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SENATE BILL NO. 598

Offered January 11, 2006

A BILL to amend and reenact §§ 6.1-249, 6.1-330.55, 6.1-330.78, 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.

Patrons—Bell and Obenshain

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, 6.1-330.78, 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~~ 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.

C. *No person shall extend credit secured by an interest in a motor vehicle pursuant to a license issued under this chapter.*

§ 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 interest chargeable by 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.

§ 6.1-330.78. Open-end sales and loan plans.

A. Notwithstanding any provision of this chapter other than § 6.1-330.71, any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a finance charge is imposed upon the obligor, if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date), may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the seller or lender and the obligor.

B. Notwithstanding the provisions of § 6.1-330.71 and subject to the provisions of § 8.9A-204.1, any loan made under this section may be secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one to four family dwelling units.

C. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is

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SB598

59 located in this Commonwealth, other than an application form or solicitation included in a magazine,
 60 newspaper, or other publication distributed by someone other than the creditor, shall contain or be
 61 accompanied by any of the following disclosures:

62 1. A disclosure of each of the following if applicable:

63 a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage
 64 rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a
 65 specific date and indicate that the rate may vary, or identify the index and any amount or percentage
 66 added to, or subtracted from, that index and used to determine the rate.

67 b. Any membership or participation fee that may be imposed for availability of a credit card account.

68 c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be
 69 imposed, expressed as an amount or as a percentage of the transaction, as applicable.

70 d. Any grace period or free period during which the consumer may repay the full balance reflected
 71 on a billing statement which is attributable to purchases of goods or services from the creditor or from
 72 merchants participating in the credit card plan, without the imposition of additional finance charges. The
 73 creditor shall either disclose the number of days of that period, calculated from the closing date of the
 74 prior billing cycle to the date designated in the billing statement sent to the consumer as the date by
 75 which that payment must be received to avoid additional finance charges, or describe the manner in
 76 which the period is calculated. If the creditor does not provide such a period for purchases, the
 77 disclosure shall so indicate;

78 2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or

79 3. If a creditor is now or hereafter required under federal law to make disclosures of the terms
 80 applicable to a credit card account in connection with application forms or solicitations, the creditor
 81 shall be deemed to have complied with the requirements of this subsection if the creditor complies with
 82 the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on
 83 purchases, or any other charge or fee, shall be written on any such application form or preapproved
 84 written solicitation.

85 D. An open-end credit or similar plan between a seller or lender and an obligor shall be governed
 86 solely by federal law, and by the laws of the Commonwealth of Virginia unless otherwise expressly
 87 agreed in writing by the parties.

88 E. *Except for purchase money security interests, the provisions of this section shall be inapplicable*
 89 *to extensions of credit secured by an interest in a motor vehicle.*

90 CHAPTER 20.

91 MOTOR VEHICLE EQUITY LOAN ACT.

92 § 6.1-474. Definitions.

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

94 *"Bureau" means the Bureau of Financial Institutions.*

95 *"Commissioner" means the Commissioner of Financial Institutions.*

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

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

99 *"Motor vehicle equity loan" means a closed-end loan for a fixed term that is secured by an interest*
 100 *in a motor vehicle made pursuant to the terms of a motor vehicle equity loan agreement.*

101 *"Motor vehicle equity loan agreement" means an agreement under which a lender makes a motor*
 102 *vehicle equity loan to a consumer for a specific amount of money with a specific repayment schedule,*
 103 *and does not provide that the borrower has the right to borrow additional money.*

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

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

108 § 6.1-475. License required.

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

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

120 § 6.1-476. Applicability.

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

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

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

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

B. The application shall include:

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

2. The name and address of each manager and officer;

3. The addresses of the locations of the business to be licensed; and

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

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

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

§ 6.1-478. Bond required.

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

§ 6.1-479. Investigation of applications.

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

§ 6.1-480. Qualifications.

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

2. That the applicant has unencumbered liquid assets per location available for the operation of the business of at least \$50,000.

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

§ 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 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 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

182 not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance
183 with law. After approval, the applicant shall give written notice to the Commissioner within 10 days of
184 the commencement of business at the additional location or relocated place of business.

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

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

192 § 6.1-482. Acquisition of control; application.

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

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

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

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

203 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
204 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
205 senior officers, trustees, and principals, and any proposed new directors, members, senior officers,
206 trustees, and principals have the financial responsibility, character, reputation, experience, and general
207 fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest,
208 and in accordance with law. The Commission shall grant or deny the application within 60 days from
209 the date a completed application accompanied by the required fee is filed unless the period is extended
210 by order of the Commissioner reciting the reasons for the extension. If the application is denied, the
211 Commission shall notify the applicant of the denial and the reasons for the denial.

