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SENATE BILL NO. 1326

Offered January 12, 2007

A *BILL to amend and reenact §§ 6.1-249, 6.1-330.55, 6.1-439, and 59.1-200 of the Code of Virginia and to repeal Chapter 18 (§§ 6.1-444 through 6.1-471) of Title 6.1 of the Code of Virginia, relating to the Payday Loan Act.*

Patrons—Stosch and Reynolds

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, 6.1-439, and 59.1-200 of the Code of Virginia are amended and reenacted 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~~ 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.

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.

§ 6.1-439. Prohibited practices.

No person required to be registered under this chapter shall:

1. Engage in the business of making loans of credit, goods, or things; or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items without meeting the requirements of the laws of the Commonwealth;

2. Cash post-dated items, other than government or payroll checks;

3. Use, or cause to be published or disseminated, any advertisement or communication that (i) contains any false, misleading or deceptive statement or representation or (ii) identifies the person by any name other than the name set forth on the registration; ~~or~~

4. Engage in unfair, deceptive or fraudulent practices; ~~or~~

~~5. Make loans unless such person is licensed under, and the loans are made in accordance with, Chapter 18 (§ 6.1-444 et seq.) of this title.~~

§ 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

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59 services, with another;

60 4. Misrepresenting geographic origin in connection with goods or services;

61 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
62 benefits;

63 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

64 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
65 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
66 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
67 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
68 irregulars, imperfects or "not first class";

69 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
70 at the price or upon the terms advertised.

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

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

80 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
81 installed;

82 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
83 or bill for merchandise or services previously ordered;

84 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
85 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
86 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
87 manufacturing the goods or services advertised or offered for sale;

88 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
89 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
90 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
91 or under federal statutes or regulations;

92 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
93 with a consumer transaction;

94 15. Violating any provision of § 3.1-796.78, 3.1-796.79, or 3.1-796.82, relating to the sale of certain
95 animals by pet dealers which is described in such sections, is a violation of this chapter;

96 16. Failing to disclose all conditions, charges, or fees relating to:

97 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
98 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
99 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
100 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
101 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
102 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
103 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
104 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
105 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
106 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
107 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
108 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
109 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
110 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
111 § 46.2-100;

112 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
113 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
114 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
115 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
116 the agreement;

117 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
118 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
119 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
120 receiving overpayments. If the credit balance information is incorporated into statements of account

furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this 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~~37. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

~~39~~38. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

~~40~~39. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;

~~41~~40. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

~~42~~41. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

~~43~~42. Violating any provision of § 59.1-443.2;

~~44~~43. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; and

~~45~~44. (Effective January 1, 2007) 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 Chapter 18 (§§ 6.1-444 through 6.1-471) of Title 6.1 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2009.