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HOUSE BILL NO. 1514

Offered January 20, 2006

A *BILL to amend and reenact §§ 6.1-249, 6.1-330.55, and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 20, consisting of sections numbered 6.1-474 through 6.1-501, relating to motor vehicle equity loans; penalties.*

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-249, 6.1-330.55, and 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 20, consisting of sections numbered 6.1-474 through 6.1-501, as follows:

§ 6.1-249. Compliance with chapter; license required.

A. No person shall engage in the business of lending any principal amounts to individuals for personal, family, household or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, compensation, consideration or expense which in the aggregate is greater than the interest permitted by § 6.1-330.55, except as provided in and authorized by this chapter or, Chapter 18 (§ 6.1-444 et seq.) of this title, or Chapter 20 (§ 6.1-474 et seq.) of this title and without first having obtained a license from the Commission.

B. However, subject to §§ 6.1-251 and 6.1-281 of this chapter, the prohibition in subsection A of this section shall not be construed to prevent any person, other than a licensee, from making a mortgage loan pursuant to §§ 6.1-330.69 and 6.1-330.70 or §§ 6.1-330.71 and 6.1-330.72 in any principal amount or from extending credit as described in § 6.1-330.78 in any amount.

§ 6.1-330.55. Contracts for more than legal rate of interest.

Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan greater than twelve percent per year.

For statutes which permit payment of interest greater than twelve percent per year, reference is hereby made to Article 6 (§ 6.1-330.60 et seq.), Article 7 (§ 6.1-330.64), Article 8 (§ 6.1-330.65 et seq.), Article 9 (§ 6.1-330.69 et seq.), Article 10 (§ 6.1-330.75 et seq.) and Article 11 (§ 6.1-330.77 et seq.) of this chapter. Further reference is hereby made to Chapter 6 (§ 6.1-244 et seq.) of this title, relating to powers of consumer finance companies; to Chapter 18 (§ 6.1-444 et seq.) of this title, relating to payday lenders; to § 38.2-1806, relating to interest chargeable by insurance agents; to §§ 38.2-4700 through 38.2-4712, relating to interest chargeable by premium finance companies; and to § 58.1-3018, relating to interest and origination fees payable under third-party taxpayer agreements; and to Chapter 20 (§ 6.1-474 et seq.) of this title, relating to motor vehicle equity lenders.

In the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.

Those provisions of this chapter providing that a loan or extension of credit may be enforced as agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of other loan fees and charges permitted by law, in addition to the stated interest rate, and such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

CHAPTER 20.**MOTOR VEHICLE EQUITY LOAN ACT.**

§ 6.1-474. Definitions.

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

"Bureau" means the Bureau of Financial Institutions.

"Commissioner" means the Commissioner of Financial Institutions.

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

"Motor vehicle" means an automobile, motorcycle, mobile home, truck, van, or other vehicle operated on public highways and streets.

"Motor vehicle equity loan" means a loan made under an open-end credit plan that is secured by an interest in a motor vehicle.

"Motor vehicle equity line of credit agreement" means an agreement under which a lender extends credit to a consumer on the security of a motor vehicle, reasonably contemplates repeated transactions, imposes interest from time to time on the outstanding unpaid balance, and the amount of credit that may be extended to the consumer during the term of the agreement (up to any limit set by the lender) is generally made available to the extent that any outstanding balance is repaid.

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

61 "Principal" means any person who, directly or indirectly, owns or controls (i) 10% or more of the
62 outstanding stock of a stock corporation, or (ii) a 10% or greater interest in a person.

63 § 6.1-475. License required.

64 A. No person shall engage in the business of making motor vehicle equity loans to any consumer
65 residing in the Commonwealth, whether or not the person has a location in the Commonwealth, except
66 in accordance with the provisions of this chapter and without having first obtained a license under this
67 chapter from the Commission. If a motor vehicle equity loan is made in violation of this section, the
68 loan and the lender's security interest in the motor vehicle shall be null and void, and the lender shall
69 have no right to collect or receive any principal, interest, or charges whatsoever. Any funds or property
70 taken or received by an unlicensed lender shall be returned to the borrower. If the property is sold by
71 the lender, the lender shall provide the borrower with the fair market value of the property.

