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Legislative Bulletin……………………………….………September 10, 2003

Contents:

H.R. 2622—Fair and Accurate Credit Transactions Act (Bachus)

Order of Business: The bill is scheduled to be considered on Wednesday, September 10th, subject to a modified open rule (H.Res. 360). Only those amendments that are pre-printed in the Congressional Record or are pro forma amendments for the purpose of debate are made in order under the rule. See summaries of amendments below.

Summary: H.R. 2622 is aimed at preventing identity theft, improving the resolution of consumer disputes and accuracy of consumer records, and making improvements in the use of, and consumer access to, credit information, as follows.

Uniform National Consumer Protection Standards

- The bill would amend section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681t(d)) to remove the January 1, 2004 sunset of the uniform national consumer protection standards (which preempt state law) and thereby make them permanent.

- The national standards (which were added onto the Fair Credit Reporting Act in 1996) address such issues as the:
  --form of the notice that consumers are entitled to receive when adverse action (such as a denial of credit) is taken against them based upon credit reporting information;
  --procedures for consumers to dispute the accuracy of information on their credit reports and remove or correct any inaccurate or unverified information;
  --timeframes for reporting of negative information, such as delinquencies and bankruptcies; and
  --circumstances under which credit-related information may be shared among affiliated entities.

Identify Theft Protection

- Directs the appropriate agencies to promulgate regulations on investigations into requests for replacement debit or credit cards soon after changing addresses.

- Directs the appropriate agencies to promulgate regulations on investigations into accounts that have been inactive for more than two years that suddenly become active again.

- Directs credit agencies to maintain on file for at least 90 days alerts from consumers that they might soon be victims of identity theft or other such fraud.

- Directs credit agencies to maintain on file for up to seven years alerts from consumers that they have actually become victims of identity theft or other such fraud.

- Directs credit agencies to maintain on file for at least one year alerts from consumers that they are on active military duty.

- Directs resellers (i.e. bundlers) of credit reporting information to also convey information about the fraud alerts in a consumer's file.

- Prohibits businesses from electronically printing the expiration date or more than the last five digits of a credit or debit card number on any receipt provided to the cardholder at the point of sale or transaction.

- Requires that credit reporting agencies furnish to consumers at their request a model summary of the rights of identity theft victims (which the Federal Trade Commission—FTC—must create under H.R. 2622).

- Requires that credit reporting agencies block (subject to certain conditions) the reporting of any information in a consumer file that resulted from an alleged identity theft and was not the result of any transaction by the consumer. Consumers would have to be notified if such a block were denied (due to misrepresentation or incomplete information from the consumer, for example). Check services companies, deposit account information service companies, and resellers would not be subject to these blocking requirements.

- Directs the FTC to establish guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

- Directs the Secretary of the Treasury to study and report on the use of biometrics to reduce the incidence and costs of identity theft (by providing convincing evidence of who actually performed a transaction).

Consumer Dispute Resolution

- Mandates that credit reporting agencies coordinate to develop and maintain procedures for the referral to each such agency (annually reported to the FTC) of any consumer complaint received by any such agency alleging identify theft or requesting a block or fraud alert.

- Requires that credit reporting agencies reinvestigate consumer disputes forwarded to them by resellers of credit reports. If a *reseller* receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on the consumer produced by the reseller, the reseller must, within five business days and free of charge, determine the completeness or accuracy of the information in question and either correct it (if the error is the reseller's) or convey the notice of dispute with any relevant information to the consumer reporting agency that provided the information (if the error is not the reseller's).

- Provides that when a consumer disputes the accuracy of information contained in a consumer credit report, the credit reporting agency that prepared the report must conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate.

- Requires that a person who regularly furnishes information relating to consumers to a credit reporting agency maintain "reasonable procedures" to ensure the accuracy of furnished information. Authorizes consumers to dispute such credit information directly with the furnishers of the information by triggering an investigation by the furnisher (subject to certain conditions).

- Directs the Federal Reserve and the FTC to jointly study within six months the extent to and manner in which credit reporting agencies and furnishers of information to such agencies are complying with current-law procedures for investigating—and if necessary correcting—disputed consumer information.

Accuracy of Consumer Records

- Requires credit reporting agencies to notify requesters of credit reports of any discrepancies in addresses between what the agency has on file and what the requester is providing. The federal banking agencies and the National Credit Union Administration would have to promulgate regulations on the procedures a requester of a credit report should employ when receiving a notice of discrepancy.

- Prevents furnishers of credit information from providing such information to a credit reporting agency when the information is reasonably substantiated as incorrect in a police report submitted to the furnisher.

- Requires that debt collectors notify their clients of any information in a consumer's file that is related to an identity theft.

