

005627406

SENATE BILL NO. 602

Offered January 24, 2000

A BILL to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 18, consisting of sections numbered 6.1-444 through 6.1-449, relating to the Virginia Consumers' Financial Privacy Protection Act.

Patron—Byrne

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 18, consisting of sections numbered 6.1-444 through 6.1-449, as follows:

CHAPTER 18.**VIRGINIA CONSUMERS' FINANCIAL PRIVACY PROTECTION ACT.**

§ 6.1-444. *Definitions. As used in this chapter, unless the context requires a different meaning:*

"Affiliate" means any company that controls, is controlled by, or is under common control with another company.

"Consumer" means an individual who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

"Financial institution" means any company that is engaging in financial activities or activities that are incidental or complementary to financial activities, including banks, savings banks, credit unions, insurers, securities firms, whether chartered, licensed, or regulated by the state or the federal government, and any company regulated by the Commission.

"Nonaffiliated third party" means any entity that is not an affiliate of the financial institution, but does not include a joint employee of such institution.

"Personal information" means personally identifiable information: (i) provided by a consumer to a financial institution; (ii) resulting from any transaction between the consumer and the financial institution or the service performed for the consumer by the financial institution; or (iii) otherwise obtained by the financial institution.

"Unrelated use" means any use other than a use that is necessary to effect, administer, or enforce any transaction with a consumer in any financial product or any financial service.

§ 6.1-445. *Disclosure of personal information without consent prohibited.*

A. Except as provided in § 6.1-446, no financial institution shall make available any personal information to any affiliate or other person that is not an employee or agent of the institution, unless the consumer to whom the information pertains: (i) has affirmatively consented in writing to the transfer of such information; and (ii) has not withdrawn such consent.

B. A financial institution shall, in complying with subsection A of this section, present the opportunity to consent in a clear and conspicuous manner that permits the consumer to consent separately with respect to affiliates and nonaffiliated persons, both generally and for specific persons, and with respect to certain specified financial and nonfinancial products and services that may be offered to the consumer.

C. No financial institution shall deny any consumer a financial product or a financial service due to any refusal by the consumer to grant the consent required by subsection A of this section.

D. Every financial institution that makes available personal information collected by the financial institution to any person or entity other than an employee or agent of such institution shall provide that consumer (i) the opportunity to examine, upon request, all personal information that was so made available and (ii) the opportunity to dispute the accuracy of any of such information, and to present evidence thereon.

E. A financial institution shall not disclose an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any affiliate or any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail or other electronic means to the consumer.

§ 6.1-446. *Permitted disclosure.*

A. Personal information shall only be disclosed under the following circumstances:

1. As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with: (i) servicing or processing a financial product or service requested or authorized by the consumer; (ii) maintaining or servicing the consumer's account with the financial

INTRODUCED

SB602

59 institution; or (iii) a proposed or actual securitization, secondary market sale (including sales of
60 servicing rights), or similar transaction related to the consumer's transaction;

61 2. With the consent or at the direction of the consumer;

62 3. To protect the confidentiality or security of the financial institution's records pertaining to the
63 consumer, the service or product, or the transaction therein;

64 4. To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other
65 liability;

66 5. For required institutional risk control, or for resolving customer disputes or inquiries;

67 6. To persons holding a legal or beneficial interest relating to the consumer;

68 7. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

69 8. To provide information to insurance rate advisory organizations, guaranty funds or agencies,
70 applicable rating agencies of the financial institution, and the institution's attorneys, accountants, and
71 auditors;

72 9. To the extent specifically permitted or required under other provisions of law to law-enforcement
73 agencies, self-regulatory organizations, or for an investigation on a matter related to public safety;

74 10. To a consumer reporting agency, or from a consumer report reported by a consumer reporting
75 agency, in accordance with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681;

76 11. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion
77 of a business or operating unit if the disclosure of personal information concerns solely consumers of
78 such business or unit; or

79 12. To comply with federal, state, or local laws, rules, and regulations; to comply with a properly
80 authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local
81 authorities; or to respond to judicial process or government regulatory authorities having jurisdiction
82 over the financial institution for examination, compliance, or other purposes as authorized by law.

83 B. The disclosure or use of personal information shall be treated as necessary to effect or administer
84 a transaction with a consumer under subdivision A 1 of this section if the disclosure or use:

85 1. Is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the
86 product or service business of which the transaction is a part, and record or service or maintain the
87 consumer's account in the ordinary course of providing the financial service or financial product, or to
88 administer or service benefits or claims relating to the transaction or the product or service business of
89 which it is a part, and includes:

90 a. Providing the consumer or the consumer's agent or broker with a confirmation, statement, or
91 other record of the transaction, or information on the status or value of the financial service or
92 financial product; and

93 b. The accrual or recognition of incentives or bonuses associated with the transaction that are
94 provided by the financial institution or any other party;

95 2. Is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial
96 institution or of other persons engaged in carrying out the financial transaction, or providing the
97 product or service;

98 3. Is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the
99 consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a
100 consumer's insurance: account administration, reporting, investigating, or preventing fraud or material
101 misrepresentation, processing premium payments, processing insurance claims, administering insurance
102 benefits (including utilization review activities), participating in research projects, or as otherwise
103 required or specifically permitted by federal or state law; or

104 4. Is required, or is a usual, appropriate or acceptable method, in connection with (i) the
105 authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts
106 charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account
107 number, or by other payment means; (ii) the transfer of receivables, accounts or interests therein; or
108 (iii) the audit of debit, credit or other payment information.

109 § 6.1-447. Disclosure of policies and practices.

110 Every financial institution shall clearly and conspicuously disclose to the consumer at the time of
111 establishing a customer relationship with a consumer and not less than annually during the continuation
112 of such relationship:

113 1. The categories of personal information that are collected by the financial institution;

114 2. The practices and policies of the financial institution with respect to disclosing personal
115 information, or making unrelated uses of such information, including:

116 a. The categories of persons to whom the information is or may be disclosed or who may be
117 permitted to make unrelated uses of such information, other than the persons to whom the information
118 must be provided to effect, administer, or enforce the transaction; and

119 b. The practices and policies of the institution with respect to disclosing or making unrelated uses of
120 personal information of persons who have ceased to be customers of the financial institution;

121 3. The policies that the institution maintains to protect the confidentiality and security of personal
122 information;

123 4. The practices and policies of the institution with respect to providing consumers the opportunity to
124 examine and dispute information; and

125 5. The right of the consumer under such section to examine, upon request, the personal information
126 of the customer, to dispute the accuracy of any of such information, and to present evidence thereon.

127 § 6.1-448. Enforcement.

128 The Commission shall promulgate any regulations necessary to the enforcement of this chapter.

129 § 6.1-449. Penalties.

130 A person injured by a violation of this act may bring an action to recover his or her actual
131 damages, or one hundred dollars, whichever is greater. The court may, at its discretion, increase the
132 award of damages by an amount not to exceed one thousand dollars for a willful violation of this
133 chapter.