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HOUSE BILL NO. 1103

Offered January 9, 2008

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A BILL to amend and reenact §§ 6.1-444, 6.1-453, 6.1-457, 6.1-459, 6.1-460, 6.1-467, and 6.1-469 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.1-453.1, 6.1-459.1, and 6.1-469.1, relating to the Payday Loan Act.

Patron—Sickles

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-444, 6.1-453, 6.1-457, 6.1-459, 6.1-460, 6.1-467, and 6.1-469 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.1-453.1, 6.1-459.1, and 6.1-469.1, as follows:

§ 6.1-444. Definitions.

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

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

"Commissioner" means the Commissioner of Financial Institutions.

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

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

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

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

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

"Second payday loan" means a payday loan that is made to a borrower when, at the time that it is made, the borrower is obligated to the same or another licensee on another payday loan or under a payment plan entered into pursuant to § 6.1-459.1.

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

Every licensee shall maintain in its licensed offices such books, accounts and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and rules and regulations adopted in furtherance thereof. *Without limitation, such records shall include (i) copies of the pay stubs provided by borrowers in establishing a borrower's gross monthly income as required to determine the maximum amount of a payday loan for which the borrower may be eligible, as provided in subdivision 5 of § 6.1-459, and (ii) the disclosures of the availability of payment plans, signed by the borrower, for every second payday loan, as provided in subsection B of § 6.1-459.1.* Such books, accounts and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to loans, including copies of checks given to a licensee as security for such loans, shall be retained for at least three years after final payment is made on any loan.

§ 6.1-453.1. Payday loan database.

A. On or before January 1, 2009, the Commission shall contract with a third party to develop, implement, and maintain a database that complies with the requirements of this section. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Commission's contracting with the database provider. The Commission will determine the content and functional specifications of the database, will own the information contained in the database, will direct the database provider to take all actions the Commission deems necessary to protect the confidentiality and security of the information contained in the database, and will utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter.

B. The Commission shall not contract with a third party to develop, implement, and maintain the database unless the Commission has determined that the prospective database provider is adequately capitalized, demonstrates the resources and the ability to perform the services required pursuant to this section, and has appropriate surety to ensure performance of its obligations pursuant to this section and

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HB1103

59 to reasonably protect claimants in the event that actions or inactions on the part of the database
60 provider result in damages to licensees or borrowers.

61 C. In selecting a database provider the Commission shall determine, by demonstration of a working
62 system prior to entering into any contract, that the database:

63 1. Will provide real-time access through an Internet connection or, if real-time access through an
64 Internet connection becomes unavailable due to technical problems incurred by the provider, through
65 alternative verification mechanisms, including verification by telephone;

66 2. Is accessible to the Commission and to licensees in real time in order to ensure compliance with
67 this chapter and in order to provide any other information the Commission deems necessary;

68 3. Contains a real-time interface that allows the Commission access to the database for monitoring
69 and reporting functions, including the ability to determine borrower eligibility and to generate reports
70 for licensee examinations, regulatory reporting and program monitoring;

71 4. Provides licensees with no more than a statement that a prospective borrower is eligible or
72 ineligible for a payday loan and the reason for the determination;

73 5. Provides adequate safeguards to ensure that consumer information contained in the database is
74 kept confidential; and

75 6. Ensures that information submitted to the database by licensees is kept confidential and shall not
76 be released or otherwise made available to the public.

77 D. Before making a payday loan, a licensee shall seek verification that the proposed payday loan is
78 not prohibited by the provisions of this chapter, as follows:

79 1. Prior to the date the database becomes operational, and during any period that the database is
80 not operational due to technical problems beyond the licensee's control, a licensee may rely on the
81 payday loan applicant's written representations, rather than the database's information, in determining
82 whether an applicant is ineligible for the proposed payday loan.

83 2. During periods that the database is operational, a licensee shall query the database as provided
84 in subsection E, and shall not make the payday loan unless the database advises the licensee that the
85 applicant is not ineligible for the payday loan.

86 E. A licensee seeking to verify that an applicant is not ineligible for a proposed payday loan shall
87 provide the database with:

88 1. Identifying information regarding the applicant that permits the database to identify prior and
89 current payday loans by the applicant;

90 2. The amount of the proposed payday loan and the applicant's gross monthly income; and

91 3. Such additional information regarding the proposed payday loan that is required in order to
92 permit the database provider to determine whether the proposed payday loan would contravene any
93 provision of this chapter.

94 F. Upon receipt of a licensee's query, the database provider will advise the licensee whether the
95 applicant is ineligible for a payday loan, whether the payday loan will be a second payday loan, and, if
96 the applicant is ineligible for the payday loan, the reason for such ineligibility. The database provider
97 shall retain evidence of the licensee's query and the response.