- Requires that a credit report provided to a consumer at the consumer's request include the addresses and phone numbers of entities that have either furnished information appearing on the report or have recently requested copies of the consumer's report.

- Directs the FTC to conduct and ongoing study and submit periodic reports on the accuracy and completeness of credit reports.

Use of and Access to Consumer Credit Information

- Mandates that credit reporting agencies provide one free credit report to a requesting consumer each year.

- Mandates that if a consumer requests a copy of his or her credit file, the reporting agency must tell the consumer that a credit score is also available upon request (if it is actually available) at a reasonable fee.

- Mandates that a credit reporting agency inform a consumer requesting a credit score that such scoring may be different than the credit score that may be used by a lender. (The agency would also have to provide details about its scoring methods.)

- Requires any person who makes or arranges mortgages and who uses a consumer credit score to disclose a variety of information about the score (as detailed in the bill) to the consumer (including the fact that the score may be affected by the number of credit enquiries made on a person).

- Voids any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a credit reporting agency.

- Relieves lenders of liability under any contractual provision for disclosing a credit score.

- Requires that anyone using a consumer report in connection with an unsolicited insurance or credit transaction must include, in the required disclosure statement to the consumer, a description in a "simple and easy-to-understand" format of how the consumer can prohibit his file from being used for unsolicited insurance and credit offers including the simple and easy-to-use method for notifying the consumer reporting agencies.

- Requires that financial institutions that extend credit and regularly furnish consumer information to reporting agencies inform consumers within 30 days when it furnishes negative information to such agencies (no additional notice required for additional information furnished). The Federal Reserve would have to prepare within six months of this bill's enactment a model disclosure form that a financial institution could use in these instances.

- Directs the FTC (in conjunction with the Department of Housing and Urban Development) to study and report on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products.

- Directs the General Accounting Office to study and report on discrimination in the credit system based on “race, color, income and education level, geographic location, age, sex, sexual orientation, national origin, [and] marital status.”

- Directs the Federal Reserve to study and report on the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer and the impact on consumers of such restrictions.

- Directs the General Accounting Office within nine months of enactment to study and report on consumers’ knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on the methods for improving financial literacy among consumers.

- Mandates that financial institutions “clearly and conspicuously” disclose to consumers the ability of a credit card issuer to increase any annual percentage rate or remove an introductory rate for reasons other than omissions of the card holder.

Employee Misconduct Investigations

- Provides that communications to an employer by outside third parties hired to investigate employee misconduct or compliance with the employer's pre-existing written policies would not be considered “consumer reports” (meaning that advance notice or permission would be required). If any adverse action were taken based on the communication, the employer would be required to disclose to the employee a summary containing the nature and substance of the communication (subject to certain limitations on information).

Medical Information

- Prohibits a credit reporting agency from providing credit reports that contain medical information for employment purposes or in connection with a credit or insurance transaction (subject to certain conditions and exceptions).

- Prohibits creditors from obtaining or using medical information for credit-granting purposes (subject to certain conditions and exceptions). Companies that receive medical information through any of the exceptions are prohibited from re-disclosing the information to any other person, except as necessary to carry out the original purpose for which the information was initially provided or as otherwise permitted by statute, regulation, or order.

- Restricts the disclosure of certain medical-related information among companies affiliated by common ownership or corporate control.

- Requires that companies whose primary business is providing medical services, products, or devices to consumers and who furnish information to a credit reporting agency are deemed to be a “medical information furnisher” and must identify themselves as such to the agency before furnishing information on a consumer to a consumer reporting agency. The agency could not include in a consumer report on that consumer the name, address, or telephone number of the furnisher, unless that contact information is encoded in a manner that does not identify or infer to anyone (other than the consumer) the specific company or the nature of the medical services, products, or devices provided.

<u>Amendments Pre-Printed in the Congressional Record</u>:

1. Kanjorski/Maloney: Extends the sunset of the uniform national consumer protection standards to the end of 2012 (the underlying bill removes the sunset entirely).

2. Lee: Prevents the uniform national protection standards from applying to the California Financial Information Privacy Act (division 1.2 of the California Financial Code, as in effect after June 30, 2004) or the law of any other state that is similar to the California Financial Information Privacy Act.

3. Inslee: Makes technical corrections and requires that the head of a federal agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism fully inform the relevant congressional committees (named in the amendment) concerning all requests made pursuant to the Fair Credit Reporting Act. These federal agencies would be allowed to pay reasonably necessary fees to credit reporting agencies for costs directly incurred in searching, reproducing, or transporting books, papers, records, or other data required to be produced under this legislation.

4. Sanders: Prohibits credit card issuers from using negative information contained in their customers' credit reports (such as a new mortgage or a new loan to pay for a medical emergency) as justification to raise credit card interest rates, unless a consumer is at least 60 days delinquent on any other credit card or debt.

