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HOUSE BILL NO. 688

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 6.1-453, 6.1-459, and 6.1-461 of the Code of Virginia, relating to the Payday Loan Act.

 Patron—Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-453, 6.1-459, and 6.1-461 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-453. Retention of books, accounts, and records.

Every licensee shall maintain in its licensed offices such books, accounts and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and rules and regulations adopted in furtherance thereof. Such books, accounts and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to loans, *including copies of checks given to a licensee as security for such loans*, shall be retained for at least three years after final payment is made on any loan.

§ 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 *on the amount advanced* 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 \$500.

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

60 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
61 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
62 (§ 6.1-444 et seq.) of this title, and any holder of this check takes it subject to all claims and defenses
63 of the maker."

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

68 16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and
69 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet
70 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash
71 needs.

72 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on
73 the loan at any time *prior to maturity*, without charge. The licensee shall give the borrower signed,
74 dated receipts for each payment made, which shall state the balance due on the loan. *Upon repayment of*
75 *the loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled,"*
76 *return it to the borrower, and retain a copy in its records.*

77 18. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest
78 charges, with examples using a \$300 loan payable in 14 days and 30 days.

79 19. Any advertising materials used to promote payday loans that includes the amount of any
80 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall
81 also include a statement of the fees and charges, expressed as an annual percentage rate, payable using
82 as an example a \$300 loan payable in 14 days.

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

91 § 6.1-461. Additional charges.

92 In addition to the loan principal and the fee permitted under § 6.1-460, no further or other amount
93 whatsoever shall be directly or indirectly charged, contracted for, collected, received or recovered except
94 (i) any deposit item return fee incurred by the licensee, not to exceed ~~twenty-five dollars~~ \$25, if the
95 check given by the borrower as security is returned because the account on which it was drawn was
96 closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check,
97 and (ii) if judgment is obtained against the borrower, court costs and reasonable attorneys' fees if
98 awarded by the court, incurred as a result of the returned check in an amount not to exceed \$250. A
99 licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted
100 pursuant to §§ 6.1-330.54, 8.01-27.2, or § 8.01-382.