72 B. No person shall engage in the business of arranging or brokering motor vehicle equity loans for
73 any consumer residing in the Commonwealth, whether or not the person has a location in the
74 Commonwealth.

75 § 6.1-476. Applicability.

76 A. The provisions of this chapter shall not apply to any bank, savings institution, or credit union that
77 does not elect to become licensed under this chapter. Electing to become licensed under this chapter,
78 however, shall constitute a waiver of the benefit of any and all laws of the Commonwealth and other
79 states, territories, possessions, and districts of the United States and federal laws preemptive of, or
80 inconsistent with, the provisions of this chapter.

81 B. The provisions of this chapter shall not apply to extensions of credit secured by purchase-money
82 security interests.

83 C. Nothing in this chapter shall prevent a licensee from engaging in any other business at any
84 location required to be licensed under this chapter. Records required to be maintained under this
85 chapter shall be maintained separate and apart from those relating to any other business conducted at
86 such location by a licensee.

87 § 6.1-477. Application for license; form; content; fee.

88 A. An application for a license under this chapter shall be made in writing, under oath, and on a
89 form provided by the Commissioner.

90 B. The application shall include:

91 1. The name and address of the applicant; and (i) if the applicant is a partnership, firm, or
92 association, the name and address of each partner or member; (ii) if the applicant is a corporation or
93 limited liability company, the name and address of each director, officer, member, registered agent, and
94 principal; or (iii) if the applicant is a business trust, the name and address of each trustee and
95 beneficiary;

96 2. The addresses of each location of the applicant to be licensed; and

97 3. Such other information concerning the financial responsibility, background, experience, and
98 activities of the applicant and the persons referred to in this section as the Commissioner may require.

99 C. The application shall be accompanied by payment of an application fee of \$1,000.

100 D. The application fee shall not be refundable in any event. The fee shall not be abated by
101 surrender, suspension, or revocation of the license.

102 § 6.1-478. Bond required.

103 The application for a license shall also be accompanied by a bond filed with the Commissioner with
104 corporate surety authorized to execute such bond in this Commonwealth in the sum of \$50,000 or such
105 greater sum as the Commissioner may require, the form of which shall be approved by the Commission.
106 Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned
107 upon the applicant or licensee performing all written agreements with borrowers or prospective
108 borrowers, correctly and accurately accounting for all funds received by him in his licensed business,
109 and conducting his licensed business in conformity with this chapter and all applicable law. Any person
110 who may be damaged by noncompliance of the licensee with any condition of such bond may proceed
111 on such bond against the principal or surety thereon, or both, to recover damages. The aggregate
112 liability under the bond shall not exceed the penal sum of the bond.

113 § 6.1-479. Investigation of applications.

114 The Commissioner may make such investigations as he deems necessary to determine if the applicant
115 has complied with all applicable provisions of law and regulations promulgated thereunder.

116 § 6.1-480. Qualifications.

117 A. Upon the filing and investigation of an application for a license, and compliance by the applicant
118 with the provisions of §§ 6.1-477 and 6.1-478, the Commission shall issue and deliver to the applicant
119 the license applied for to engage in business under this chapter at the locations specified in the
120 application if it finds:

1. That the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law; and

2. That the applicant has unencumbered liquid assets available for the operation of its business of at least \$25,000 per licensed location, provided that the maximum aggregate amount of such assets required hereunder shall be \$250,000.

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant in writing of the denial and the specific reasons for such denial, including citations of authority. The applicant shall have the right to a formal contested case hearing under § 2.2-4020 pursuant to rules adopted by the Commission, and the final order after the hearing shall be subject to judicial review.

§ 6.1-481. Licenses; places of business; changes.