5. Frank: Makes federal laws on identity theft non-preemptible by state laws (subject to the exceptions in current law).

6. Frank: Extends the free annual reports from nationwide credit reporting agencies to <u>regional</u> agencies. Strikes a conforming amendment.

7. Frank: Extends the free annual reports from nationwide credit reporting agencies to <u>regional</u> agencies.

8. Waters: Prevents the uniform national protection standards from applying to the California Financial Information Privacy Act (division 1.2 of the California Financial Code, as in effect after June 30, 2004) or to the Consumer Credit Reporting Agencies Act of California (sections 1785.1 through 1785.36 of the California Civil Code).

9. Tauscher: Authorizes a consumer to submit a request to a credit reporting agency that any person who uses his or her credit report establish a new credit plan in the name of the consumer using “reasonable policies and procedures” regarding identity verification. A credit reporting agency that receives such a request would have to include it in the consumer’s file.

10. Bordallo: Precludes any reference in a credit report to a late payment that was due solely to a disruption caused by a disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as long as the consumer settles the obligation within 30 days of the end of a disaster period.

11. Royce: Requires that consumers, before disputing credit information with a furnisher of such information, exhaust investigatory possibilities with the credit reporting agency.

12. Ney/Royce/Scott (GA): Makes the sections of the bill on free credit reports and access to credit scores inapplicable to the appropriate state laws of California, Colorado, Georgia, Maine, Maryland, Massachusetts, New Jersey, and Vermont.

13. Biggert: Directs the President, not later than January 31, 2005, to convene a Commission to Educate our Nation's Teachers and Students on Financial Literacy Skills to examine and identify government policies that promote economic and financial literacy. The Commission would have to report to Congress on its activities and recommendations not later than July 1, 2005. Authorizes up to $500,000 for fiscal year 2005 for the Commission.

14. Shadegg/Emanuel/Ose: Prohibits the sale, purchase, and display of Social Security numbers by private parties (subject to certain exceptions for cases in which an important public interest is at stake or safeguards are in place to inhibit theft). Further, no person could require an individual to transmit his or her Social Security number over the Internet (unless the connection is secure or the Social Security number is encrypted) or require an individual to use his or her Social Security number to access an Internet website (unless a password, unique personal identification number, or other authentication device is also required to access the site). Sets civil penalties for violations. Requires the Commissioner of the Social Security Administration to study and report to Congress on all of the uses of Social Security numbers permitted, required, authorized, or excepted under any federal law and on state and local uses of Social Security numbers.

15. Lee: Prevents the uniform national protection standards from applying to the California Financial Information Privacy Act (division 1.2 of the California Financial Code, as in effect after June 30, 2004) or the law of any other state that is similar to the California Financial Information Privacy Act.

16. Kelly: Authorizes the FTC and the Federal Reserve to implement short-term measures to help credit reporting agencies that have been temporarily overwhelmed with requests for disclosures of consumer reports.

17. Oxley (Manager’s Amendment): Directs the FTC and the Federal Reserve to promulgate regulations for free credit reports that minimize the possibility of credit reporting agencies being overwhelmed with requests for disclosures without sacrificing timeliness for consumers. Relieves furnishers of credit information of their responsibilities under this bill (regarding receipts of notices of dispute from consumers) when a notice of dispute is frivolous (as defined in amendment text). The furnisher would have to notify the consumer of the determination that a dispute is frivolous. Makes technical and conforming changes to the underlying bill.

Committee Action: On July 16, 2003, the Subcommittee on Financial Institutions and Consumer Credit marked up and forwarded the bill to the full Financial Services Committee by a recorded vote of 41-0. On July 24th, the full Committee marked up and ordered the bill reported to the full House by a recorded vote of 63-3. The three "no" votes were Rep. Maxine Waters (D-CA), Rep. Barbara Lee (R-CA), and Rep. Bernard Sanders (I-VT).

Administration Position: Before the full Committee on July 9, 2003, Treasury Secretary John Snow expressed strong support for this legislation: http://financialservices.house.gov/media/pdf/070903js.pdf

Cost to Taxpayers: CBO estimates that H.R. 2622 would authorize appropriations of about $3 million in FY2004 and $7 million over the FY2004-FY2008 period. The bill could affect mandatory spending and revenues, but CBO estimates that any such impact would be insignificant.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill would implement a variety of new federal rules, as detailed above.

Constitutional Authority: The House Financial Services Committee, in House Report 108-263, cites constitutional authority in Article I, Section 8, Clause 1 (relating to the defense and general welfare of the United States), and Clause 3 (relating to the power to regulate foreign and interstate commerce).

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