



# THE VIRGINIA STATE BANKER

Regulatory News for Virginia State-chartered Banks  
State Corporation Commission - Bureau of Financial Institutions  
Commissioner E.J. Face, Jr.  
ISSUE NO. 13 — SPRING 2001

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## 2001 GENERAL ASSEMBLY SESSION



Although the Bureau of Financial Institutions requested only one bill this past General Assembly Session, Commissioner E. J. Face, Jr. remarked that this was one of the busiest sessions for the Bureau, if not the busiest, in recent memory. Senior Bureau staff diligently tracked a number of complicated bills affecting banking, finance, and money and interest.

The Bureau's bill (Senate Bill 1103) amended Virginia Code §6.1-410 of the Mortgage Lender and Broker Act to codify the State Corporation Commission's understanding of certain exemptions from licensing that were not implicitly stated in the Act. SB 1103 clarified the SCC's position that bona fide employees and exclusive agents of a licensed mortgage broker may negotiate, place, or find mortgage loans for others without having to obtain a separate license. In other words, employees and exclusive agents may work for and operate under the license and guidance of a duly licensed mortgage broker. It is interesting trivia that the Bureau's bill, SB 1103, was the first bill to be signed by Governor Gilmore this year!

Two topics of particular interest this past session were "predatory lending," and caps on loan fees and late charges for installment loans. Bureau staff was involved in discussions on predatory lending legislation from the very beginning, and suggested amending an already strong Mortgage Lender and Broker Act to provide additional supervisory tools to police all mortgage lending practices. (Of course, banks and insurance companies are among those exempt from all the provisions of the Mortgage Lender and Broker Act.)

With respect to caps on loan fees and late charges, Bureau staff worked with all interested parties to facilitate understandable and enforceable changes to complicated Money and Interest (and as a result, Consumer Finance) statutes. Amendments to Virginia's Money and Interest laws often times have wide-ranging,

The Virginia State Banker is published quarterly by the Virginia Bureau of Financial Institutions to provide useful information to the banks and savings institutions that it regulates, and any of their related interests. Reader comments and suggestions are welcome and should be addressed to:

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Thanks to the following persons for their help in producing this issue of **The Virginia State Banker**:  
Commissioner Face, John Crockett, Jay Russell, Nick Kyrus, Gerald Fallen, Katha Treanor, and Jane Owen.



## NEWS FROM THE DIRECTORS' COLLEGE

Commissioner Face reports that the Spring 2001 session of the Directors' College held at the Marriott Hotel in Williamsburg in March was a success with a number of positive remarks included on the attendees' critique forms. A few of them follow:

"I understand government's role in banking better."

"Got a better understanding of bank holding companies."

"A greater appreciation of how regulators look at my bank."

"Got a good look into subprime and predatory lending activities."

"All directors should attend a workshop of this nature."

"Very informative; a lot of information covered in a very fundamental, easy to follow way."

Once again, the Virginia Association of Community Banks served as the event coordinator for the College. Commissioner Face and senior Bureau staff associated with the College offer their sincere thanks to Pat Satterfield and her very professional staff for their outstanding contributions. Regulators being able to devote their entire attention to speakers, subject matter, and attendee interaction makes a huge difference in managing what has become a most successful program for bank directors, sponsored by the Bureau and Federal regulatory agencies.

The spring 2001 event was the first session where directors attending received a certificate of completion from the Bureau, the Federal Reserve, and the FDIC. In addition, directors are eligible to receive continuing education credits from the American Association of Bank Directors.

Preliminary planning for the fall session of the College has already begun. The location will once again be Charlottesville and the dates are October 24-25. Last October's event saw a capacity-plus group of directors who learned, shared, and returned to their colleagues and banks with much helpful information.

Commissioner Face and the VACB will provide more information about the fall session during mid-summer 2001.

## REVISED ASSESSMENT SCHEDULE PROPOSED



The State Corporation Commission is considering the adoption of a new bank assessment schedule. The Commission is authorized by Code of Virginia §6.1-94 to adopt a schedule of fees to recover the costs of supervision, regulation, and examination of banks. The current schedule was adopted in 1990. Since its adoption, 3 one-year reductions have been authorized resulting in just under \$3 million remaining with Virginia-chartered banks rather than paid to the Commission.

The proposed schedule would become effective July 1, 2001. It provides for an increase of 6.07% in aggregate. Smaller institutions would see a larger percentage increase, but no individual fee would increase more than \$3,500. If adopted, fees paid to the Commission's Bureau of Financial Institutions would remain substantially below those of the Office of Comptroller of the Currency (OCC), the primary regulator of national banks. If all Virginia-chartered banks were nationally chartered, in aggregate they would pay \$2.86 million or 43.4% more in assessment fees than under the proposed schedule. The Bureau's fee would remain substantially below the OCC's for every Virginia-chartered bank regardless of size.