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious name or names by which the licensee is operating in the Commonwealth. Each license shall be posted prominently in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name in the Commonwealth other than the legal name or fictitious name or names set forth on the license issued by the Commission.

B. No licensee shall open an additional office or relocate any place of business without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The application shall be approved unless the Commission finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within 30 days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within 10 days of the commencement of business at the additional location or relocated place of business.

C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any business location and of the name, address, and position of each new senior officer, member, trustee, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

§ 6.1-482. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, trustees, principals, and members, and of any proposed new directors, senior officers, trustees, principals, or members of the licensee; and

3. Pays a nonrefundable application fee of \$1,000.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers, trustees, and principals, and any proposed new directors, members, senior officers, trustees, and principals have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial, including citations of authority. The applicant shall have the right to a formal contested case hearing under § 2.2-4020 pursuant to rules adopted by the Commission, and the final order after the hearing shall be subject to judicial review.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, by merger or consolidation by or with a person licensed under this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, by merger or consolidation by or with

182 a person affiliated through common ownership with the licensee; or (iii) the acquisition of an interest in
183 a licensee by bequest, descent, survivorship, or operation of law. The person acquiring an interest in a
184 licensee in a transaction that is exempt from filing an application by this subsection shall send written
185 notice to the Commissioner of such acquisition within 30 days of its closing.

186 § 6.1-483. Retention of books, accounts, and records.

187 A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the
188 Commissioner may reasonably require in order to determine whether such licensee is complying with
189 the provisions of this chapter and rules and regulations adopted in furtherance thereof. Such books,
190 accounts, and records shall be maintained apart and separate from any other business in which the
191 licensee is involved. To safeguard the privacy of consumers, records containing personal financial
192 information shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may
193 arrange for service from a business record destruction vendor.

194 B. Each licensee shall retain for at least three years after final payment is made on any motor
195 vehicle equity loan, copies of the loan application, line of credit agreement, and such other papers or
196 records relating to the motor vehicle equity loan as may be required by rule or regulation.

197 C. When the Bureau requests a written response, books, records, documentation, or other
198 information from a licensee in connection with the Bureau's investigation, enforcement, or examination
199 of compliance with applicable laws and regulations, the licensee shall deliver a written response as well
200 as any requested books, records, documentation, or information within the time period specified in the
201 Bureau's request. If no time period is specified, a written response as well as any requested books,
202 records, documentation, or information shall be delivered by the licensee to the Bureau not later than
203 30 days from the date of such request. In determining the specified time period for responding to the
204 Bureau and when considering a request for an extension of time to respond, the Bureau shall take into
205 consideration the volume and complexity of the requested written response, books, records,
206 documentation, or information and such other factors as the Bureau determines to be relevant under the
207 circumstances.

208 § 6.1-484. Annual report.

209 Each licensee under this chapter shall annually, on or before March 25, file a written report with
210 the Commissioner containing such information as the Commissioner may require concerning his
211 business and operations during the preceding calendar year as to each licensed place of business.
212 Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

213 § 6.1-485. Filing of written report with Commissioner; events impacting activities of licensee.

214 Within 15 days of becoming aware of the occurrence of any of the events listed below, a licensee
215 shall file a written report with the Commissioner describing such event and its expected impact, if any,
216 on the activities of the licensee in the Commonwealth:

217 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

218 2. The revocation or suspension of the licensee's authority to conduct business by any governmental
219 authority;

220 3. The denial of the opportunity to engage in business by any governmental authority;

221 4. Any felony indictment of the licensee or any of its members, employees, officers, directors,
222 trustees, or principals;

223 5. Any felony conviction of the licensee or any of its members, officers, directors, trustees, or
224 principals;

225 6. The licensee surrenders its license to engage in business in another state in lieu of threatened or
226 pending license revocation, license suspension, or other regulatory or enforcement action.

227 7. The institution of an action against the licensee under the Virginia Consumer Protection Act
228 (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or

229 8. Such other events as the Commission may determine and identify by regulation.

