hills attorney who refused to return any of my phone calls.

Law Enforcement

I contacted the Los Angeles Bankruptcy Court Fraud Division and gave them the information. They told me that they would put it under investigation. To this day it is supposedly still under investigation and they will not tell me any more.

I then contacted Local, State, and Federal law enforcement agencies and tried to give all of them the information that I had gathered. But none of them were interested. The Lawrence Police Department "grilled" me for 3 hours and afterward I was told that they would not help and that I should contact the Los Angeles Police Department since it occurred in Los Angeles. I contacted the Los Angeles Police Department and was told that over two dozen cars are stolen each day and not to bother them. They totally ignored the fact that this person had broken dozens of state laws, federal bankruptcy laws, committed mail fraud, and was probably an illegal alien and a possible member of the Russian Mafia.

I continued trying to find someone to help by contacting the California Bureau of Investigation, Kansas Bureau of Investigation, the Los Angeles FBI, Kansas FBI, and Missouri FBI, Los Angeles Immigration and Naturalization Service, the Inspector General Office of the Social Security Administration, and the Secret Service. The standard response was that they do not have the money or resources to go after this person since I lost less than \$25,000 in monetary losses. I tried contacting the Kansas Attorney General's office but all I received was a standard form letter that had nothing to do with what I wrote them about. The Topeka FBI became downright rude. I became so desperate for their help I told their agent that I was even thinking about driving to Los Angeles and shooting the imposter just to evoke a response from the agent. His only response was that I might get hurt. He was more concerned about the paper work involved if I got killed than if I went out there and shot the imposter.

The only help I received from law enforcement was through the Sheriff in my home town. With his help I was able to find out that the driver's license number belonged to some women in San Diego, the license plates belonged to a 1988 Lincoln Continental in another town.

After two weeks the imposter became aware of my phone calls and investigation and disappeared. To this day he could appear again and this could start all over again because I could not get any help from any law enforcement agency. But the story does not end here it is only beginning.

Credit Bureaus

By now the time available to me was very limited and my financial resources were dwindling even quicker. My attorney was only able to get the bankruptcy dismissed from Federal Bankruptcy Court

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only because the filing documentation was done improperly, not because of fraud. What I really wanted was a statement from the court saying that the bankruptcy was fraudulently filed by an imposter. But as a graduate student I had already run up over a \$1,000 dollars in attorneys fees on a budget of less than \$8,000 a year so I was never able to obtain that statement from the court. So I began to try to repair my credit which had up to this point been immaculate.

Several weeks after the initial contact with TRW the other two major credit bureaus started reporting the same information. I contacted all three and sent proof in the form of utility bill, leases, affidavits from professors and co-workers that I had not lived in California in at least the last six years. I also sent them samples of my hand writing to compared to the signature on the bankruptcy statement, several photo ID's, and any other information I could think to send them. I was told several times, by phone, that the bankruptcy and any other information pertaining to this person in California would be deleted. I thought this would be the end of this matter. I was sadly mistaken. Several months later I began to get phone calls from collection agencies for unpaid long distance phone calls to Russia, cable companies, and utility companies. I now also had a judgement against me for back rent for the apartment in California. After requesting another copy of my credit reports from each of the three credit bureaus I found that nothing had been removed and that now I had other derogatory information placed in my credit report. I wrote to each explaining what happened and was told that it was my name and SSN and that there was nothing they would do about it.

I found out that the Federal Trade Commission was in charge of the credit bureaus and wrote them explaining what had happened to me. I received a letter back saying they were sympathetic but they could do nothing to help. They only worked with companies on legal points of the Fair Credit Reporting Act.

In 1995 I began another letter writing and phone call campaign. I had to write every one of the companies who had reported this fraudulent information. There were over a dozen which took at minimum of three letters, a pound of documentation, and four phone calls to each company to convince them that I was innocent. This time I was able to get most of the collection agencies off my back and have the liens and bad credit removed from my credit report. But the credit bureaus still refused to remove the California address or the bankruptcy. I was told it is my name and my SSN and it would not be removed. I was told that I could put a one hundred word statement at the end of my file to explain my side of the story. I became very angry but I did not have the time or financial resources left to pursue this matter any longer. I gave them my statement but later found out that this statement at best means nothing and at worst is totally ignored or eliminated from any report given to lending institutions.

In 1996 I tried to get an auto loan but was turned down because my record showed bankruptcy. I protested and explained the situation but they said that the credit bureaus would have removed it if it wasn't true. I ended up leasing a car and had to pay a substantial security deposit. In 1997 I tried to

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get a pre-approved home loan. All I received was a terse letter turning me down because my record showed bankruptcy. I tried calling but the lending institution would not talk to me. I was not even allowed to explain what had happened to me.