98 G. A licensee shall provide the database provider with information regarding each of the following
99 not later than the close-of-business on the date of such event:

100 1. The date, amount, and borrower of each payday loan it makes;

101 2. A borrower's entering into a payment plan pursuant to § 6.1-459.1;

102 3. The payment or satisfaction in full of a payday loan;

103 4. The rescission of a payday loan; and

104 5. A licensee's determination that a payday loan is in default.

105 H. The information contained in the payday loan database is exempt from disclosure under the
106 Freedom of Information Act (§ 2.2-3700 et seq.).

107 1. If the database provider advises the licensee that the applicant is ineligible for a payday loan, then
108 the licensee shall inform the applicant of the advice received from the database. The applicant may
109 make a direct inquiry to the database provider to request a more detailed explanation of the basis for
110 the database provider's determination that the applicant is ineligible for a payday loan, and the
111 database provider shall provide a reasonable response to the applicant.

112 J. A licensee shall not be subject to any administrative penalty or civil liability as a result of relying
113 on inaccurate information contained in the database.

114 § 6.1-457. Fees.

115 A. In order to defray the costs of their examination, supervision and regulation, every licensee under
116 this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission.
117 The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual
118 costs of their examinations, and to other factors relating to their supervision and regulation. All such
119 fees shall be assessed on or before September 15 for every calendar year. All such fees shall be paid by
120 the licensee to the State Treasurer on or before October 15 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 thirty 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.

C. *In addition to the fees prescribed in subsections A and B, a licensee shall pay to the Commission for every payday loan that is consummated an administrative fee of one dollar per payday loan. A licensee shall be assessed this fee for each transaction that has been both registered and recorded on the database. On behalf of the Commission, the database provider shall electronically submit an invoice to the licensee for its transaction fees at least five days before payment is due and the licensee shall pay each such invoice within five days of the invoice date. The database provider shall submit such invoices for payment to the licensee every seven days. The proceeds of the fee shall be used to (i) defray the costs incurred in connection with the establishment and operation of the database established pursuant to § 6.1-453.1 and (ii) administration of its duties under this chapter.*

§ 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~~ 14 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 a disclosure in at least 10-point boldface type on the first page of the loan agreement of the right of the borrower shall have the right to cancel or rescind the loan transaction at any time before the close of business 5:00 p.m. 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, pursuant to the provisions of subdivision 25; 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; ~~and (viii) a disclosure in at least 10-point boldface type on the first page of the loan agreement of the borrower's rights to enter into a payment plan, if it is a second payday loan, under § 6.1-459.1.~~

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 make a payday loan to any person to be obligated to the licensee in any capacity at any time in the principal an amount of more than \$500 that exceeds:~~

a. If it is not a second payday loan, the lesser of (i) \$1,000, which amount shall include any fee charged pursuant to § 6.1-460, or (ii) an amount equal to 25 percent of the borrower's gross monthly income. As used in this subdivision, "gross monthly income" means the borrower's wages or salary for the calendar month preceding the date of the payday loan application, before any required payroll tax deductions, as stated on the borrower's pay stubs covering any portion of such month.

b. If it is a second payday loan, \$500.

6. A licensee shall not (i) refinance, renew or extend any payday loan, (ii) make a payday loan to any borrower if the loan would cause the borrower to have more than two payday loans outstanding at the same time, or (iii) make a payday loan to a borrower on the same day that the borrower pays or otherwise satisfies a previous payday 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

182 as security for a loan.

183 ~~14~~ 10. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other
184 product or service sold at the licensee's business location.

185 ~~12~~ 11. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be
186 charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

187 ~~13~~ 12. A check given as security for a loan shall not be negotiated to a third party.

188 ~~14~~ 13. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with
189 an endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
190 (§ 6.1-444 et seq.) of this title, and any holder of this check takes it subject to all claims and defenses
191 of the maker."

192 ~~15~~ 14. Before entering into a payday loan, the licensee shall provide each borrower with (i) a
193 pamphlet, in form consistent with regulations promulgated by the Commission, explaining in plain
194 language the rights and responsibilities of the borrower and providing a toll-free number at the
195 Commission for assistance with complaints and (ii) a copy of the Commission's publication titled
196 "Consumer Guide to Payday Lending," in such form as the Commission makes available to the licensee
197 for distribution to borrowers.

198 ~~16~~ 15. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and
199 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet
200 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash
201 needs.

202 ~~17~~ 16. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on
203 the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated
204 receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the
205 loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled,"
206 return it to the borrower, and retain a copy in its records.

207 ~~18~~ 17. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest
208 charges, with examples using a \$300 loan payable in 14 days and 30 days.