230 § 6.1-486. Investigations; examinations.

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

242 § 6.1-487. Annual fees.

243 A. In order to defray the costs of their examination, supervision, and regulation, every licensee under

this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before August 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before September 1 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee under this chapter at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission, within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

§ 6.1-488. Interest and other charges.

A. A licensee may charge and collect finance charges and other charges and fees on a motor vehicle equity loan as permitted by § 6.1-330.78.

B. A licensee may charge its costs to perfect its security interest in the motor vehicle pledged as collateral and its reasonable costs of repossession and sale in accordance with § 6.1-489.

C. Any amounts collected or received by a licensee in violation of this section shall be refunded to the borrower.

§ 6.1-489. Limited recourse; repossession and sale of motor vehicle.

A. Except as otherwise provided in subsection F, a licensee taking a security interest in a motor vehicle pursuant to this chapter shall, upon default by a borrower, be limited to seeking repossession of, preparing for sale, and selling the motor vehicle in accordance with the Uniform Commercial Code-Secured Transactions (§ 8.9A-101 et seq.). Except as otherwise provided in subsection F, a licensee is prohibited from seeking a personal money judgment against a borrower for any amount owed under a motor vehicle equity line of credit agreement or any deficiency resulting after the sale of a motor vehicle.

B. After default and prior to repossessing a motor vehicle, a licensee shall send written notice to a borrower offering the borrower an opportunity to (i) make the motor vehicle available to the licensee at a place, date, and time reasonably convenient to the licensee and the borrower and (ii) remove from the motor vehicle any personal belongings without charge or additional cost to the borrower. After such notice is sent, no further notice shall be required prior to repossession or sale of the motor vehicle other than notices required under the Uniform Commercial Code-Secured Transactions (§ 8.9A-101 et seq.).

C. At least 15 days prior to the sale of a motor vehicle, a licensee shall notify the borrower of the date, time, and place of the sale and provide the borrower with a written accounting of the principal amount due to the licensee, interest accrued through the date the licensee took possession of the motor vehicle, and any reasonable expenses incurred to date by the licensee in taking possession of, preparing for sale, and selling the motor vehicle. At any time prior to such sale, the licensee shall permit the borrower to redeem the motor vehicle by tendering cash or other good funds instrument for the principal amount due to the licensee, interest accrued through the date the licensee took possession, and any reasonable expenses incurred to date by the licensee in taking possession of, preparing for sale, and selling the motor vehicle. Nothing in this chapter nor in any motor vehicle equity line of credit agreement shall preclude a borrower from purchasing the motor vehicle at any sale, provided that if the sale is conducted at a dealer auction, the borrower shall not be deemed precluded from purchasing the motor vehicle because the borrower is required to qualify as a dealer under the rules of the auction house in order to be eligible to bid on the vehicle.

D. Within 30 days of the licensee's receipt of funds from the sale of a motor vehicle, the borrower is entitled to receive all proceeds from such sale of the motor vehicle in excess of the principal amount due to the licensee, interest accrued through the date the licensee took possession, and the reasonable expenses incurred by the licensee in taking possession of, preparing for sale, and selling the motor vehicle. The prevailing party is entitled to reasonable attorney fees and costs incurred in any action or proceeding brought by the borrower to recover such proceeds.

E. Except in the case of fraud or a voluntary surrender of the motor vehicle, a licensee shall not take possession of a motor vehicle until such time as a borrower is in default. Except as otherwise provided in this chapter, the repossession and sale of a motor vehicle shall be subject to the provisions of the Uniform Commercial Code-Secured Transactions (§ 8.9A-101 et seq.).

F. Notwithstanding anything else to the contrary, upon default by a borrower, a licensee may seek a personal money judgment against the borrower for any amounts owed under a motor vehicle equity line of credit agreement if the borrower impairs the licensee's security interest by intentionally damaging or destroying the motor vehicle, intentionally concealing the motor vehicle, pledging to the licensee for a loan a motor vehicle that is already encumbered by an undisclosed prior lien, or by subsequently

pledging or selling a motor vehicle serving as security for a motor vehicle equity loan to a third party without the licensee's written consent.