212 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
213 directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed
214 under this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, by merger or
215 consolidation by or with a person affiliated through common ownership with the licensee; or (iii) the
216 acquisition of an interest in a licensee by bequest, descent, survivorship, or operation of law. The
217 person acquiring an interest in a licensee in a transaction that is exempt from filing an application by
218 this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its
219 closing.

220 § 6.1-483. Retention of books, accounts, and records.

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

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

231 C. When the Bureau requests a written response, books, records, documentation, or other
232 information from a licensee in connection with the Bureau's investigation, enforcement, or examination
233 of compliance with applicable laws and regulations, the licensee shall deliver a written response as well
234 as any requested books, records, documentation, or information within the time period specified in the
235 Bureau's request. If no time period is specified, a written response as well as any requested books,
236 records, documentation, or information shall be delivered by the licensee to the Bureau not later than
237 30 days from the date of such request. In determining the specified time period for responding to the
238 Bureau and when considering a request for an extension of time to respond, the Bureau shall take into
239 consideration the volume and complexity of the requested written response, books, records,
240 documentation, or information and such other factors as the Bureau determines to be relevant under the
241 circumstances.

242 § 6.1-484. Annual report.

243 Each licensee under this chapter shall annually, on or before March 25, file a written report with

the Commissioner containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each licensed place of business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

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

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

1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
2. The institution of revocation or suspension proceedings against the licensee by any governmental authority;
3. The denial of the opportunity to engage in business by any governmental authority;
4. Any felony indictment of the licensee or any of its members, employees, officers, directors, trustees, or principals;
5. Any felony conviction of the licensee or any of its members, employees, officers, directors, trustees, or principals;
6. The licensee surrenders its license to engage in business in another state in lieu of threatened or pending license revocation, license suspension, or other regulatory or enforcement action.
7. The institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or
8. Such other events as the Commission may determine and identify by regulation.

§ 6.1-486. Investigations; examinations.

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

§ 6.1-487. Annual fees.

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 interest on the outstanding balance of a motor vehicle equity loan only at such fixed periodic simple interest rate as may be agreed to by the borrower, provided that the effective rate of simple interest does not exceed 20% per month for the first two months of the loan term and three percent per month for the remaining term of the loan. Payments shall be credited by the licensee on the date received. Notwithstanding anything set forth in this chapter or in a motor vehicle equity loan agreement, if the principal amount borrowed under a motor vehicle equity loan is repaid in full within 48 hours following the delivery of loan proceeds to the borrower, the motor vehicle equity loan shall be deemed to have been made without interest, and any interest accrued on the loan at the time of its repayment shall be waived by the licensee.

B. In addition to the loan principal and interest permitted under subsection A, a licensee shall not directly or indirectly charge, contract for, collect, receive, recover, or require a borrower to pay any further or other amount whatsoever except for (i) a licensee's actual cost of perfecting its lien on a motor vehicle and (ii) reasonable costs of repossession, preparation for sale, and sale of the motor vehicle in accordance with § 6.1-489. A licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to § 6.1-330.54, 8.01-27.2, or 8.01-382.

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

307 § 6.1-489. Limited recourse; repossession and sale of motor vehicle.

308 A. Except as otherwise provided in subsection F, a licensee taking a security interest in a motor
309 vehicle pursuant to this chapter shall, upon default by a borrower, be limited to repossessing, preparing
310 for sale, and selling the motor vehicle in accordance with applicable law. A licensee is prohibited from
311 seeking a personal money judgment against a borrower for any amount owed under a motor vehicle
312 equity loan agreement or any deficiency resulting after the sale of a motor vehicle.

313 B. At least 15 days prior to repossessing a motor vehicle, a licensee shall send written notice to a
314 borrower offering the borrower an opportunity to (i) make the motor vehicle available to the licensee at
315 a place, date, and time reasonably convenient to the licensee and the borrower; and (ii) remove from
316 the motor vehicle any personal belongings without charge or additional cost to the borrower.

317 C. At least 15 days prior to the sale of a motor vehicle, a licensee shall notify the borrower of the
318 date, time, and place of the sale and provide the borrower with a written accounting of the principal
319 amount due to the licensee, interest accrued through the date the licensee took possession of the motor
320 vehicle, and any reasonable expenses incurred to date by the licensee in repossessing and preparing the
321 motor vehicle for sale. At any time prior to such sale, the licensee shall permit the borrower to redeem
322 the motor vehicle by tendering cash or other good funds instrument for the principal amount due to the
323 licensee, interest accrued through the date the licensee took possession, and any reasonable expenses
324 incurred to date by the licensee in repossessing the motor vehicle and preparing it for sale. Nothing in
325 this chapter nor in any motor vehicle equity loan agreement shall preclude a borrower from purchasing
326 the motor vehicle at any sale.