It was at this point that I decided to seek legal action against the credit bureaus. I contacted a dozen attorneys, organization, and even the ACLU to help me fight the credit bureaus. One attorney told me it would take a minimum of \$15,000 dollars just to get to court and could exceed \$150,000 by the time the trial was over. I did not have the money even to get to court. Needless to say I could not find any attorney's that would fight them pro bono.

On my second attempt to clear my name through the State Attorney Generals office on the first of June in 1997 I got into a "pass the buck" letter writing campaign between the AG office and the credit bureaus that after two months had netted nothing. So around the first of August I took off a day from work and took all my documentation (by now weighing in around 40 lbs) and went to the attorney generals office in the morning and refused to leave until I talked with the Attorney General herself. I sat there all day until around 430pm when a man came out and took me back to a conference room where I spread out all of my documentation. After 30 minutes he said that I had obviously exhausted all legal recourse and that he would pursue the matter all the way to court. The next day he contacted me and assured me that everything had been removed and cleared up with the credit bureaus and that I would be receiving copies of my credit report from all three credit bureaus within 3 days. On the third day I received my credit reports and all bankruptcy information and the California address had been removed.

However, to this day I still receive an occasional phone call from collection agencies who have somehow obtained my unlisted phone number to pay a bill. It is also still difficult to obtain a copy of my credit report without making copies of my utility bills and include some kind of photo ID with my hand writing. Also finding the correct address of the credit bureaus seems to be a challenge as it seems to change every month. On top of this I have to wait two weeks or more after requesting information. I have also written to the credit bureaus to have my name removed from any type of solicitation but I still receive pre-approved credit card offers.

Lack of Security

I have never put my SSN on my personal checks or any other documents since I obtain my SSN. I do not carry my SSN. I do not and never have had my SSN on my drivers license. I have never put my SSN on any form that did not demand it in order to obtain loans or medical assistance. But today you cannot go into a store and pay for anything by check without giving your drivers license number and/or SSN. It is getting to the point were I can't do business without my SSN.

So how do identity thieves get this information? According to the FBI and Secret Service, many ways.

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- One way is the old fashioned way -- by stealing a wallet or purse. The thief either uses the information obtained or sells the information to a crime ring.
- Dumpster diving - Fishing credit card slips and loan or credit applications from the trash, and unfortunately many businesses, banks, mortgage companies, and restaurants do not shred these documents.
- An inside job -- having access to a computer terminal and doing a credit check for a legitimate company.
- Mail theft
- Bribing credit bureau or bank employees
- Obtain information from drivers licenses, birth certificates, voter registration
- Retrieval of information through the Internet
- Change of address routine. The thief fills out a change of address card so the victim's mail is diverted to the thief's drop box.
- And there are many more schemes. Many victims like myself haven't a clue as to how their identifying information was obtained by the imposter

Added to this recipe for identity fraud that I've just given is the fact that merchants, banks, auto dealerships and other often make it easy. When's the last time a store clerk actually examined your signature on the back of a credit card. Banks still issue the last 4 digits of the SSN as the default PIN number for ATM cards and for telephone banking access. Sallie Mae uses SSN as the account number on student loans. Most colleges and universities use the SSN as the student ID. It's on their cards, and grades are often posted by the SSN. In many states the SSN is the drivers license number. All these acts put personal privacy at risk. Many insurance companies, including Blue Cross use the SSN as the the insurance account number and have it emblazoned on member cards which must be carried in the wallet. MediCare cards have the SSN on them.

Victims

So what happens to the victims of these crimes? According to Beth Givens of the Privacy Rights Clearinghouse each identity fraud case is different, but what happens to them is sadly all too similar.

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- They get little to no help from any of the authorities who issued the identifying information to them in the first place. The government.
- Law enforcement almost never gets involved. There's just too much of other more life threatening crime occurring from them to handle. To them identity fraud is minor.
- Many police and sheriff's department refuse to issue a police report to the victims -- and many victims, including myself, need that police report to prove their innocence.
- Many victims report that they do not get effective help from the credit bureaus or banks. They have difficulty in reaching the credit bureaus, and tell how they are treated disbelievably by some credit bureaus. And the report that flagging their credit report for fraud doesn't always stop the imposter
- Victims also have to put up with abusive collection agencies
- Victims are often scarred emotionally. They feel violated and helpless -- and very angry. I've talked to many who are crying or close to it because they can't find anyone to help. I've even heard two women talk about "killing" the perpetrator.

Conclusion

Identity theft goes to the heart of personal privacy. It occurs when an individual appropriates another's name, address, SSN, or other identifying information to commit fraud. In rural Kansas where I grew up my good name is very important to function socially and financially. Without it I would have been someone not to be trusted or worse. So why is it that a number I accepted with trust from the government for my future financial security in retirement is allowed to be subverted and subjugated as some sort of ID for private companies and corporations?