§ 6.1-490. Required and prohibited business methods.

A. Each licensee shall comply with the following requirements and prohibitions:

1. Each motor vehicle equity loan shall be made under a written motor vehicle equity line of credit agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements. The agreement shall be dated on or before the day the loan is made and disbursed, and shall set forth or contain, at a minimum: (i) the amount of credit available to the borrower; (ii) the interest rate; (iii) the annual percentage rate, which shall be stated using that term, calculated in accordance with the Federal Reserve Board's Regulation Z; (iv) the make, model, year, and vehicle identification number of the motor vehicle being used as security for the loan; (v) an agreement by the licensee that the borrower shall have the right to cancel the motor vehicle equity line of credit agreement at any time before the close of business on the next business day following the date the agreement is executed by returning the original loan proceeds check or paying to the licensee, in the form of cash, the amount advanced to the borrower; (vi) an agreement that the borrower shall have the right to prepay a motor vehicle loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest; (vii) an agreement that the licensee shall provide for monthly billing periods; and (viii) a requirement that the borrower shall make a minimum payment of the accrued finance charges and fees, plus at least 5% of the outstanding principal balance, each billing cycle. No motor vehicle equity line of credit agreement shall provide for the waiver or modification of any provisions of this chapter or the Uniform Commercial Code-Secured Transactions (§ 8.9A-101 et seq.).

2. A motor vehicle equity line of credit agreement shall contain the following notice in at least 10-point bold type immediately above the borrower's signature:

THE INTEREST RATE ON THIS LOAN IS HIGH. YOU SHOULD CONSIDER WHETHER THERE ARE OTHER LOWER COST LOANS AVAILABLE TO YOU.

THIS IS A MOTOR VEHICLE EQUITY LINE OF CREDIT AGREEMENT. IT ALLOWS YOU TO RECEIVE CASH ADVANCES TO MEET YOUR IMMEDIATE CASH NEEDS. IT IS NOT INTENDED TO MEET YOUR LONG-TERM FINANCIAL NEEDS.

WHEN USING THIS LINE OF CREDIT, YOU SHOULD REQUEST THE MINIMUM AMOUNT REQUIRED TO MEET YOUR IMMEDIATE NEEDS AND YOU SHOULD REPAY THE LOAN AS QUICKLY AS POSSIBLE TO REDUCE THE AMOUNT OF INTEREST YOU ARE CHARGED.

YOU MAY RESCIND THIS LOAN WITHOUT COST OR FURTHER OBLIGATION IF YOU RETURN THE PRINCIPAL AMOUNT ADVANCED, IN CASH OR THE ORIGINAL LOAN CHECK, PRIOR TO THE CLOSE OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY FOLLOWING THE EXECUTION OF THIS AGREEMENT.

YOU ARE PLEDGING YOUR MOTOR VEHICLE AS COLLATERAL FOR THIS LOAN. IF YOU FAIL TO REPAY THE LOAN PURSUANT TO THIS AGREEMENT, WE MAY REPOSSESS YOUR MOTOR VEHICLE.

UNLESS YOU CONCEAL OR INTENTIONALLY DAMAGE THE MOTOR VEHICLE, OR OTHERWISE IMPAIR OUR SECURITY INTEREST BY PLEDGING THE MOTOR VEHICLE TO A THIRD PARTY OR PLEDGING A MOTOR VEHICLE TO US THAT IS ALREADY SUBJECT TO AN UNDISCLOSED EXISTING LIEN, YOUR LIABILITY FOR DEFAULTING UNDER THIS LOAN IS LIMITED TO THE LOSS OF THE MOTOR VEHICLE.

