

080182668

HOUSE BILL NO. 12

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2008)

(Patrons Prior to Substitute—Delegates Oder, Jones, D.C. [HB 1404], McClellan [HB 730], O'Bannon [HB 249] and Ware, O. [HB 176])

A BILL to amend and reenact §§ 6.1-459, 6.1-460, and 6.1-461 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.1-453.1 and 6.1-469.1, relating to the Payday Loan Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-459, 6.1-460, and 6.1-461 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 and 6.1-469.1, as follows:

§ 6.1-453.1. Payday lending database.

On or before January 1, 2009, the Commission shall certify and contract with one or more third parties to develop, implement, and maintain a real-time, Internet-accessible database that contains such payday loan information as the Commission may require from time to time by administrative rule or policy statement. The following shall apply to the database:

1. Before making a payday loan, a licensee shall query the database through a Commission-certified database provider and shall retain evidence of the query for the Commission's supervisory review. The database will allow a licensee to make a payday loan only if the loan complies with the provisions of this chapter. Prior to the Commission's implementation of the database, and during any period that the database is unavailable due to technical problems beyond the licensee's control, a licensee may rely on the payday loan applicant's written representations, rather than the database's information, to verify that the loan applied for will comply with the provisions of this chapter. Because a licensee may rely on the accuracy of the applicant's representations and the database's information, a licensee is not subject to any administrative penalty or civil liability if that information is later determined to be inaccurate.

2. The database provider will determine the content and functional specifications of the database, will take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, and will own the information contained in the database. The Commission will utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter.

3. Upon a licensee's query, the database will advise the licensee whether the applicant is eligible for a new payday loan and, if the applicant is ineligible, the reason for such ineligibility. If the database advises the licensee that the applicant is ineligible for a payday loan, then the applicant shall direct any inquiry regarding the specific reason for such ineligibility to the database provider rather than to the licensee. The information contained in the payday loan database is confidential and exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

4. If a licensee and borrower consummate a payday loan, then the licensee shall pay a fee, not to exceed one dollar, to defray the costs of submitting the database inquiry. If a licensee submits a database inquiry but does not consummate a payday loan with the applicant, then the licensee shall not pay the database inquiry fee.

5. The Commission shall collect and turn in to the state treasury all database inquiry fees, and all amounts so collected and the unexpended balances thereof may be used only for the payment of the expenses of the administration of this chapter and of the performance of other functions of the Bureau of Financial Institutions of the Commission. The Commission may employ such examiners or clerks to assist it and the Commissioner as it from time to time deems necessary and may fix their compensation. All salaries and expenses necessarily incurred in the administration of this chapter shall be paid out of the license and other fees collected and turned in to the state treasury under the provisions of this chapter, upon the basis of duly verified itemized vouchers, approved by the Commission. The Comptroller shall issue his warrant on the State Treasurer for, and the State Treasurer shall pay, the salaries and expenses out of the proceeds in the state treasury from these fees, in accordance with appropriations as from time to time are made.

6. If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, then the licensee making the loan shall report such payment to the database not later than the close of business on the date the loan is made or satisfied.

§ 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 *interest and any fee* charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z; (iv) evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be ~~at least seven days after the date the loan is made~~ *produce a loan term of at least two times the borrower's pay cycle*, and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; ~~and~~ (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid *interest, fees, and charges*.

2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter.

4. A licensee shall not require, or accept, more than one check from the borrower as security for any loan at any one time.

5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than \$500.

6. A licensee shall not (i) refinance, renew or extend any loan, (ii) *make a loan to a borrower if the loan would cause the borrower to have more than one loan from any licensee outstanding at the same time*, (iii) *make a loan to a borrower if the loan would cause the borrower to have more than five loans from any licensee within the preceding year*, or (iv) *make a loan to a borrower until not less than 24 hours has elapsed since the borrower satisfied in full any prior 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 as security for a loan.

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

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

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

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

15. Before entering into a payday loan, the licensee shall provide each borrower with (i) 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.

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

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

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

19. Any advertising materials used to promote payday loans that includes the amount of any

payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall also include a statement of the *interest*, fees and charges, expressed as an annual percentage rate, payable using as an example a \$300 loan payable in 30 days.

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

21. 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:

- a. Shall not garnish any military wages or salary;
- b. 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;
- c. 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;
- d. 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
- e. Shall not make a loan to a member of the military services of the United States if a military base commander has declared that a specific location of the licensee's business is off limits to military personnel.

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

23. *A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60 days after the date of default on a payday loan, during which period the licensee and borrower may voluntarily enter into a repayment arrangement.*

24. *A borrower may pay any outstanding payday loan by means of a voluntary payment plan. A licensee shall enter into a voluntary payment plan with the borrower, upon the borrower's request, if the borrower agrees, within seven days of written notification by the licensee that the borrower is in default, to repay the principal and any interest and fees owed in at least two equal installments over an aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the voluntary payment plan. The borrower may prepay a voluntary payment plan in full at any time without penalty. If the borrower fails to pay the voluntary payment plan when due, then the licensee may immediately accelerate the unpaid loan balance.*

§ 6.1-460. Rate of interest, processing fee, and verification fee.

A. A licensee may charge, as a fee for and receive on each loan, an amount interest at a simple annual rate not to exceed fifteen 36 percent of the amount of the loan proceeds advanced to the borrower. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.

B. A licensee may charge and receive a loan fee in an amount not to exceed 10 percent of the amount of the loan proceeds advanced to the borrower.

C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan made under this chapter. The verification fee shall be used in part to defray the costs of submitting a database inquiry as provided in subdivision 4 of § 6.1-453.1.

§ 6.1-461. Additional charges.

In addition to the loan principal, *interest*, and the fee fees permitted under § 6.1-460, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or recovered except (i) any deposit item return fee incurred by the licensee, not to exceed \$25, if the check given by the borrower as security is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if judgment is obtained against the borrower, court costs and reasonable attorneys' fees if awarded by the court, incurred as a result of the returned check in an amount not to exceed \$250. 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.

183 *§ 6.1-469.1. Application of chapter to Internet loans.*

184 *The provisions of this chapter, including specifically the licensure requirements of § 6.1-445, shall*
185 *apply to persons making payday loans over the Internet to Virginia residents, whether or not the person*
186 *making the loan maintains a physical presence in the Commonwealth.*