In a series of "Washington Post" articles dated March 8-10, 1998, it was reported that personal information is being released to marketers, database managers, and other interested parties by various state and local agencies. And, within the past week or two the US Circuit court upheld the right of phone companies to sell your phone records, even though the FCC opposed this further invasion of your privacy.

In the most recent edition of *GIS World* companies that data mine and data warehouse (which are

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designed to gather, link, and sell personal consumer information for marketing purposes) is growing at a rate of 20% a year. The *Washington Post* article mentions that there are approximately 1,000 data warehouses, which is ten times the number that existed just five years ago. Like all businesses, these companies are profit motivated, and as such, may be more concerned with generating potential customers than with protecting the use of this information.

When fraud victims turn to law enforcement they have difficulty obtaining help. Criminal laws for the most part, including three sections of the United States Criminal Code that criminalize conduct integral to identity theft, but do not recognize wronged citizens as victims of identity theft. In addition, due to the nature of this type of fraud, victims have little evidence to offer to law enforcement. Even when creditor refer cases to law enforcement, the cases that do not meet significant dollar thresholds (typically \$25,000-\$50,000) and fall through the cracks.

So what have I learned from this experience? I have found out that credit bureaus collect personal information, sell personal information, and make millions from your personal information. I also know that I was not the first victim and there will be many more people. The challenge for me now and in the future will be to protect my privacy. So I ask, why are credit bureaus allowed to have and maintain this awesome power over my life? Who authorized the credit bureaus to collect information on me? I was never asked to give them information. I never authorized them to sell my personal information. So what can I do about it? What can you do about it? To this day I still am haunted by the fact that the perpetrator is still at large and there is no way to defend myself.

This concludes my prepared statement. I would be happy to answer any questions that any member of the committee may have.



Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

For Release: January 13, 2000

Nation's Big Three Consumer Reporting Agencies Agree To Pay \$2.5 Million To Settle FTC Charges of Violating Fair Credit Reporting Act

Three national consumer reporting agencies, Equifax Credit Information Services, Inc., (Equifax), Trans Union LLC (Trans Union), and Experian Information Solutions, Inc. (Experian), have agreed to a total of \$2.5 million in payments as part of settlements negotiated by the Federal Trade Commission to resolve charges that they each violated provisions of the Fair Credit Reporting Act (FCRA) by failing to maintain a toll-free telephone number at which personnel are accessible to consumers during normal business hours. According to the FTC's complaints, Equifax, Trans Union and Experian (collectively, consumer reporting agencies or CRAs) blocked millions of calls from consumers who wanted to discuss the contents and possible errors in their credit reports and kept some of those consumers on hold for unreasonably long periods of time. The proposed settlements with each CRA also would require that it meet specific performance standards to ensure that CRA personnel are accessible to consumers.

The FCRA is designed to promote accuracy, fairness and privacy of information in the files of every consumer reporting agency. To provide consumers the ability to more easily resolve inaccuracies in their credit reports quickly, Congress amended the FCRA -- effective Sept. 30, 1997 -- to require Experian, Equifax and Trans Union to provide consumers who receive a copy of their credit report with a toll-free telephone number at which personnel are accessible to consumers during normal business hours.

"The reality is that consumers never got the access to the consumer reporting agencies that the law guarantees," said Jodie Bernstein, Director of the FTC's Bureau of Consumer Protection. "These cases demonstrate in no uncertain terms that it's time for Equifax, Experian and Trans Union to pick up the phone and meet their obligations to consumers."

Equifax is based in Atlanta, Georgia; Trans Union is based in Chicago, Illinois, and Experian (formerly, TRW) is an Ohio corporation, with its principal place of business in Orange, California. They are the largest consumer reporting agencies in the nation. According to the FTC's complaints, while all three CRAs had established toll-free telephone numbers for consumers, they violated the accessibility requirement of Section 609(c)(1)(B) since the provision went into effect in September 1997 because a substantial number of consumers have been unable to access the CRAs' personnel when calling the toll-free numbers during normal business hours.

The complaints against Trans Union and Experian allege that since September 1997 over a million calls to their toll-free numbers received a busy signal or a message indicating that the consumer must call back because all representatives are busy. The complaint against Equifax contains a similar allegation involving hundreds of thousands of calls by consumers to its toll-free numbers. Further, each complaint alleges that a number of callers

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to the CRAs' toll-free numbers experienced an unreasonable hold time while waiting to speak with CRA personnel during normal business hours. Finally, the complaints against Equifax and Trans Union allege that each blocked certain incoming telephone calls based upon the location of the call, including, but not limited to, area code.

