

Not in the Public's Best Interest

Financial Privacy Act 1999

In the 105th Congress, Rep. Jim Leach, R-Iowa, Chairman of the House Banking and Financial Services Committee, held hearings on the issue of obtaining financial information from institutions and brokerage houses under false pretenses and misrepresentations. The bill being considered was HR 4321. This is a laudable goal and should, in part be supported. However, HR 4321 as written shoots hardworking individuals, the wronged, the catastrophically, injured, the fraud victim, the stalked in the foot, and like the Fair Credit Reporting Act, has many flaws. The bill did not reach the full House, but was reintroduced as HR 30 in the current, 106th Congress as the "Financial Privacy Act of 1999." It remains flawed and is not in peoples best interest.

Vice President Al Gore also proposed a consumer privacy initiative during a meeting at the White House during the 105th Congress. He wants Congress to force business to protect medical, financial and personal information-on and off line. This is not in the best interest of society either, is anti-consumer and offers no protection from the rouge information provider who is willing to obtain any information from any source, and resell the information (not independently verifiable incidentally) to anyone or any entity so long as the "price is right."

In effect, the two proposals create an environment wherein a costly gray market or worse, a black market will thrive and erode traditional avenues of discrete discovery to protect the wronged, the catastrophically, injured, the fraud victim, the stalked while providing a cocoon of protection for the frauderster, the swindler, the welfare cheat, the scam artist and sexual predator, not mentioned the deadbeat parent or spousal abuser.

There are numerous reasons, seven of which are listed as follows, for obtaining access to financial information using a pretext or misrepresentation so long as a claim of being a law enforcement officer or a governmental representative is not used: 1) To verify statements of a land or housing developer who builds a subdivision and creates an environment which causes property damage to owners of homes he sold. The damage exceeds liability limits of available insurance to compensate homeowners. The developer claims he is insolvent. 2) To locate the financial assets (following the money) on or off shore of the principals of the telemarketing scam, rip-off of the unsophisticated, the feeble, elderly and infirmed by the unscrupulous. 3) To locate the financial assets (following the money) on or off shore of the rouge broker who churns an account to generate brokerage fees, and in turn, line his pocket with commissions depleting the investors assets. 4) To locate the financial assets (following the money) on or off shore of those responsible for causing catastrophic injury or damage to an individual or entity. 5) To locate the financial assets (following the money) on or off shore of the bankruptcy applicant to verify the applicant is bankrupt or insolvent as declared. 6) To locate the financial assets (following the money) on or off shore to verify the politician has no financial interest in legislation being considered, sponsored, modified, amended by same, creating an inherent or at the minimum, the appearance of a conflict interest. 7) To verify and locate the true owner of a land or estate trust. If HR 30 passes without amendments, the government has effectively created an invitation to transfer funds that could be used to offset excessive damages to an off shore account, or fraudulently transfer potentially legally exposed assets of any form into the name of a controlled straw trust or entity. A review of the Internet shows many companies specialize in creating havens for hiding assets through so-called international business corporations, economic citizenship's and international trusts. Individuals or companies that proceed through channels by filing a lawsuit and obtaining a judgment will be left with unenforceable pieces of paper. Presently, it is the judgment holder's responsibility to collect. The debtor, swindler, cheat, deadbeat, and corrupt politician will be able to sequester assets. The person responsible for injury will do likewise if insurance is insufficient to protect assets

The debtor, the fraudster, the swindler, the welfare cheat, the deadbeat parent and the corrupt politician will be able to sequester assets and shield them from collection and avoid responsibility and discovery. The person responsible for the injury will do likewise if his/her insurance coverage is insufficient to protect assets. If the

tortfeasor does not transfer assets off shore, he/she will transfer them into a trusted allies name. This does not include the location of assets of deadbeat parents, welfare cheats, divorcing income earners, errant vindictive spouses or governmental malfeasance and other possible financial wrongdoing such as bankruptcy.

Most attorneys can relate horror stories of how discovery efforts or obtaining information with a subpoena are all but futile and time consuming and non-productive, as is the Freedom of Information Act or so called open records/sunshine laws. These have been watered down and in many cases simply ignored by bureaucrats and are ineffective, unless the person seeking the information is financially capable of continued pursuit. The penalty to the bureaucrat that chooses to ignore these acts are minimal at best and laughable at worst. The bureaucrat is not, can not be held liable for the financial penalties imposed for failure to comply, thus the taxpaying American citizen is not only impeded in his/her pursuit of information, but in many cases needs to employ an advocate specialist to assist in obtaining the desired records under these various acts as well as indirectly paying for the defense of the bureaucrat that has chosen to ignore the request or the law. The ultimate insult is when a monetary fine is imposed on bureaucrats, the self same taxpayer, through confiscatory taxation, pays the fine in behalf of the penalized bureaucrat. A subpoena for records is only as good as the ability to independently verify if the declarant is responding truthfully. To discern truthfulness, discrete, perhaps pretext or misrepresented independent verification needs to be undertaken.

These bills will remove the ability of the investigator/adjuster/information broker/the press to accomplish that through pretext or other indirect methods. They will also seriously undermine the legal community's ability to verify whether an individual is disclosing all assets. The individual's right to privacy must be balanced to accommodate society's need to obtain necessary information legally and without prior notice. It is in society's best interest for professionals with a legitimate need to know to continue to have such access without fear of sanctions or license penalties.