IF YOUR MOTOR VEHICLE IS SOLD DUE TO YOUR DEFAULT, YOU ARE ENTITLED TO ANY SURPLUS OBTAINED AT SUCH SALE BEYOND WHAT IS OWED PURSUANT TO THIS AGREEMENT ALONG WITH ANY REASONABLE COSTS OF RECOVERY AND SALE.

3. A licensee shall give a duplicate original of the line of credit agreement to the borrower at the time it is executed.

4. 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. Furthermore, no agreement shall contain (a) an acceleration clause under which a licensee may demand immediate payment of any amount owed to it unless the borrower is in default under the terms of such agreement or (b) a provision by which a person acting on behalf of the licensee is treated as an agent of the borrower in connection with its formation or execution. Any clause or provision in violation of this subsection shall be unenforceable. The term "default" when used in this chapter means both a monetary default and any non-monetary default specified in the agreement evidencing the loan.

5. A licensee shall not require or accept a lien upon more than one motor vehicle from a borrower as security for any motor vehicle equity loan.

6. A licensee shall not take an interest in a mobile home that is the primary residence of the owner.

7. A licensee shall not take an interest in any real or personal property other than a motor vehicle as security for a motor vehicle equity loan, provided that obtaining the borrower's consent or agreement to make electronic or automated clearinghouse payments shall not be deemed security for purposes of this section. For purposes of this section, the term "motor vehicle" includes any accessories or accessions to a motor vehicle that are affixed thereto.

8. The total amount of credit to be made available to a borrower at any time under a motor vehicle equity line of credit agreement shall not exceed \$10,000.

9. Loan proceeds shall be disbursed (i) in cash, (ii) by the licensee's business check, or (iii) by debit card provided that the borrower will not be directly or indirectly charged a fee by the licensee in connection with the withdrawal of the funds. No fee shall be charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

10. Before entering into a motor vehicle equity line of credit agreement, a licensee shall provide each borrower with a pamphlet, in a 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.

11. A licensee shall not make a loan to a borrower to enable the borrower to (i) pay for any other product or service sold at the licensee's business location; or (ii) repay any amount owed to the licensee or an affiliate of the licensee in connection with another credit transaction.

12. A licensee may require a borrower to purchase or maintain property insurance upon a motor vehicle securing a loan made pursuant to this chapter provided that the licensee may not require the borrower to obtain such insurance from a particular provider. The licensee may be a loss payee under the policy. Premiums for insurance coverage permitted by this section are not considered interest and are not prohibited by § 6.1-488, and a licensee is not prohibited by this section from offering or selling such insurance to a borrower.

13. A borrower may prepay a loan at any time without penalty. The licensee shall give the borrower signed, dated receipts for each cash payment made in person.

14. A licensee shall conspicuously post in each licensed location (i) a schedule of fees and interest charges and (ii) a notice containing the following statement: "Should you wish to file a complaint against us, you may contact the Bureau of Financial Institutions at [insert contact information]." The Commissioner shall furnish licensees with the appropriate contact information.

15. A licensee shall not cause a borrower to be obligated under more than one motor vehicle line of credit agreement per motor vehicle at any time.

16. If a borrower has no outstanding indebtedness under a motor vehicle equity line of credit agreement for a period of 180 consecutive days, or if a borrower repays the outstanding indebtedness under a motor vehicle equity line of credit agreement and requests that the licensee close his account, the licensee shall within 10 days thereof (i) mark the original motor vehicle equity line of credit agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its security interest; and (iii) return the certificate of title to the borrower.

17. A licensee shall not engage in any misleading or deceptive acts or practices.

18. A licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if the borrower impairs the value of a motor vehicle used as security for a motor vehicle equity loan.

19. A licensee shall not engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter.

B. 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:

1. Shall not garnish any military wages or salary;

2. Shall not knowingly 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;

3. 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;

4. 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

5. Shall not make a loan to a member of the military services of the United States from any location that a military base commander has declared off limits to military personnel.

§ 6.1-491. Advertising.