The proposed consent decrees contain specific injunctive provisions that ensure the three CRAs maintain toll-free telephone numbers with personnel accessible to consumers who receive a copy of their credit report. Each of the proposed settlements would require that the CRAs maintain a blocked call rate of no greater than 10 percent and an average hold time of no greater than three minutes and thirty seconds. To measure the CRAs' compliance with these standards, the CRAs will be required to conduct regular audits in accordance with guidelines specified as part of the settlement. Further, the proposed consent decrees would require each of the CRAs to fully comply with Section 609(c)(1)(B) of the FCRA in the future.

Finally, Equifax has agreed to pay \$500,000, and Experian and Trans Union both have agreed to pay \$1 million, all pursuant to the Commission's authority to collect civil penalties, as a monetary settlement of the charges.

The complaints and proposed settlements were filed in U.S. District Courts in Illinois, Georgia, and Texas earlier today by the Department of Justice on behalf of the FTC. The Commission vote to refer the matters to DOJ for filing was 4-0, with Commissioner Sheila F. Anthony recused.

NOTE: A consent decree is for settlement purposes only and does not constitute an admission by the defendant of a law violation. A consent decree is subject to court approval and has the force of law when signed by the judge.

Copies of the complaints and proposed settlements, as well as two consumer brochures, "Fair Credit Reporting" and "How to Dispute Credit Report Errors" are available from the FTC's web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; 877-FTC-HELP (877-382-4357); TDD for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.

MEDIA CONTACT:

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Bureau of Consumer Protection
202-326-3025 or 202-326-3210

FTC Matter Nos.:

Equifax -- 9923016;
Experian -- 9923017;
Trans Union -- 9923018

Civil Action Nos.:

Equifax -- 1:00-CV-0087; U.S. District Court for the Northern District of Georgia, Atlanta Division;
Trans Union -- 00C 0235; U.S. District Court for the Northern District of Illinois, Eastern Division, in

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Testimony of

James J. Welch, Assistant Attorney General

Consumer Protection Division

Office of Attorney General Carla J. Stovall

Before the Judiciary Committee

RE: HB 2685

February 1, 2000

CONSUMER HOTLINE
1-800-432-2310

Chairperson O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to provide information on House Bill 2685, concerning revisions to the Kansas Fair Credit Reporting Act. My name is Jim Welch and I am an Assistant Attorney General for the Consumer Protection division.

Our office was asked to appear before the Interim Judiciary Committee to provide information on identity theft and credit reporting concerns. We were subsequently asked to draft proposed language to update the Kansas Fair Credit Reporting Act (FCRA), which resulted in HB 2685.

The Interim Judiciary Committee asked our office to confer with representatives of the Office of the State Bank Commissioner to determine who should enforce the provision of the Kansas FCRA. Because our office currently handles credit reporting complaints under the federal law, both agencies agreed we would be the appropriate enforcement authority. As a result, HB 2685 transfers enforcement of the Kansas FCRA from the Consumer Credit Commissioner to the Attorney General.

The federal FCRA was enacted on April 25, 1971, and the closely-modeled Kansas FCRA followed on July 1, 1974. Since enacted in 1974, the Kansas act has had very few court decisions and no legislative updates. However, with the increasing incidence of identity theft, credit card fraud, and the like, there is an increasing need for enhanced enforcement of the FCRA at the state level.

The federal FCRA supercedes equivalent state Acts where there are inconsistencies - unless the state law gives greater protection to consumers than is provided under federal law. Over the past few years, the federal FCRA has undergone significant changes, affording more protection and easier access to credit report information to consumers. It is important that Kansas law reflect these changes in order to protect Kansas consumers from the gross inequities that may result from identity theft, fraud, or erroneous information being given to a credit reporting agencies.

Some highlights of the amendments to the federal FCRA which are reflected in HB2685 include:

- Limitations upon the circumstances for which a consumer report may be obtained
- Establishment of new rules for providing consumer reports for pre-screening purposes, including allowing consumers who wish to do so to "opt-out" of the pre-screening process
- Limitations upon the types of information and the circumstances in which such information can be included in consumer reports
- Disclosures required to be provided to consumers for the preparation of investigative consumer reports (reports that provide information on a consumer's character, reputation, personal character and mode of living) and summaries of consumers' rights
- Compliance procedures which provide notice to consumers, users and furnishers of information and ensure the accuracy of such information
- Required procedures for credit reporting agencies and consumers for disputing the accuracy of information contained within the consumer report
- Requirements for users of consumer reports for disclosing certain information to consumers, including notice of adverse action being taken based upon a consumer report

In addition, HB 2685 includes the addition of amendments contained in the Colorado FCRA, as recommended by Senator Clark. First, consumer reporting agencies would provide a disclosure copy of a consumer's report at no charge to the consumer when, during any 12-month period, one of the following occurs: (1) the consumer reporting agency receives 3 credit inquiries pertaining to that consumer, or (2) the consumer reporting agency receives a report that would add adverse information to a consumer's file. Further, the Colorado amendments would afford every consumer, upon request, one free disclosure copy of the consumer's own credit report during any twelve-month period.

