

Consumer Action
Consumer Federation
of America
Consumers Union
Electronic Frontier
Foundation
Identity Theft
Resource Center
National Consumer
Law Center
National Association
for the Advancement
of Colored People
(NAACP)
National Community
Reinvestment
Coalition
PrivacyActivism
Privacy Rights
Clearinghouse
Privacy Times
U.S. Public Interest
Research Group

ACLU, California
Legislative Office
California Public
Interest Research
Group
ConnPIRG
Congress of California
Seniors
Consumer Federation
of California
Democratic Processes
Center (Tucson, AZ)
Florida PIRG
Illinois PIRG
NYPIRG
Maryland Consumer
Rights Coalition
MASSPIRG
Oregon State PIRG
Texas Legal Services
Center
Texas PIRG
Vermont PIRG
WashPIRG
Wisconsin Consumers
League

Credit Reporting Bill is A Trojan Horse:
Please Oppose HR 2622 Unless Amendments Protecting Stronger
State Privacy Laws Are Included
-- HR 2622 Wrongly Overrides California's New Financial Privacy Law--

HR 2622 May Preempt Some or All of Stronger New Identity Theft Laws In
California, Connecticut, Illinois, Indiana, Louisiana, Nevada, Texas, and Virginia

September 9, 2003

Dear Representative,

We, the undersigned national and local consumer, civil rights and privacy groups, are writing to urge you to oppose HR 2622 on the House floor this Wednesday, unless its "Trojan Horse" provisions eliminating state authority to enact stronger financial privacy and identity theft reforms are eliminated. While the preferred position of many of our organizations and of most state Attorneys General is to strike all preemption from this bill, at a minimum, Congress should protect financial privacy and stronger existing state identity theft laws. Many members may not be aware that, as sent to the floor, HR 2622 includes a provision expanding, not simply extending, current preemption of state law. We are also concerned that HR 2622 contains no meaningful requirements to address the chronic and systemic problems with accuracy in our nation's credit reporting system.

We urge you to support strengthening amendments (see below) and to oppose any industry-backed amendments to weaken it at the behest of debt collectors, or retailers and banks, whose sloppy practices are frequently responsible for identity theft. Credit bureaus, whose inaccurate reports can result in consumers paying too much, are also seeking weakening amendments.

The Financial Services Committee approved this bill in July, without any consideration or debate of financial privacy, over a month before the August 28th enactment of the nation's strongest financial privacy law by California. We now know that HR 2622 would clearly preempt this bi-partisan law, SB 1, which enjoys sweeping public support. We believe that all Americans deserve the same protections. At the very least, stronger state financial privacy laws giving citizens the right to choose whether their banks share or sell confidential financial information should not be preempted by the Fair Credit Reporting Act amendments of 2003, especially when negotiators for the nation's largest banks have agreed to the new California law and have called it "workable."

Further, just last week, the Federal Trade Commission announced that the identity theft epidemic is worse than even they knew: Fully 1 in 8 Americans have been victims of identity theft. Yet, perversely, according to both the Congressional Research Service and other experts, HR 2622 would also preempt numerous stronger identity theft laws recently enacted in California, Connecticut, Illinois, Indiana, Louisiana, Nevada, Texas, and Virginia.

We are also disappointed that although HR 2622 takes some steps to prevent identity theft, improve accuracy and protect medical privacy, it fails to offer meaningful solutions to many other problems identified by the House and Senate

hearings. For example, the bill does not require companies to completely report a consumer's credit history, nor does it end the unfair practice of raising a consumer's APR to an abusive penalty interest rate of 25% APR or more on the basis of a lowered credit score or one alleged late payment.

Yet, while its proponents call it "landmark" legislation, HR 2622 really includes only the bare minimum number of reforms industry lobbyists believed they would have to agree to achieve their goal of permanent preemption of stronger state consumer laws. For example, it provides an annual free credit report on request, but allows companies to charge a fee for credit scores. It also eliminates some free reports available to the very poor and to identity theft victims and it preempts stronger state laws providing additional free reports to identity theft victims. Further, HR 2622 fails to adequately address many very real problems, including the potential for credit scores to have a disparate racial impact, the use of credit scores for unfair insurance rating purposes, and the failure of the existing law to include adequate penalties for creditors and credit bureaus that violate the law.

We urge you to support any amendments to eliminate, sunset or narrow the impact of the bill's preemption provisions. These amendments may be offered by Reps. Barbara Lee, Maxine Waters, Paul Kanjorski, and others.

We also urge you to SUPPORT the following possible amendments:

The Ed Markey amendment, to allow states to enact meaningful privacy laws; the Bernie Sanders amendment, to prevent credit card companies from using bait and switch interest rate practices; the Barney Frank amendment, to require free credit reports by regional and specialized credit bureaus; and any other positive amendments, such as amendments to make it easier for consumers to clear their credit reports of mistakes or to ameliorate the bill's unfair exception from the FCRA's protections for most workplace investigations.

Additionally, we urge you to oppose any weakening amendments. In particular, we urge opposition to possible amendments to expand existing preemption to also preempt state laws providing for free credit reports or free credit scores (Ney) or to make free credit reports, which have long been offered in six states (Colorado, Georgia, New Jersey, Maryland, Massachusetts and Vermont) an unconstitutional taking (Toomey). We urge opposition to amendments (Royce) to weaken the bill's modest FTC-backed provision allowing victims to complain directly to furnishers (retailers and banks) or otherwise weaken creditor responsibilities or diminish credit bureau responsibilities. We also urge opposition to any amendments putting consumers at the mercy of notoriously sloppy debt collector practices.

Thank you for your consideration of our views. Please contact Travis Plunkett at CFA (202-387-6121), Janell Duncan at Consumers Union (202-462-6262) or Ed Mierzwinski at U.S. PIRG (202-546-9707x314) if your staff have any questions. We have also posted links to several helpful documents and web pages at <http://www.pirg.org/consumer/fcra.htm> to assist your staff.

Sincerely,

Consumer Action, Consumer Federation of America, Consumers Union, Electronic Frontier Foundation, Identity Theft Resource Center, National Consumer Law Center, National Association for the Advancement of Colored People (NAACP), National Community Reinvestment Coalition, PrivacyActivism, Privacy Rights Clearinghouse, Privacy Times, U.S. Public Interest Research Group, ACLU, California Legislative Office, California Public Interest Research Group, Congress of California Seniors, ConnPIRG, Consumer Federation of California, Democratic Processes Center (Tucson, AZ), Florida PIRG, Illinois PIRG, NYPIRG, Maryland Consumer Rights Coalition, MASSPIRG, Oregon State PIRG, Texas Legal Services Center, Texas PIRG, Vermont PIRG, WashPIRG, Wisconsin Consumers League.