

Senator Tunney's Bill On Financial Disclosure

Following are Senator Tunney's remarks of introduction of his bill S. 3814, the Financial Records Privacy Act, as found in the Congressional Record for July 20, 1972:

Mr. TUNNEY. Mr. President, the bill is designed to be an insurance policy against unwarranted and improper intrusions by person's banking life.

At the same time it will relieve the banks from the uncomfortable and conflicting position of having to please both the Government as well as the customer.

The bill is designed to cover all varieties of financial institutions including banks, savings and loan associations, credit card companies and the like. It prohibits unwarranted disclosure of financial records showing individual transactions in or with respect to a particular account. This includes checks, invoices, or similar instruments drawn on, issued, payable, or billable by a financial institution.

The bill permits disclosure of the protected information only upon certain very well-defined conditions: First, when the account holder has consented to it; second, when a subpoena has been served requiring those records; third, or when a "probable cause" hearing has been held resulting in a court order requiring disclosure of those records.

In the event a subpoena is the means by which the records are to be obtained, the bill requires service to be made upon the account holder himself in order that he will have notice of its issuance thereby affording him an opportunity to demand a court hearing in the event he believes the subpoena to be improperly issued.

By requiring direct service of subpoena on the account holder, no longer will the bank have to worry about whether it should notify the account holder when a subpoena is served or whether it should challenge the Government in court on the customer's behalf.

Mr. President, I might add that the Library of Congress has informed me that there are over 100 different administrative subpoenas which can be issued by Federal governmental agencies and departments. This incredible number of subpoenas available to Government agents demonstrates clearly the need to give notice to the account holder, if we are going to protect from improper intrusion the right of banking privacy that Americans have a right to expect.

The bill also provides, however, that when a probable cause hearing has been undergone which results in the issuance of a court order for any particular bank records, no such notice to the account holder will be required on the part of law enforcement agencies.

There is good reason for allowing law enforcement authorities this method. If a court determines there is probable cause that a crime has been committed and that the evidence will be found among the bank records, the Constitutional fourth amendment protection will have been safeguarded, and then enforcement authorities should be allowed to utilize the element of surprise.

The bill will allow the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and similar agencies to perform periodic examination or audit of financial records pursuant to their statutory authority.

The bill prohibits for the most part any such agency or, indeed, any other governmental department or agency obtaining records pursuant to the procedures outlined in the bill, to use or retain the disclosed information for any purpose other than the specific statutory purpose for which the information was originally sought. This protection is subject to one exception: Such information may be used and retained where it provides evidence giving rise to complaint or indictment within 6 months of obtaining such information. This will have the effect of precluding the accumulation of such information for any noncriminal investigatory purpose, but will not require the Government to wear blinders in the event some highly incriminating evidence is disclosed.

The bill provides for civil remedies against the financial institution, the United States, or any other person or agency violating the act as well as criminal penalties. It also allows injunctive relief to be available to persons who are affected by violations of the act.

Tunney's staff wanted to draw particular attention to the bill's section on Civil Penalties.

"CIVIL PENALTIES"

"SEC. 7. (a) For each willful violation of this title, the person to whom such records relate may recover from such financial institution, The United States or any other person willfully violating this title an amount equal to the sum of—

"(1) any actual damages sustained by such person as a result of the violation;

"(2) such punitive damages as the court may allow; but not less than \$5,000; and

"(3) in the event of any successful action to enforce liability under this section, the cost of the action together with a reasonable attorney's fee as determined by the court.

"(b) For every other violation of this Act, the person to whom such records relate may recover from such financial institution, the United States, or any other person violating this title an amount equal to the sum of—

"(1) any actual damages sustained by such person or the sum of \$1,000, whichever is greater; and

"(2) in the event of any successful action to enforce liability under this section, the cost of the action together with a reasonable attorney's fee as determined by the court.

"(c) An action to enforce any liability under this Act may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within three years from the date on which the liability arises, or the date of discovery of such liability, whichever is longer."