209 ~~19~~ 18. Any advertising materials used to promote payday loans that includes the amount of any
210 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall
211 also include a statement of the fees and charges, expressed as an annual percentage rate, payable using
212 as an example a \$300 loan payable in 14 days.

213 ~~20~~ 19. In any print media advertisement, including any web page, used to promote payday loans, the
214 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in
215 subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,
216 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to
217 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio
218 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure
219 statement shall last at least two seconds and the statement shall be spoken so that its contents may be
220 easily understood.

221 ~~21~~ 20. ~~If the borrower is~~ A licensee or affiliate shall not knowingly make a payday loan to a person
222 who is a member of the military services of the United States or the spouse or other dependent of a
223 member of the military services of the United States; the licensee:

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

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

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

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

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

237 21. A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60
238 days after the date of default on a payday loan.

239 22. A licensee may not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in
240 the conduct of its business.

241 23. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions
242 and prohibitions contained in the Fair Debt Collections Practices Act, 15 U.S.C. 1692 et seq., regarding
243 harassment or abuse, false or misleading misrepresentations, and unfair practices in collections.

24. A licensee shall not present for payment or deposit a check received from a borrower as security for a payday loan unless the licensee has notified the borrower that the licensee will so present the check on the day that the notice is given. A licensee shall have notified the borrower as required by this subdivision if the licensee calls the borrower after the specified maturity date, at a telephone number provided by the borrower to the licensee for such purpose, and advises the borrower that the check will be deposited on the date of the telephone call; however, if the borrower does not answer the licensee's telephone call, such notice shall be deemed given if the licensee records such message on an answering device for such telephone number.

25. A payday loan agreement shall include a provision giving the borrower the right to cancel or rescind the payday loan transaction by returning in cash or other good funds instrument, 100% of the amount advanced to the borrower no later than 5:00 p.m. on the first day of business conducted by the licensee following the execution of the payday loan. If a borrower exercises the right of rescission pursuant to this subdivision, no fee for the rescinded transaction shall be charged to the borrower and the licensee shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this subdivision. If a payday loan is rescinded as provided in this subdivision, any fee collected by a licensee shall be returned in full to the borrower.

26. A licensee may secure a payday loan with the borrower's electronic debit authorization in addition to, or in lieu of, the borrower's check, provided that the borrower may terminate the electronic debit authorization at any time without such termination being considered a default under the parties' written agreement. In addition, a licensee may secure a payday loan through the borrower's payment order through an automated clearinghouse, wire transfer network, or similar electronic fund transfer system.

27. A licensee shall not make a payday loan to an applicant until the licensee has verified that the proposed payday loan is not prohibited by the provisions of this chapter as required by subsection D of § 6.1-453.1.

§ 6.1-459.1. Payment plans.

A. At the time it enters into a second payday loan, the licensee shall disclose to the borrower, orally and in writing, that if the payday loan is not repaid in full when due, the borrower shall have the option to repay the second payday loan by entering into an unsecured payment plan. The written disclosure statement shall be signed by the borrower upon its receipt, and the licensee shall retain the signed disclosure statement as provided in § 6.1-453.

B. A licensee shall permit a borrower, at the borrower's option, to enter into a payment plan to provide for the payment of the unpaid balance of the second payday loan, by executing an amendment to the written loan agreement that memorializes the terms of the payment plan.

C. No fees, charges or interest may be charged for a payment plan.

D. A payment plan shall provide for:

1. A maximum of 60 days for the repayment of the unpaid principal balance of the second payday loan; and

2. Relatively equal installment payments based upon the consumer's schedule of pay periods.

E. A licensee may not make a payday loan to a borrower after a payment plan has been entered into and before the loan balance covered by the payment plan has been paid in full.

§ 6.1-460. Fee.

A licensee may charge, as a fee for each loan, an amount not to exceed fifteen percent of the amount of the loan proceeds advanced to the borrower. A licensee shall not require or permit a borrower to pay any portion of the administrative fee assessed with respect to a payday loan pursuant to subsection C of § 6.1-457.

§ 6.1-467. Fines for violations.

In addition to the authority conferred under §§ 6.1-464 and 6.1-465, the Commission may impose a fine or penalty not exceeding \$1,000 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, the regulations promulgated by the Commission pursuant thereto, or any other law or regulation applicable to the conduct of the lender's business. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case of a violation of § 6.1-445, each loan made or arranged shall constitute a separate violation.

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

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

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

§ 6.1-469.1. Application of chapter to Internet loans.

305 *The provisions of this chapter shall apply to persons making payday loans over the Internet to*
306 *Virginia residents, whether or not the person making the loan maintains a physical presence in the*
307 *Commonwealth.*