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HOUSE BILL NO. 1769

Offered January 8, 2003

Prefiled January 6, 2003

A BILL to amend and reenact § 6.1-459 of the Code of Virginia, relating to the Payday Loan Act.

Patrons—Nutter and Baskerville

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-459 of the Code of Virginia is amended and reenacted as follows:

§ 6.1-459. Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount of the loan; (ii) the fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z; (iv) evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be at least seven days after the date the loan is made and after which date interest shall not accrue at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid fees.

2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter.

4. A licensee shall not require, or accept, more than one check from the borrower as security for any loan at any one time.

5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than five hundred dollars.

6. A licensee shall not refinance, renew or extend any loan.

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time for the purpose of increasing charges payable by the borrower.

8. A licensee shall not require or accept a post-dated check as security for, or in payment of, a loan.

9. A licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored.

10. A licensee shall not take an interest in any property other than a check payable to the licensee as security for a loan.

11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the licensee's business location.

12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

13. A check given as security for a loan shall not be negotiated to a third party.

14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18 (§ 6.1-444 et seq.) of this title, and any holder of this check takes it subject to all claims and defenses of the maker."

15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in form consistent with regulations promulgated by the Commission, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number at the Commission for assistance with complaints.

16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and

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59 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet
60 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash
61 needs.

62 17. A borrower shall be permitted to make partial payments, in increments of not less than five
63 dollars, on the loan at any time, without charge. The licensee shall give the borrower signed, dated
64 receipts for each payment made, which shall state the balance due on the loan.

65 18. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest
66 charges, with examples using a \$300 loan payable in fourteen days and thirty days.

67 19. *Any advertising materials used to promote payday loans shall include a statement of the fees and*
68 *charges, expressed as an annual percentage rate, payable using as an example a \$300 loan payable in*
69 *fourteen days. The type, size and location of the statement required by this subdivision shall be*
70 *displayed in such a manner as to be easily understood by persons to whom the advertising materials are*
71 *directed.*