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HOUSE BILL NO. 912

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend and reenact §§ 6.1-444, 6.1-453, 6.1-459, 6.1-467, and 6.1-469 of the Code of Virginia, relating to payday loans; penalties.*

Patrons—Oder, Cox and O'Bannon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-444, 6.1-453, 6.1-459, 6.1-467, and 6.1-469 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-444. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Check" means a draft drawn on the account of an individual or individuals at a depository institution.

"Commissioner" means the Commissioner of Financial Institutions.

"Financial institution" means a bank, savings institution, or credit union.

"Licensee" means a person to whom a license has been issued under this chapter.

"Payday loan" means a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual or individuals at a depository institution, or (iii) any form of assignment of income payable to an individual or individuals, other than loans based on income tax refunds.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock corporation or a limited liability company.

"Rollover" means the extension or continuation of an existing payday loan when the borrower pays any additional fee and the licensee continues to hold the check, or by the substitution of a new check drawn by the borrower pursuant to a new payday loan.

"Termination of an existing payday loan" occurs when the check that is the basis for a payday loan is redeemed by the borrower by payment in full in cash, or is deposited and the licensee has evidence that such check has cleared.

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

A. 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.

B. On or before July 1, 2007, the Commission shall contract with a third party to develop, implement, and maintain a database, with real-time access through an Internet connection, in accordance with the provisions of this chapter. The following shall apply to the database:

1. The database shall be accessible to the Commission and licensees to ensure compliance with this chapter and to provide such other information as the Commission deems necessary;

2. The Commission may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by lenders in accordance with this chapter;

3. The Commission shall require the database provider to maintain a real-time copy of the required reporting information in the database that shall be available to the Commissioner at all times and shall be the property of the Commission;

4. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database;

5. Every licensee shall subscribe to a status verification database maintained by an administrator that is certified by the Commission. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the certification by the Commission of a database administrator;

6. Prior to the implementation of the database or during times when the database is unavailable to

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59 lenders due to technical problems, a lender may rely upon the written verification of the borrower that
60 the borrower does not have an outstanding payday loan at any other licensee and has not terminated
61 another payday loan within 48 hours; and

62 7. Inquiries to the database by lenders shall only state that a person is eligible or ineligible for a
63 new payday loan transaction together with a description of the reason for the determination. Only
64 information previously registered and recorded by the lender on the database shall be made available to
65 the lender by the database. Only the person seeking the payday loan may make a direct inquiry to the
66 designated third-party provider to request a more detailed explanation of a particular transaction that
67 was the basis for the database's determination that the person was ineligible for a loan. Any information
68 regarding any person's transactional history is confidential and exempt from the Freedom of Information
69 Act (§ 2.2-3700 et seq.).

70 § 6.1-459. Required and prohibited business methods.

71 Each licensee shall comply with the following requirements:

72 1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the
73 borrower and a person authorized by the licensee to sign such agreements and dated the same day the
74 loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount
75 of the loan; (ii) the fee charged; (iii) the annual percentage rate, which shall be stated using that term,
76 applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z; (iv)
77 evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating
78 the amount of the check; (v) an agreement by the licensee not to present the check for payment or
79 deposit until a specified maturity date, which date shall be at least ~~seven~~15 days after the date the loan
80 is made and after which date interest shall not accrue on the amount advanced at a greater rate than six
81 percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the
82 loan transaction at any time before the close of business on the next business day following the date of
83 the transaction by paying to the licensee, in the form of cash or other good funds instrument, the
84 amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to
85 prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued
86 and unpaid fees.

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

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

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

95 5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time
96 in the principal amount of more than \$500.

97 6. A licensee shall not refinance, renew or extend any *payday loan or make a payday loan to a*
98 *borrower if the proceeds of the payday loan will be used in whole or in part to repay an outstanding*
99 *payday loan.*

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

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

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

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

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

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

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

112 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
113 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
114 (§ 6.1-444 et seq.) of this title, and any holder of this check takes it subject to all claims and defenses
115 of the maker."

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

120 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 \$5, on the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records.

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 14 days and 30 days.

19. Any advertising materials used to promote payday loans that includes the amount of any payment, expressed either as a percentage or dollar amount, 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 14 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.

21. If the borrower is a member of the military services of the United States or the spouse of a member of the military services of the United States, the licensee:

- a. Shall not garnish any military wages or salary;
- b. Shall not conduct any collection activity against a borrower who is a member of the military services of the United States or the spouse of such a member, when the member has been deployed to a combat or combat support posting or is a member of the Reserves or National Guard and has been called to active duty, for the duration of the deployment or active duty service;
- c. Shall not contact the commanding officer of a borrower who is a member of the military services of the United States or anyone in the borrower's chain of command in an effort to collect on a loan made to the member or the member's spouse;
- d. Shall be bound by the terms of any repayment agreement that the licensee negotiates with respect to such borrower through military counselors or third-party credit counselors; and
- e. Shall not make a loan to a member of the military services of the United States if a military base commander has declared that a specific location of the licensee's business is off limits to military personnel.

22. A licensee or its affiliate shall not enter into a payday loan (i) with a person who has an outstanding payday loan with that licensee or affiliate or with any other payday lender or (ii) with a borrower who had a previous payday loan that has been terminated for less than 48 hours.

23. No legal proceeding of any kind shall be filed or initiated by a lender against a borrower to collect on a payday loan until 60 days after the date of default on the payday loan, during which period the licensee and borrower may voluntarily enter into a repayment arrangement.

24. A licensee shall not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in the making or collecting of a payday loan.

25. A licensee shall not enter into a payday loan with a person unless the licensee has obtained information that has been provided by the borrower in writing in response to inquiry on the loan application form and by information from the database pursuant to subsection B of § 6.1-453, that none of the proceeds of the payday loan will be used in whole or in part to pay an outstanding payday loan made to the borrower.

26. In collecting or attempting to collect a payday loan when the check given as security for such loan is dishonored, a licensee shall comply with the requirements and prohibitions applicable to debt collectors under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

§ 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 \$2,500 upon any person 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 or regulations promulgated by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of the lender's business. 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.

182 § 6.1-469. Validity of noncompliant loan agreement; private right of action.

183 A. *If any provision of a written loan agreement violates this chapter, such provision shall be*
184 *unenforceable against the borrower.*

185 B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a
186 civil action to enforce such provision. Any person who is successful in such action shall recover
187 reasonable attorney's fees, expert witness fees and court costs incurred by bringing such action.