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HOUSE BILL NO. 2819

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 6.1-459 of the Code of Virginia, relating to the Payday Loan Act; requirement for disclosure of information about alternative lenders.

Patrons—Sickles and Dance

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 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.

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

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59 with complaints.

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

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

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

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

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

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

85 a. Shall not garnish any military wages or salary;

86 b. Shall not conduct any collection activity against a borrower who is a member of the military
87 services of the United States or the spouse of such a member, when the member has been deployed to a
88 combat or combat support posting or is a member of the Reserves or National Guard and has been
89 called to active duty, for the duration of the deployment or active duty service;

90 c. Shall not contact the commanding officer of a borrower who is a member of the military services
91 of the United States or anyone in the borrower's chain of command in an effort to collect on a loan
92 made to the member or the member's spouse;

93 d. Shall be bound by the terms of any repayment agreement that the licensee negotiates with respect
94 to such borrower through military counselors or third-party credit counselors; and

95 e. Shall not make a loan to a member of the military services of the United States if a military base
96 commander has declared that a specific location of the licensee's business is off limits to military
97 personnel.

98 22. *Each licensee shall conspicuously post in its licensed location an alternative lending signboard
99 and shall allow any person acting on behalf of an alternative lender to post on the alternative lending
100 signboard an alternative lending posting. Each alternative lending signboard posted in a licensed
101 location shall be situated so that alternative lending postings posted to the signboard are reasonably
102 accessible for reading by individuals entering the licensed location. Each licensee shall ensure that
103 alternative lending postings are not defaced or damaged and once posted are not removed from the
104 alternative lending signboard by any person other than a person acting on behalf of the alternative
105 lender who posted the alternative lending posting. At any time that the number of alternative lending
106 postings exceeds the capacity of the alternative lending signboard, the licensee shall post in its licensed
107 location as many additional alternative lending signboards as are necessary to permit the posting of all
108 alternative lending postings. The posting of an alternative lending posting on a licensee's alternative
109 lending signboard shall not constitute a warranty or other statement of the licensee regarding the
110 veracity of the information on any alternative lending posting or that an individual will qualify for a
111 loan described in an alternative lending posting.*

112 *As used in this subdivision:*

113 *"Alternative lender" means any organization exempt from taxation pursuant to § 501(c)(3) of the*
114 *Internal Revenue Code that has a program whereby it may make unsecured loans to individuals in*
115 *amounts not exceeding \$500.*

116 *"Alternative lending posting" means a paper, cardboard, or plastic sign that is approximately 11*
117 *inches high and 8.5 inches wide, appropriate for being posted on or affixed to an alternative lending*
118 *signboard, on which an alternative lender advertises, promotes, or describes its program or programs*
119 *for making unsecured loans to individuals in amounts not exceeding \$500, which shall state the amount*
120 *of payments and the amount of any finance charge, expressed as an annual percentage rate, and any*

fees and charges charged on a loan under the program, using as an example a \$300 loan payable in 14 days.

"Alternative lending signboard" means a board, composed of wood, cork, or a similar durable material, with dimensions not less than two feet high and three feet wide, that is appropriate for the posting of alternative lending postings via tape, pins, staples, or similar means and that contains a caption centered across the top, in bold, capital letters not less than two inches high, stating "ALTERNATIVE LENDERS," and beneath it a subcaption in bold, capital letters not less than one inch high, stating "THE ENTITIES WHO HAVE POSTED INFORMATION TO THIS BOARD MAY BE WILLING TO MAKE AN UNSECURED LOAN TO YOU AT A LOWER COST THAN WHAT A PAYDAY LOAN WILL COST YOU. YOU ARE ENCOURAGED TO INVESTIGATE LOW-COST ALTERNATIVES TO PAYDAY LOANS."

23. Each licensee shall permit any regulated lender, acting through any agent or employee, to place within each licensed location, on a counter, table, or similar location, its brochures, pamphlets, or like informational literature that advertises any program offered by the regulated lender for unsecured loans to individuals that are intended to provide an alternative to payday loans. Each licensee shall ensure that regulated lender's brochures, pamphlets, and like informational literature are not defaced or damaged by the licensee or its agents or employees and remain accessible to individuals who enter the licensed location. The placing of a regulated lender's brochures, pamphlets, and like informational literature within the licensed location shall not constitute a warranty or other statement of the licensee regarding the veracity of the information contained therein or that an individual will qualify for a loan described therein. As used in this subdivision, "regulated lender" means any bank, trust company, savings and loan association, savings bank, consumer finance company, or credit union operating within the Commonwealth.