327 D. Within 15 days of receiving funds from the sale of a motor vehicle, a licensee shall send to the
328 borrower all proceeds from such sale in excess of the principal amount due to the licensee, interest
329 accrued through the date the licensee took possession, and the reasonable expenses incurred by the
330 licensee in repossessing, preparing for sale, and selling the motor vehicle. The borrower is entitled to
331 reasonable attorney fees and costs incurred in any action brought to recover such proceeds that results
332 in the licensee being ordered to return all or part of such amount.

333 E. Except in the case of fraud by a borrower, a licensee shall not repossess a motor vehicle until
334 such time as a borrower is in default. Except as otherwise provided in this chapter, the repossession
335 and sale of a motor vehicle shall be subject to the provisions of Title 8.9A.

336 F. Notwithstanding anything else to the contrary, upon default by a borrower, a licensee may seek a
337 personal money judgment against the borrower for any amounts owed under a motor vehicle equity loan
338 agreement if the borrower impairs the licensee's security interest by intentionally damaging the motor
339 vehicle, intentionally concealing the motor vehicle, pledging to the licensee for a loan a motor vehicle
340 that is already encumbered by an undisclosed prior lien, or by subsequently pledging or selling a motor
341 vehicle serving as security for a motor vehicle equity loan to a third party without the licensee's written
342 consent.

343 § 6.1-490. Required and prohibited business methods.

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

345 1. Each motor vehicle equity loan shall be made under a written motor vehicle equity loan
346 agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such
347 agreements. The agreement shall be dated on or before the day the loan is made and disbursed, and
348 shall set forth or contain, at a minimum: (i) the principal amount of the loan; (ii) the interest rate; (iii)
349 the annual percentage rate, which shall be stated using that term, calculated in accordance with the
350 Federal Reserve Board's Regulation Z; (iv) the make, model, year, and vehicle identification number of
351 the motor vehicle being used as security for the loan; (v) an agreement by the licensee that the
352 borrower shall have the right to cancel the motor vehicle equity loan agreement at any time before the
353 close of business on the next business day following the date the agreement is executed by returning the
354 original loan proceeds check or paying to the licensee, in the form of cash or other good funds
355 instrument, the amount advanced to the borrower; (vi) an agreement that the borrower shall have the
356 right to prepay a motor vehicle loan prior to maturity by paying the licensee the principal amount
357 advanced and any accrued and unpaid interest; and (vii) a requirement that each motor vehicle equity
358 loan be repaid in full, including all accrued interest, within 12 months of the date such loan is made.
359 No motor vehicle equity loan agreement shall provide for the waiver or modification of any provisions
360 of this chapter or Title 8.9A

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

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

365 **THIS IS A MOTOR VEHICLE EQUITY LOAN AGREEMENT. IT ALLOWS YOU TO RECEIVE**
366 **LOAN PROCEEDS TO MEET YOUR IMMEDIATE CASH NEEDS. IT IS NOT INTENDED TO MEET**

YOUR LONG-TERM FINANCIAL NEEDS.

WHEN OBTAINING A LOAN UNDER THIS AGREEMENT, 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 OTHER GOOD FUNDS INSTRUMENT, PRIOR TO THE CLOSE OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY FOLLOWING THE EXECUTION OF THIS AGREEMENT.

IF YOU REPAY THE ENTIRE PRINCIPAL AMOUNT ADVANCED WITHIN 48 HOURS, YOU WILL NOT INCUR ANY INTEREST.

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 THAT IS ALREADY SUBJECT TO AN UNDISCLOSED EXISTING LIEN WITHOUT OUR WRITTEN CONSENT, 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 REPOSESSION, PREPARATION FOR SALE, AND SALE OF THE MOTOR VEHICLE.

3. A licensee shall give a duplicate original of the loan 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.

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 property other than a motor vehicle as security for a motor vehicle equity loan. For purposes of this section, the term "motor vehicle" includes any accessories or accessories to a motor vehicle that are affixed thereto.

8. A licensee shall not cause any person to be obligated to a licensee in any capacity in a principal amount that exceeds 50% of the fair market value of the motor vehicle in which the licensee is taking an interest, which value shall be determined by reference to the loan value for the motor vehicle specified in a recognized pricing guide.