No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading, or deceptive statement or representation; or

428 (ii) identifies the person by any name other than the name set forth on the license issued by the
429 Commission.

430 § 6.1-492. Rules and regulations.

431 The Commission shall promulgate such rules and regulations as it deems appropriate to effect the
432 purposes of this chapter. Before promulgating any such regulation, the Commission shall give
433 reasonable notice of its content and shall afford interested parties an opportunity to be heard, in
434 accordance with the Rules of Practice and Procedure of the Commission.

435 § 6.1-493. Suspension or revocation of license.

436 A. The Commission may suspend or revoke any license issued under this chapter upon any of the
437 following grounds:

438 1. Any ground for denial of a license under this chapter;

439 2. Any violation of the provisions of this chapter or regulations promulgated by the Commission
440 pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the
441 licensee's business which reflects on the licensee's fitness to hold a license under this chapter;

442 3. A course of conduct consisting of the failure to perform written agreements with borrowers;

443 4. The licensee is convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

444 5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;

445 6. Entry of a federal or state administrative order against the licensee for violation of any law or
446 any regulation applicable to the conduct of his business;

447 7. Refusal to permit an investigation or examination by the Commission;

448 8. Failure to pay any fee or assessment imposed by this chapter; or

449 9. Failure to comply with any order of the Commission.

450 B. For the purposes of this section, acts of any officer, director, member, partner, trustee,
451 beneficiary, or principal shall be deemed acts of the lender; however, if the acts were not the acts
452 which were made in the course of making or servicing motor vehicle equity loans or lines of credit,
453 those acts shall only subject the person who performed those acts to regulatory action pursuant to
454 § 6.1-494, and shall not be a basis to suspend or revoke the license.

455 § 6.1-494. Regulatory action against an individual.

456 A. The Commission, after providing notice and an opportunity for a hearing, may censure, suspend
457 for a defined period, or bar a person from any position of employment, management, or control of any
458 licensee, if it finds that:

459 1. The censure, suspension, or bar is in the public interest and that the person has committed or
460 caused a violation of this chapter or any rule, regulation, or order of the Commission; or

461 2. The person has been (i) convicted of or pled guilty to or pled nolo contendere to any crime; or
462 (ii) held liable in any civil action by final judgment, or any administrative judgment by any public
463 agency, if the criminal, civil, or administrative judgment involved any offense reasonably related to the
464 qualifications, functions, or duties of a person engaged in the business in accordance with the
465 provisions of this chapter.

466 B. Persons suspended or barred under this section are prohibited from participating in any business
467 activity of a licensee and from engaging in any business activity on the premises where a licensee is
468 conducting its business. This subsection shall not be construed to prohibit suspended or barred persons
469 from having their personal transactions processed by a licensee.

470 § 6.1-495. Cease and desist orders.

471 If the Commission determines that any person has violated any provision of this chapter or
472 regulations promulgated by the Commission pursuant thereto, or violated any other law or regulation
473 applicable to the conduct of the lender's business, the Commission may, upon 21 days notice in writing,
474 order such person to cease and desist from such practices and to comply with the provisions of this
475 chapter. The notice shall be sent by certified mail to the principal place of business of such person or
476 other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action.
477 Within 14 days of mailing the notice, the person or persons named therein may file with the Clerk of the
478 Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a
479 cease and desist order except based upon findings made at such hearing. Such hearing shall be
480 conducted in accordance with § 2.2-4020 and the Commission's Rules of Practice and Procedure. The
481 Commission may enforce compliance with any order issued under this section by imposition and
482 collection of such fines and penalties as may be prescribed by law.

483 § 6.1-496. Notice of proposed suspension or revocation.

484 The Commission shall not revoke or suspend the license of any person licensed under this chapter
485 upon any of the grounds set forth in § 6.1-493 until it has given the licensee 21 days notice in writing
486 of the reasons and authority for the proposed revocation or suspension and an opportunity for a
487 contested case hearing pursuant to § 2.2-4020. The notice shall be sent by certified mail to the principal
488 place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with
489 particularity the grounds for the contemplated action. Within 14 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 Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with § 2.2-4020 and the Commission's Rules of Practice and Procedure.