Finally, HB 2685 would increase the penalties for non-compliance with the FCRA. Specifically, a person who willfully refuses to comply may be subject to damages of not less than \$100 or no more than \$1000, plus punitive damages and reasonable attorney fees. A person who negligently fails to comply with the FCRA could be liable for actual damages and attorney fees. HB 2685 also increases the criminal sanctions available for obtaining information under false pretenses and for unauthorized disclosures of consumer report information from a class A misdemeanor to a level 7 person felony. Penalties for all other violations not specifically detailed would remain a class C misdemeanor.

On behalf of Attorney General Stovall, I urge your favorable consideration of HB 2685 with our proposed amendments which will serve as a "tune-up" in keeping current with the federal law already in place and in protecting consumers from the evils of identity theft, fraud and erroneously-reported information. I would be happy to answer questions of the Chair or any member of the Committee.



Associated Credit Bureaus, Inc.

1090 Vermont Avenue, N.W. Suite 200
Washington, D.C. 20005-4905

February 1, 2000

The Honorable Michael O'Neal
Chairman, House Judiciary Committee
Kansas State House of Representatives
Topeka, KS 66612

Dear Mr. Chairman:

I write on behalf of Associated Credit Bureaus (ACB) to oppose portions of H.B. 2685 and support portions. By way of background, ACB is the national trade association representing the credit reporting industry. With offices throughout Kansas and the United States, ACB members' services provide rapid credit information for consumer credit needs including mortgages, car loans, student loans, credit card accounts, and much more.

Since ACB and its members take identity theft very seriously I want to inform the committee what our industry has been doing on this subject and why some of the proposals in the bill will do little if any good for consumers at great cost to business.

First, although additional technical fine-tuning is necessary, ACB supports Kansas updating the federal Fair Credit Reporting Act (FCRA). Originally passed in 1970, the FCRA was significantly modernized in 1997 and we support similar modernization in Kansas. Second, we support moving enforcement of the Kansas act to the Office of the Attorney General. Third, we supported the identity fraud bill you passed last year and we support the enhanced penalties to that law that are contained in S.B. 383.

However, Mr. Chairman, we must oppose the notice provision and free report provision found on page 17, lines 8-32, page 23, lines 12-32, and page 24, lines 3-10.

Identity Theft

Identity theft is an equal-opportunity crime that affects everyone. It is a particularly invasive form of fraud where consumers, consumer reporting agencies and creditors must untangle the snarl of fraudulent accounts and information resulting from a criminal's actions. This task is often frustrating and time-consuming for all concerned. ACB and its members remain committed to doing what we can on the issue of identity fraud and as no one industry can deal with it alone, we are working with consumer organizations, credit grantors, and law enforcement. Only with a united front will identity fraud be reduced.

There are several components to combating identity fraud and the credit reporting industry has been diligent in attacking the crime from several aspects: fraud detection at the onset, post-reinvestigation strategies, victim assistance, and consumer education. ACB members have implemented a number of methods to attack identity fraud, and are developing more all the time.

The Honorable Michael O'Neal
February 1, 2000
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The attached document demonstrates that, since January 1997, ACB and its members have been focused on assisting consumers and reducing the incidence of identity fraud. Specifically, the ACB Board of Directors created a Task Force to ensure our industry's focus on the issues of identity theft. Its mission is to explore how our industry can continue to assist consumers and customers, which have been victimized by the crime of identity theft. The Task Force consists of the senior-most executives within our largest members and is facilitated by a former state attorney general.

ACB and its members are also educating consumers about credit and identity fraud and nothing speaks more to that point than the following comment offered by Jim Bauer, Deputy Assistant Director, Office of Investigations, U.S. Secret Service. In January 1998, speaking before an ACB conference, Mr. Bauer said:

There has to be undertaken by all of us an education of the public...It's sometimes difficult to convince victims that the bad guys in all of this are not the banks or the credit bureaus, but in fact the criminals themselves. And on that count, I commend [the credit reporting] industry; you've done more than any other that I can see to educate the public.

On the legislative front, ACB has supported identity fraud bills in many states, including Kansas and we support enhancing the penalties for identity fraud perpetrators.