This ability to obtain information can not be limited to law enforcement and government. There is only so much law enforcement can do. Certainly, law enforcement should not be involved in the civil sector. Law enforcement however is often supplemented by the legal investigator, adjuster, legitimate information broker, and the press in such matters who often pick up in the civil arena when law enforcement has finished obtaining necessary data in its criminal prosecutorial efforts. The needs of attorneys and civil litigants to freely develop facts and information should not be restrained. Otherwise the Orwellian view of a privileged class of knowledgeable, well connected individuals or entities only will have access.

Access to this information will be only for those that are well connected or in the government sector. All one need consider to understand the magnitude of this potential for abuse is to look at last winter's efforts by the Federal Deposit Insurance Corp. introducing a regulation which would have required FDIC insured non-member banks to develop "Know Your Customer" programs. All other federal supervisory agencies were likely to have implemented their versions of the regulation to prevent bank customers from moving funds to avoid the program. All banks, savings associations, federally-chartered branches and agencies of foreign banks, as well as credit unions could have been subject to regulation.

Even broker-dealers and other non-bank institutions would have faced the regulation. It would have required each non-member bank to determine the identity of customers; the source of funds; normal and expected transactions; monitor account activity for transactions inconsistent with normal and expected activity; and report transactions determined suspicious. (In accordance with the FDIC's existing reporting regulation.) The justification was by requiring insured non-member banks to determine the identity and financial habits of customers, the regulation would reduce chances of non-members becoming unwitting participants in illicit activities. It is rumored this regulation (had it not been defeated by negative reaction) would have applied to transactions starting as low as \$100.

Having received more than 6,600 complaints against the planned "Know Your Customer" regulations, the FDIC is considering eliminating some of the phrases they believe have inflamed the public, such as the term "profiling". They might replace some nasty words here and there with more pleasing euphemisms, (see the purpose and definition of the term camouflage) but this won't change the spirit, purpose and results of these regulations. Richard A. Small, an assistant director at the Federal Reserve Board who had drafted the KYC proposal, said: "The word 'profile' has developed a life of its own. It has become a big government conspiracy to learn everything you do with your money and what you eat for breakfast (this later information is already being gathered by private enterprise and is perhaps protected as a proprietary business data, not subject to disclosure to the public/consumer or their legal representative, but is subject to government acquisition). "That is not what we intended." (often, legislation ends up being utilized in a manner not originally intended). Small failed to mention, the information is only available to the government and that financial institutions already maintain a wealth of data about the financial transactions of their customers that would be invaluable in tracing funds that an entity is trying to sequester or avoid discovery thereof

When confronted with the unusually large number of complaints, Small commented: "We haven't gotten one substantive comment. Either they, (the public and their legal representatives) haven't taken time to read it (the edict) and they are being hyped up by these things on the Internet - or they have read it and just don't get it." In other words, the public and by extension, their appointed representatives is too stupid to understand what this is all about, anyway.

It seems the FDIC acting as a surrogate for Messrs. Leach and Gore wish to slam the door on legitimate non governmental inquiry. Bureaucrats tried to sneak through a regulation wherein the government-ONLY the government--would have a right to access that information under the guise of searching for money laundering or other suspected nefarious activity. This is not in the best interest of society and must not be allowed to happen. Law enforcement is considered the thin blue line, protecting society from criminals and civil disobedience. Logically then, the licensed legal investigator/adjuster/information broker and a free press is the thin gray line of societal responsibility, knowledgeable research and independent finder of erroneous information.

Passing these bill(s) and not challenging unilateral administrative decisions will remove the legal community's ability to determine if prospective defendants have assets worth pursuing as is frequently claimed in unverified answers in civil discovery or determine if alleged criminal defendants are wrongly accused. When one considers the continued (although incorrect) argument that litigiousness is overwhelming our courts, imagine what it will be if investigations of defendants' assets are barred. It will reduce the ability to obtain information only after a lawsuit or indictment is filed. Experience suggests an irrational exuberance by litigators and prosecutors to file more quickly and with softer facts than is currently customary will ensue. The sensationalization of the fact that a person's financial information may be obtained through pretext damages no one, least of all responsible, law abiding taxpayers with no financial legal exposures for wrongs committed, injury or damage negligently inflicted on others.

A pretext only hurts those who implement injurious activity or have an adjudicated judgment against them. All others are already immune since their funds cannot be obtained without court order. No investigator or attorney/information broker/member of the press will waste resources or time to make a pretext accumulation of data on honest individuals on a whim. It does not make sense logically nor economically. These bills provide no alternative for the use of a pretext system to determine the economic viability of a likely defendant or preclude him/her from hiding assets. It encourages those engaged in criminal or injurious activity to continue the activity and affords those that might be held legally liable for a civil tort to hide, obfuscate, transfer exposed personal assets off shore or elsewhere. Much like prohibition in the 1920's, the proposed Financial Privacy Act of 1999 creates a defacto black market and the opportunity for a thriving gray market.

Erroneous information, even under oath, will not be able to be challenged by independent verification and will

become the norm as opposed to the rarity. There is a simple way of amending the bills to truly accommodate the greater good as is the professed purpose of the legislation.

The amendment must address: A) What rights of absolute financial privacy should we really have? B) Society's right to be safe and secure? The right to be informed?C) The right of attorneys and litigants to develop indisputable facts and independently verify defendants answers in discovery?E) The rights of defendants to investigate charges against them and their accuser?There must be controls on unethical, unlicensed investigators, adjusters, information brokers and a recalcitrant press. An allowance for investigators, adjusters, information brokers as well as members of the legitimate press and other related professions to legitimately, discretely obtain information by pretext upon a showing of need must be granted. We, in the information gathering professions must also provide our critics with a better understanding of how we help them, and by extension, society. Such a program allied with other related professions would truly be in the public's interest.

Such an outreach and educational program allied with other related professions would truly be in the "public's best interest".