§ 6.1-497. Fines for violations.

In addition to the authority conferred under §§ 6.1-493, 6.1-494, and 6.1-495, the Commission may impose a fine or penalty not exceeding \$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.

§ 6.1-498. Criminal penalty.

Any person violating § 6.1-475 shall, upon conviction, be guilty of a Class 1 misdemeanor. For the purposes of this section, each violation shall constitute a separate offense.

§ 6.1-499. Private right of action.

Unless arbitration has been agreed to by the parties, any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action as described in § 6.1-501.

§ 6.1-500. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

B. Upon such referral of the Commission, the Attorney General may also seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

C. In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek reasonable attorney fees and costs.

§ 6.1-501. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

- 551 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
552 installed;
- 553 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
554 or bill for merchandise or services previously ordered;
- 555 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
556 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
557 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
558 manufacturing the goods or services advertised or offered for sale;
- 559 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
560 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
561 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
562 or under federal statutes or regulations;
- 563 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
564 with a consumer transaction;
- 565 15. Violating any provision of § 3.1-796.78, 3.1-796.79, or 3.1-796.82, relating to the sale of certain
566 animals by pet dealers which is described in such sections, is a violation of this chapter;
- 567 16. Failing to disclose all conditions, charges, or fees relating to:
- 568 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
569 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
570 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
571 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
572 this subdivision shall not apply to any retail merchant ~~who~~ *that* has a policy of providing, for a period
573 of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card
574 account for the return of defective, unused, or undamaged merchandise upon presentation of proof of
575 purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase
576 and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This
577 subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or
578 otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the
579 purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand
580 not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection
581 with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
582 § 46.2-100;
- 583 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
584 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
585 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
586 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
587 the agreement;
- 588 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
589 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
590 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
591 receiving overpayments. If the credit balance information is incorporated into statements of account
592 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 593 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
594 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
595 agreement;
- 596 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
597 title;
- 598 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
599 seq.) of this title;
- 600 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
601 seq.) of this title;
- 602 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
603 (§ 59.1-207.17 et seq.) of this title;
- 604 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;
- 605 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
606 (§ 59.1-424 et seq.) of this title;
- 607 24. Violating any provision of § 54.1-1505;
- 608 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
609 17.6 (§ 59.1-207.34 et seq.) of this title;
- 610 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;
- 611 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
612 title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2; ~~and~~

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; *and*

45. *Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1.*

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

2. That the Bureau of Financial Institutions shall establish a procedure by August 1, 2006, for any person who is engaged in the business of making motor vehicle equity loans to consumers residing in the Commonwealth on July 1, 2006, to apply prior to October 1, 2006, for a license under Chapter 20 (§ 6.1-474 et seq.) of Title 6.1 of the Code of Virginia. Any person engaged in the business of making motor vehicle equity loans to consumers residing in the Commonwealth on July 1, 2006, who has submitted a complete application for a license under Chapter 20 (§ 6.1-474 et seq.) of Title 6.1 of the Code of Virginia prior to October 1, 2006, may continue to operate without a license until the earliest of the following: (i) the date the Commission issues a license under such chapter; or (ii) the date the Commission denies an application for a license under such chapter; provided that if the applicant requests a hearing pursuant to § 2.2-4020 to contest the denial of the application, the applicant may continue to operate without a license until the entry of a final order after the hearing pursuant to § 2.2-4023 or, if appealed to the Supreme Court of Virginia, the final decision of such court. Nothing in this act shall be so construed so as to impair or affect the obligation of any contract of loan between any licensee and any borrower that was lawfully entered into prior to the earliest date specified in clause (i) or (ii) applicable to such licensee.

3. That the provisions of the first enactment of this act shall become effective on October 1, 2006.