The proposed schedule is published in the June issue of the Virginia Register of Regulations, a copy has been mailed to all Virginia-chartered banks, and a copy is posted on the Commission's Web site. The comment period runs through Monday, June 25, 2001. If you have questions about the proposal, please feel free to contact Commissioner Face or Assistant Commissioner Gerald Fallen.

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### NEW STATE BANK

The State Corporation Commission approved the application of The Freedom Bank of Virginia, to begin business at 502 Maple Avenue, Vienna, Virginia, on April 19, 2000. The Chief Executive Officer will be **James N. Newsome**. The bank will become a member of the Federal Reserve Bank and is expected to open for business in July 2001 with a minimum capital of \$8.5 million.



## FROM THE COMMISSIONER'S DESK -- E. J. Face, Jr.

Virginia's state-chartered banks are in very good financial condition.

Although the stock market and economy are palpitating, Virginia's state banks are successful, well capitalized, profitable financial institutions prepared to meet changing conditions. This success is directly attributable, I think, to a wealth of talented bankers and bank directors throughout the Commonwealth.

Even though the Commonwealth has incurred more than its fair share of bank consolidation in recent years, it has been extremely encouraging that a number of new community banks have opened for business. The latest announcements of BB&T's acquisition of F&M and First Union's acquisition of Wachovia seem to have spurred a new interest in de novo state-chartered banks. Virginia may not be home to as many large banks as it once was; however, it is home to a growing number of community banks which, of course, are such a vital part of our Commonwealth's economy and local communities.

When we look back some years from now on the period from 1997 to 2003, give or take a year or two, some will say it was a period of great banking transformation in Virginia. From where I sit, it seems the Bureau of Financial Institutions is becoming more a community bank regulator than a big bank regulator. Of course, I think the state charter fits quite well with community banking, and vice versa. Community banks have always been the backbone of Virginia's communities and are directly attributable to the success of our local economies. Given the number of new banks formed in Virginia in recent years and the renewed interest in start-ups, I am very optimistic about the future of banking in Virginia.

Nevertheless, change and challenges will continue. As we have stressed time and again at our Directors' Colleges, institutions get into trouble for mostly the same reasons: a lack of, or failure to follow, adequate internal controls. The adoption of and adherence to proper internal controls cannot be over-emphasized.

The Bureau will continue to hold Directors' Colleges and meetings with bank CEO's in an effort to meet the many challenges both regulators and industry are sure to face. The Directors' College will be held twice annually. CEO meetings will be held annually as well. However, this year I am planning one statewide meeting for the fall, most likely to be held in Charlottesville. Next year, we will again hold regional CEO meetings. This interaction between industry and regulators I believe is vital to the continued success of the Commonwealth's banking industry.

## APPEALS COURT BLOCKS VIRGINIA CONSUMER LAW

The U.S. Court of Appeals for the Fourth Circuit has ruled against Virginia Commissioner of Financial Institutions E. J. Face, Jr., blocking the enforcement of a Virginia law against predatory lending.

The ruling, *NHEMA v. Face, Hancock & Earley*, upheld an earlier decision from the U.S. District Court, which found that Virginia's statutory limits on prepayment penalties do not apply to licensed lenders making "alternative mortgage transactions" under a 1982 federal law, the Alternative Mortgage Transaction Act.

The Virginia Bureau of Financial Institutions has argued that this law was not intended to preempt consumer protections such as bans on prepayment penalties, and is preparing its case for a Supreme Court challenge. The Appeals Court decision, if left standing, could be used against a number of state and local laws that seek to curb predatory lending.

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## DID YOU KNOW?

Commissioner Face was recently selected to Chair The Conference of State Bank Supervisors' Legislative Committee for 2001-2002.

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The Bureau has a significant number of Examiners on its staff with professional designations. The following is a list of the various designations held by Bureau Examiners followed by the number of Examiners with that particular designation:

- Certified Public Accountant — 4**
- Certified Internal Auditor — 6**
- Certified Information Systems Auditor — 1**
- Certified Financial Services Auditor — 3**
- Certified Trust Auditor — 1**
- Certified Operations Examiner — 8**
- Certified Credit Examiner — 12**
- Certified Examiner-in-Charge — 6**
- Certified Examinations Manager — 3**

# BUREAU PROFILE

Contributions from Katha Treanor



- **Name:** John Voit
- **Current Position and Years of Service:** Financial Analyst; 5 years
- **Main Responsibilities:** Conduct examinations of State-Chartered Banks
- **Education and Professional Designations:**
  - Roanoke College, Bachelors Degree in Economics
  - Radford University, Masters Degree in Criminal Justice
  - Georgia State University, Masters Degree in Public Administration
- **Family:** Wife and Son
- **Personal Interests:** Politics, Reading, Golf, Tennis, Chess, and Billiards

**John Voit** is not your ordinary bank examiner. A new father, he is also a talented pool player and former political activist. "I've done a variety of things," he said, adding, "The biggest goal I have right now is to be a good father" to his son, Nathan Everett, who was born in December.