Notice Requirements

The notice requirements on page 17, lines 8-32 and page 23, lines 12-32 would require credit reporting agencies to send an annual notice to consumers when one of the following events occurs during that year: (a) the consumer reporting agency has received three credit inquiries pertaining to the consumer; or (b) the consumer reporting agency has received a report that would add adverse action to a consumer's file. When one of these thresholds have been met, credit reporting agencies must send a notice each year informing the consumer that one or both of the events has occurred. This notice must give consumers an address to write to to obtain a copy of their credit report. The bill also prevents a credit reporting agency's ability to recoup from the consumer the administrative processing charges for the notice and the report.

We believe these provisions will not be effective in preventing or reducing identity theft, for several reasons:

First, this notice is confusing to consumers. It is quite likely that most adults in the state would receive three of these notices in any given 12 month period – one from each credit reporting system. Anecdotal evidence suggests that such a notice confuses consumers and generates more inquiries as to the meaning of the document than anything else. Consumers do not need the notice and should be spared the confusion. If a consumer applies for credit he or she is aware of his or her affirmative steps to open a credit account. If a consumer has inquiries on his or her file because of prescreened credit card offers, the consumer is aware of that too as mail arrives concerning prescreened offers. Finally, most other inquiries are made by institutions that have existing relationships with consumers.

The Honorable Michael O'Neal
February 1, 2000
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The second concern we have is that the consumer notice in the bill will do little if anything to prevent identity fraud and in fact, the proposal could increase the instances of identity fraud. Instead of taking this route, which invites the idea of sending a notice on every address change, it might be more direct to note that these unsolicited, and unexpected notices about adverse information could raise privacy problems within the household. Or better yet, how about the fact that the vast majority of these notices are ignored by the consumers receiving them today. There is anecdotal evidence from the only state where such a notice provision exists to suggest that not one single instance of identity fraud has been identified as a result of a consumer receiving the notice.

Free Report

The bill would require credit reporting agencies to give all consumers a copy of their credit report at no charge. Currently, federal law allows credit bureaus to collect an administrative fee of not more than \$8.50. Bureaus that charge an administrative fee are not unlike a public college or university which charges for transcripts, state licensing departments which impose an administrative fee for licensing information, police departments charging for copies of accident or arrest reports, or the motor vehicle department charging for a drivers' abstract or other information.

There are a number of instances, however, where consumers are entitled under federal law to obtain a report for free: if the consumer is unemployed and seeking employment, if the consumer is on public assistance, if the consumer has been denied credit, or most importantly, if the consumer considers him- or herself to be a victim of fraud.

ACB and its members find it difficult to suggest that a business should have to give away a core business product without a chance to charge a reasonable administrative fee.

Summary

There are a number of points where ACB and its members can support parts of H.B. 2685 and all of S.B. 383. ACB members are committed to reducing the instances of identity fraud and assisting those that have been victimized. However, we cannot support onerous burdens that will result in little benefit and potentially more harm to consumers.

Sincerely,



Eric J. Ellman, Esq.
Senior Manager, State Government Relations

Enclosure

Associated Credit Bureaus, Inc.
Identity Theft Briefing Paper

Credit Reporting Industry Response to Fraud in General:

- ACB formed a Fraud and Security Task Force in 1993.
- A "membership alert form" was developed to be used in notifying other ACB members of a customer, which was committing fraud through the misuse of data. Implemented in 1994.
- A "Universal Fraud Information Form" was developed for use by creditors when communicating the incidence of fraud to national consumer reporting systems.
- A generic credit reporting industry presentation on ACB fraud and security initiatives was developed and presented to customer segments during 1995.
- Minimum standards for data access equipment and software were announced to industry suppliers in March 1995.
- ACB members implement company-specific limitations on the availability of account numbers, and truncation of Social Security Numbers on consumer reports sold to certain customer segments.
- Experian, Equifax and Trans Union voluntarily formed special fraud units with 800 number service and consumer relations personnel specially trained to work with fraud victims.
- A hardware and software certification program is created by the industry and administered by a third-party certification authority for those access products, which have implemented minimum industry security standards.
- Over 150,000 copies of a new customer educational brochure entitled "We Need Everyone's Help to Protect Consumer Privacy and Reduce Fraud" have been distributed since its first printing in the last quarter of 1997.
- An education program was also developed for use by ACB members in presenting the information found in the brochure. Second quarter of 1998.

