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HOUSE BILL NO. 1769

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 23, 2003)

(Patron Prior to Substitute—Delegate Nutter)

A BILL to amend and reenact §§ 6.1-456, 6.1-459, 6.1-465, and 6.1-467 of the Code of Virginia, relating to the Payday Loan Act.

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:

§ 6.1-456. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises and records of any person licensed or required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter or any person who may be violating § 6.1-445. Examinations of licensees shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners and employees of such person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

§ 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.

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

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

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

19. *Any advertising materials used to promote payday loans that includes the amount of any loan available or any payment, expressed either as a percentage or dollar amount, the period of repayment, or the amount of any finance charge, shall also include a statement of the fees and charges, expressed as an annual percentage rate, payable using as an example a \$300 loan payable in fourteen days.*

20. *In any print media advertisement, including any web page, used to promote payday loans, the disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure statement shall last at least two seconds and the statement shall be spoken so that its contents may be easily understood.*

§ 6.1-465. Cease and desist orders.

If the Commissioner determines that any person ~~licensed or required to be licensed hereunder~~ has violated any provision of this chapter or any regulation adopted hereunder, he may, upon twenty-one days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within fourteen days of mailing the notice, the person or persons named therein may file with the Clerk of the Commission a written request for a hearing. If a hearing is requested, the Commissioner shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

§ 6.1-467. Fines for violations.

In addition to the authority conferred under §§ 6.1-464 and 6.1-465, the Commission may impose a fine or penalty not exceeding \$1,000 upon any person ~~licensed or required to be licensed under this chapter~~ who it determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission, has violated any of the provisions of this chapter. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case of a violation of § 6.1-445, each loan made or arranged shall constitute a separate violation.