A financial analyst with the SCC's Bureau of Financial Institutions for almost five years, John spends as much as 70 to 75 percent of his time on the road, traveling from one state-chartered bank to another. The travel doesn't bother him, and he enjoys the four-day workweeks and the variety of his job. "It's a really unique opportunity to learn banking and learn the various aspects of the financial industry," he said. He likes going to different places, meeting different people, and performing different tasks.

Before joining the SCC, John had worked as a stockbroker with firms in Roanoke and Washington, D.C. He also worked briefly as a recruiting manager for the 1990 Census in northern Georgia. He even owned his own import business, Galapagos Island Imports. In addition to his degree from Radford, John holds a bachelor's degree in economics and urban studies from Roanoke College and a master's degree in public administration with a concentration in financial management from Georgia State University. When he first started college, he considered a career that combined finance and local government.

He got a taste of local government when he ran for Roanoke City Council in 1994. He garnered 47 percent of the vote in what he called a "head-to-head contest" for a vacant Council seat. Despite that defeat, he called the race "an educational experience" and an enjoyable one. "A lot of people stand on the sidelines and complain . . . at least I can say I was one of those who engaged in the heat of battle," he said.

John's interests include reading, golf, tennis, and chess, but pool is his passion. He has been drawn to the sport since his childhood. "Every time I would see a pool table, my eyes would light up," he said. In contrast to the reputation pool once had of being a past time for "peg-legged dock workers playing in fog-enshrouded bars," he said it is now a popular family sport that attracts a broad spectrum of people. "It really is a family affair . . . It's something you can do all your life" and in any kind of weather, he said.

With the banking industry in a constant state of flux, it is hard to tell what the future holds for bankers and regulators alike. "Everybody right now is watching the changes in the banking industry," John said. Despite this, he feels there will be a continued role for bank regulators and examiners at the state level. He also expects banks to continue to expand their offerings as the lines between the banking, securities, and insurance industries dissolve. "Change is inevitable. Either you're dynamic or you're dying," he said.

## Customer Privacy

Much has been said about the privacy section and the attendant regulations of the Gramm-Leach-Bliley Act. Rules and guidelines have been issued, and the deadline for implementation delayed. Some companies are anxious to start cross-selling services, and others have no interest in testing the waters. The largest companies, those most likely to cross product lines, were the main force behind the exchange of data exemption for affiliates. The law also provides for an "opt out" of information sharing with non-affiliated companies, but affiliates are exempt.



Over many years, banks have earned the trust of the public in general, and their customers specifically. Your customers most likely do not know, or possibly even care, who your affiliates are (if you have any), or what they do or sell. Giving customers' personal information to any other company, without the expressed permission of the individual involved, invites the beginning of the end of their trust in the bank.

While it is realized an opt-in system will create extra work and require additional staff time and effort, bank boards and management should carefully weigh the benefits/costs of an opt-out vs. an opt-in system for information sharing. Irritated customers seldom keep their gripes to themselves.

The following is a complaint received by the Bureau relating to the privacy of personal information discussed above:

*Deputy Commissioner,*

*I am forwarding you a copy of correspondence I recently submitted to Governor Gilmore's office regarding some "unscrupulous" actions by ...{a large national bank}&/or one of its vendors. I am politely requesting your assistance in this matter; I may be reached at XXX-XXX-XXXX. The correspondence to the Governor's aide follows:*

*"Dear Sir,*

*I had planned to "cc" this information, but as I could not find "your" eMail, I will try to be succinct herein. I am regularly solicited by {large national bank}(& others) regarding various offers, even after repeatedly requesting that they discontinue this action. The latest, occurring today, concerns me greatly. The solicitor knew information regarding my credit card account, such as recent payments. They offered me a "reduced rate," but would not tell me who they were or the rate being offered, unless I told them if a recent payment was a balance transfer or simply a payment. I inquired as to whether they were indeed {large national bank}, and they responded no, but refused to identify what firm they were with and hung up. I called the bank's Customer Service, and got no answer as to the caller/vendor soliciting me. Bank personnel stated they were not the caller, but could not be sure one of their vendors was the solicitor. I did "ID" the solicitor as "Yvonne," associate #1331. I need your office's help or guidance; I wish to have a responsible party at the Bank to explain this to me, especially the possible violation of the Privacy Act information piece. Further, I would like to see someone at the State Corporation Commission respond to this as well. Isn't this an intrusion of my rights? Aren't these solicitors required by law to identify themselves? Isn't there a law in Virginia that allows me to "charge" or "sue" the Bank for these violations? Thank you in advance for any assistance.*