Credit Reporting Industry Voluntary Initiatives on Identity Fraud:

Consumers who discover that they are victims of identity theft will often turn to credit bureaus for assistance as they begin their road to recovery. It is important to note that resolving the problems of identity theft must include the efforts of the consumer, the creditors and the credit bureau. Our industry has already taken a number of voluntary steps to help consumer victims and to do our part in the area of prevention. Consider the following:

- ACB's three largest members, Equifax, Experian and Trans Union have established fraud programs with toll free lines for consumer victims, who can obtain assistance from specially trained fraud unit personnel.
- Our members put limits on the types of information provided to certain types of customers.
- The industry has produced a new product certification process to ensure that access technologies, which are used to pull credit reports, have standard security protocols.
- Our members have also funded a "Protecting Consumer Privacy" program, which includes seminar and employee training materials, which helps ensure that our customers' employees partner with us in protecting sensitive information.
- ACB has also formed a task force to review industry practices as discussed below.

Formation of "True Name (Identity Theft) Fraud Task Force":

In January of 1998, the Board of Directors created a Task Force to ensure our industry's focus on the issues of identity theft. Its mission is to explore how our industry can continue to assist consumers and customers, which have been victimized by the crime of identity theft. The Task Force consists of the senior-most executives within our largest members and is facilitated by a former state attorney general.

Creation of an Operations Working Group - the working group consists of industry experts in fraud to explore best practices, exchange ideas and ultimately to recommend a series of voluntary initiatives for our membership.

Creation of a Policy Working Group - this working group seeks to keep the Task Force members informed on the types of issues and questions being raised by legislators, regulators and law enforcement.

The Task Force is focusing on four key areas: fraud detection at the onset, post-reinvestigation strategies, victim assistance, and consumer education.



TRANS UNION

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Mike Stewart

Vice President / Area Sales

February 1, 2000

The Honorable Michael O'Neal
Chairman, House Judiciary Committee
Kansas State House of Representatives
Topeka, KS 66612

Dear Mr. Chairman:

Those of us who represent Trans Union locally have been and are very sensitive to all issues that affect consumers and the businesses that use historical data from our industry in order to provide the goods and services that consumers desire.

We recognize that any person who has been the victim of identity theft has endured a great invasion of privacy. As an industry we help in limiting the damage caused by the criminal and help the consumer regain the feeling of control over their privacy.

The Fraud Victims Assistance Department of all three credit-reporting entities; Trans Union, Experian, (formerly TRW) and CSC/Equifax provide these services.

Most victims or potential victims become aware that their identity information has become compromised before the industry does. The two Trans Union offices in Kansas receive between 5 to 8 telephone calls per month from consumers who are concerned about fraud issues.

These consumers are generally directed to our office by a police official or a merchant as the result of the loss or theft of a wallet or purse. These callers are given the telephone numbers for all three Fraud Victim Assistance Departments.

Specialists in these departments work with the individual in order to determine what steps need to be taken in order to protect the consumer's records and limit potential damage to the consumer or merchant.

Once a consumer has been identified as a victim or potential victim of fraud a consumer statement is usually added to the credit file. (see attached) The consumer can leave this statement on their file for up to 7 years.

House Judiciary
2-1-2000
Attachment 6

Many creditors or service providers refer consumers directly to the Fraud Assistance groups. Bankcard issuers and cell phone service providers are the major targets in terms of criminal activity and dollar loss with this crime in Kansas. Because of this they have specific departments that will assist the consumer in getting to the appropriate credit reporting industry group or law enforcement department for aid.

The credit Reporting Repositories provide sensitive responsive services to consumers who have been victimized or whose identity information may have been compromised.

The specific notification clause that is a part of House Bill 2685 is offered with good intentions but will not offer additional protection to victims of identity theft.

We do support the updating of Kansas statutes in order to conform to the revised Fair Credit Reporting Act and of moving enforcement of Kansas statutes to the Office of the Attorney General.

The crime of identity theft and or fraud currently holds little or no risk of consequences for the criminal. Because of this it is on the increase. We feel that the best protection for potential victims is to make this crime less attractive to the criminal.

Passage of S.B. 383, which moves this activity from a misdemeanor to a felony, would help this and is fully supported by the credit industry in Kansas.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Stewart", written in black ink over a horizontal line.

Mike Stewart
VP/Area Sales

Consumer Statement

Date Recorded: 11/99

Date To Remove: 11/01

*** FRAUD ALERT *** FRAUDULENT APPLICATIONS MAY BE SUBMITTED IN MY NAME USING CORRECT PERSONAL INFORMATION// IF YOU ACCESS THIS FILE, PLEASE VERIFY WITH ME, PERSONALLY, THAT IT IS LEGITIMATE// I CAN BE REACHED AT -238-4142(DAY/EVENING)

- End of Credit File -

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LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2685

February 1, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Judiciary Committee

by

Marlee Bertholf
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Bertholf and I am here on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry. Members of the Kansas Retail Council who offer credit to their customers believe it is in the best interest of the consumer and the credit grantors to have correct information in the consumer's credit reports. There are several areas of HB 2685 that we support and feel would be positive changes in the existing law. However, retailers who offer credit to their customers have concerns about the notice provision contained on page 17, lines 8-27, and would like to see this provision deleted from the bill.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

House Judiciary

2-1-2000

Attachment 7

The federal Fair Credit Reporting Act, 15 U.S.C. 1681 et. seq., already encompasses consumer concerns. The federal act allows consumers access to their file at any time for a limited charge. A consumer can access their file at no charge if they believe that they are a victim of fraud or if they apply for credit and are denied. The FCRA requires a consumer reporting agency to maintain a record of all users which have requested the consumer's file. Further, law requires that this user record be disclosed as part of the consumer record. These provisions have been law since 1997 and have increased consumer access to their files.