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 or an affiliate of 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 loan, a 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 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. Premiums for insurance coverage permitted by this section are not considered interest for purposes of § 6.1-488.

13. A licensee shall not sell or otherwise assign a motor vehicle equity loan agreement to a third party.

14. A borrower shall be permitted to make partial payments on a motor vehicle equity loan without

charge at any time prior to the date such amounts would otherwise be due to the licensee. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the outstanding balance due on the loan.

15. A licensee shall conspicuously post in each licensed location (i) a schedule of fees and interest charges, with examples using a \$500 loan that is repaid in 15 days, 30 days, and 60 days; 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.

16. A licensee shall not cause a borrower to be obligated under more than one agreement at any time.

17. Upon repayment of a loan in full, a licensee shall (i) mark the original motor vehicle equity loan 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.

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

19. 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 loan.

20. A licensee shall not sell insurance or enroll borrowers in group insurance policies, or 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 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.

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

B. Any advertising materials used to promote motor vehicle equity loans that include the amount of any payment, expressed either as a percentage or dollar amount, or the amount of any interest charges, shall also include a statement of the fees and interest charges, expressed as an annual percentage rate, payable using as an example a \$500 loan payable in 15 days, 30 days, and 60 days.

C. In any print media advertisement, including any web page, used to promote motor vehicle equity loans, the disclosure statement required by subsection B 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 motor vehicle equity loans, the visual disclosure legend shall include 20 scan lines in size. In a radio advertisement or advertisement communicated by telephone used to promote motor vehicle equity loans, the disclosure statement shall last at least two seconds and the statement shall be spoken so that its contents may be easily understood.

§ 6.1-492. Rules and regulations.

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

§ 6.1-493. Suspension or revocation of license.

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

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

2. Any violation of the provisions of this chapter or regulations promulgated by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;

3. A course of conduct consisting of the failure to perform written agreements with borrowers;
 4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
 5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;
 6. Entry of a federal or state administrative order against the licensee for violation of any law or any regulation applicable to the conduct of his business;
 7. Refusal to permit an investigation or examination by the Commission;
 8. Failure to pay any fee or assessment imposed by this chapter; or
 9. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner, trustee, beneficiary, or principal shall be deemed acts of the lender.

§ 6.1-494. Regulatory action against an individual.

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

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

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

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

§ 6.1-495. Cease and desist orders.

If the Commission determines that any person has violated any provision 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, the Commission may, upon 21 days notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state 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 issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

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

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § 6.1-493 until it has given the licensee 21 days notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with 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 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, and each day after the date of notification, excluding Sundays and holidays, as prescribed in § 2.2-3300, that an unlicensed person engages in the business or holds himself out to the general public as a lender offering motor vehicle equity loans shall constitute a separate violation.

§ 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.

551 § 6.1-499. *Private right of action.*

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

555 § 6.1-500. *Authority of Attorney General; referral by Commission to Attorney General.*

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

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

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

568 § 6.1-501. *Violation of the Virginia Consumer Protection Act.*

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

572 § 59.1-200. *Prohibited practices.*

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

575 1. Misrepresenting goods or services as those of another;

576 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

577 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
578 services, with another;

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

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

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

583 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
584 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
585 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
586 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
587 irregulars, imperfects or "not first class";

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

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

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

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

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

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

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

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

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

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

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

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

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of 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

674 the consumer's social security number;

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

676 37. Violating any provision of § 8.01-40.2;

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

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

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

680 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46

681 (§ 59.1-525 et seq.) of this title;

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

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

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

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

686 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or

687 lease solely by reason of the failure of such contract or lease to comply with any other law of the

688 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation

689 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable

690 such contract or lease.

691 **2. That the Bureau of Financial Institutions shall establish a procedure by August 1, 2006, for any**

692 **person who is engaged in the business of making motor vehicle equity loans to consumers residing**

693 **in the Commonwealth on July 1, 2006, to apply prior to October 1, 2006, for a license under**

694 **Chapter 20 (§ 6.1-474 et seq.) of Title 6.1 of the Code of Virginia. Any person engaged in the**

695 **business of making motor vehicle equity loans to consumers residing in the Commonwealth on**

696 **July 1, 2006, who has submitted a complete application for a license under Chapter 20 (§ 6.1-474**

697 **et seq.) of Title 6.1 of the Code of Virginia prior to October 1, 2006, may continue to operate**

698 **without a license until the earliest of the following: (i) the date the Commission issues a license**

699 **under such chapter; (ii) the date the Commission denies an application for a license under such**

700 **chapter; or (iii) April 1, 2007.**

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