*GDB"*

The Attorney General's office informed the complainant of the following:

"The Virginia General Assembly recently passed, and the Governor recently signed, the Virginia Telephone Privacy

## RULES CHANGE AT NATIONAL AUTOMATED CLEARING HOUSE ASSOCIATION

*The following article is from Jack Burkett, Associate Counsel, Texas Independent Bankers Association. It was in an electronic newsletter several members of the Bureau receive. It was news to us, so we thought it might be of interest to our examiners and to Virginia's bankers. The liability of banks just increased another notch with this action by the National Automated Clearing House Association (NACHA). We thank R. Kinney Williams & Associates for calling the information to our attention, and for getting clearance from Mr. Burkett for us to use his article.*

Banks could be liable for losses that result from their customers' failure to meet security standards under a recent amendment to the NACHA Rules. The amendment, which is intended to enhance security for ACH debits that are originated through the Internet, mandates the use of security measures that meet minimum standards. Banks transmitting ACH debits for customers will be deemed to warrant that the customers have met those standards and may be liable if the customers have not. The amendment places new requirements on debit originators and their banks. Originators (banks' merchant customers) are required to employ fraud-detection systems, verify that routing numbers are valid, use security technology that meets a specified standard and conduct annual security audits. Banks are required to ensure that their customers have satisfied these obligations and, by transmitting the debit, warrant that they have done so. If the originator is not a natural person, the bank must also know the originator's identity, have procedures to monitor the originator's creditworthiness, and establish and periodically review the originator's exposure limit and entries. The amendment becomes effective March 16, 2001.

See: <http://www.nacha.org/news/news/pressreleases/2000/PR082400/pr082400.htm> .

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### GENERAL ASSEMBLY (continued)

unintended implications unforeseen to those who may not, during the normal course of business, be involved in regular enforcement and interpretation of such statutes.

On another front, to help keep state-chartered banks on par with national banks, Commissioner Face asked Bureau counsel to help draft language allowing state-chartered banks to own the same minority interest in controlled subsidiaries as is authorized for national banks for financial subsidiaries, which language was offered for sponsorship.

As always, but particularly this year, Bureau senior staff worked mainly unnoticed behind the scenes during the Session to help all interested parties on legislative matters. The Bureau generally does not suggest public policy, but rather attempts to point out all sides of all issues, and make sure whatever legislation that becomes law will be enforceable. It is not often that the Bureau takes a position on a bill; nonetheless, the Bureau is active and works closely on legislation affecting all financial institutions. This year the Bureau worked in tandem with the Commission's Bureau of Insurance and Division of Securities and Retail Franchising on legislation; it anticipates doing so to an even greater extent in the future -- given the implications of the Gramm-Leach-Bliley Act.

Upon conclusion of this year's Session, Bureau staff began preparing for the 2002 Session!

**PRIVACY** (CONTINUED)

Protection Act (Senate Bill 1295 - 2001 Acts of the Assembly, Chapter 528; House Bill 2427 – 2001 Acts of the Assembly, Chapter 553). This legislation will become effective on July 1, 2001.

The Virginia Telephone Privacy Protection Act was proposed by the Attorney General. Among other things, the new law: (1) prohibits telephone solicitation calls to residences at any time other than between 8:00 a.m. and 9:00 p.m.; (2) requires telephone solicitors to identify themselves by first and last name and by the name of the company for which they are calling; (3) prohibits telephone solicitors from intentionally blocking caller identification services; (4) prohibits telephone solicitors from calling a telephone number when someone at that number has stated that he does not wish to receive solicitation calls by or on behalf of the company for which the call is being made; (5) permits individuals to sue to enjoin violations, recover damages of \$500 for each violation or up to \$1,500 for willful violations, and recover their attorney's fees and court costs; (6) authorizes the Commissioner of the Department of Agriculture and Consumer Services to inquire into possible violations and authorizes the Attorney General to issue civil investigative demands; and (7) authorizes the Attorney General, Commonwealth's Attorneys, and attorneys for any county, city, or town to sue to enjoin violations, recover damages for affected citizens of \$500 for each violation, recover a civil penalty of up to \$1,000 for each willful violation, and recover attorney's fees and expenses.

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*We hope this will assist in formulating your bank's policy with regard to the use of customers' personal information.*

**PLEASE VISIT OUR WEBSITE AT:**  
**[www.state.va.us/scc/division/banking](http://www.state.va.us/scc/division/banking)**