The State of Colorado has enacted the same type of notice provision that is encompassed in HB 2685. This notice provision, which requires a credit reporting agency to notify the consumer that there has been three credit inquiries, has caused much confusion. Letters the credit reporting agencies send to consumers are very vague, for confidentiality reasons, and consumers are alarmed at the high number of inquiries on their credit. The Kansas Retail Council maintains the position that consumers are more confused than aided by these notices.

Additionally, the costs of the consumer notice provision is staggering. Current industry experience is that even once-per-year notices lead to cost increases of an average 130% above current prices. Further, small businesses end up paying more than the largest customers, which have volume discounts. This proposal creates millions of letters per year at a tremendous cost to both consumers reporting agencies and their customers.

The Kansas Retail Council and the Kansas Chamber of Commerce and Industry believe that laws which provide consumers a right to access their file at a reasonable fee or for free when a consumer believes that they are a victim of fraud, benefit both the consumer and the credit reporting agency. Federal law provides these rights for citizens today.

On behalf of the members of the Kansas Retail Council, I would like to thank you for the opportunity to appear before you today. I will be happy to answer any questions.

Kansas Association of Financial Services

George Barbee, Executive Director
Jayhawk Tower, 700 SW Jackson, Suite 702
Topeka, KS 66603-3758

785/233-0555

Fax: 785/357-6629

Statement to:
House Committee on Judiciary
House Bill 2685
Tuesday, February 1, 2000

Mr. Chairman and members of the Committee, my name is George Barbee, and I am appearing today on behalf of the Kansas Association of Financial Services. KAFS membership is made up of rather large financial service companies, such as Household Finance, Norwest, Associates, American General, and others. These companies annually make thousands of consumer loans in Kansas, and they rely heavily on consumer reporting agencies for reports to determine credit worthiness in the process of making loans to customers and selling other related products.

KAFS is opposed to HB-2685 as currently drafted.

We understand that the bill adopts the Federal Fair Credit Reporting Act, and we support that effort. Those provisions clearly provide for a consumer to obtain a free copy of their credit report if an adverse action has occurred. It also provides for notice to the consumer that an adverse action has occurred with requirements specifically informing the consumer how to obtain a free copy of the report if they desire to do so.

Now, let me draw your attention to page 17, lines 4 through 27 of HB 2685. Our concern is that the bill goes beyond those Federal provisions by requiring the credit reporting agencies to keep records of all inquiries and to provide notice to the consumer that a free report is available when three credit inquiries have been made within a 12-month period. The consumer will already be notified of the availability of a free report if there has been an adverse action under the proposed amendments to this statute. This is a prudent and necessary safeguard against inaccurate reports or reports due to identity theft or misidentification.

Three inquiries in a 12-month period do not harm the consumer. A consumer can easily have three inquiries in the normal logistics of living. Buying a house. Buying furniture. Seeking employment. Purchasing an automobile. We fail to see that a harm has been done that justifies the cost to the public for collecting, processing, and disclosing this information.

This onerous requirement will cost a great deal. How much is not exactly known, but this provision has been enacted in Colorado where it caused a service charge of \$.75 per credit report to be imposed on those requesting reports. Would such a charge increase the cost of doing business for banks, employment agencies, employers, consumer credit lending agencies, auto dealers, and businesses in general? Yes. Will these businesses pass it on to the consumer? Perhaps you can venture an answer. It is estimated that Kansas has approximately 100 million households. The average credit report inquiries are 8 per household. If the Kansas consumer report industry placed the same \$.75 surcharge as Colorado, the cost to users of reports would be approximately \$6 million. That is a conservative figure. Yes, I think users would seek ways to recover this cost.

We do not believe there is a benefit to imposing the additional free report requirements. If there is even a perceived benefit to the consumer, is it worth \$6 million? And, it just gives Kansas businesses in the Kansas City metropolitan area another reason to locate in Missouri.

Mr. Chairman, I do not believe Kansas needs the burden imposed by this bill, and I urge this committee to amend the above mentioned provision out of the bill.