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HOUSE BILL NO. 12

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on March 3, 2008)

(Patron Prior to Substitute—Delegate Oder)

A BILL to amend and reenact §§ 6.1-459, 6.1-460, 6.1-461, 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 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, 6.1-461, 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 and 6.1-469.1 as follows:

§ 6.1-453.1. Payday lending database.

A. 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 database shall be operational by January 1, 2009.

B. The following provisions 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 making the loan is permissible under the provisions of this chapter. 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 making the loan applied for is permissible under 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 maintain the database, will take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, will be responsible for the confidentiality and security of such information, and will own the information contained in the database. The Commission will have access to and 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 to defray the costs of submitting the database inquiry. The amount of the database inquiry fee shall be calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to actual cost of the operation of the database. 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. Each licensee shall remit all database inquiry fees directly to the database provider on a weekly basis.

5. If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if a borrower enters into an extended payment plan as provided in subdivision 26 of § 6.1-459 or an extended term loan as provided in subdivision 27 of § 6.1-459, then the licensee making the loan shall report such event or other information to the database not later than the close of business on the date of such event.

§ 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 as of the same date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement by the licensee

60 not to present the check for payment or deposit until a ~~specified maturity~~ *the date the loan is due*, which
61 date shall be ~~at least seven days after the date the loan is made~~ *produce a loan term of at least two*
62 *times the borrower's pay cycle* and after which date interest shall not accrue on the amount advanced at
63 a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have
64 the right to cancel the loan transaction at any time before the close of business on the next business day
65 following the date of the transaction by paying to the licensee, in the form of cash or other good funds
66 instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have
67 the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and
68 any accrued and unpaid *interest, fees, and charges*.

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

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

75 4. A licensee shall not require, or accept, more than one check from ~~the~~ *a* borrower as security ~~for~~ *in*
76 *connection with* any loan ~~at any one time~~.

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

79 6. A licensee shall not (i) refinance, renew or extend any *payday* loan; (ii) *make a loan to a person*
80 *if the loan would cause the person to have more than one payday loan from any licensee outstanding at*
81 *the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise*
82 *satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following*
83 *the date that the person has paid or otherwise satisfied in full a payday loan through an extended*
84 *payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days*
85 *following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within*
86 *a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within*
87 *the longer of (a) 60 days following the date that the person has paid or otherwise satisfied in full an*
88 *extended term loan or (b) 120 days following the date that the person enters into an extended term*
89 *loan, as provided in subdivision 27 b.*

90 7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time ~~for the~~
91 ~~purpose of increasing charges payable by the borrower.~~

92 8. A ~~check accepted by a licensee shall not require or accept a post-dated check as security for, or in~~
93 ~~payment of, a~~ *be dated as of the date the loan is due.*

94 9. A licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if
95 a check given as security for a loan is dishonored. *In addition to any other remedies available at law, a*
96 *licensee that knowingly violates this prohibition shall pay the affected borrower a civil monetary penalty*
97 *equal to three times the amount of the dishonored check.*

98 10. A licensee shall not take an interest in any property other than a check payable to the licensee as
99 security for a loan.

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

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

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

105 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
106 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
107 (§ 6.1-444 et seq.) of ~~this title~~ *Title 6.1 of the Code of Virginia*, and any holder of this check takes it
108 subject to all claims and defenses of the maker."

109 15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in
110 form consistent with regulations promulgated by the Commission, explaining in plain language the rights
111 and responsibilities of the borrower and providing a toll-free number at the Commission for assistance
112 with complaints.

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

117 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on
118 the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated
119 receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the
120 loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled,"
121 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 14 and 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 licensee or affiliate shall not knowingly make a payday loan to a person who is a member of the military services of the United States or the spouse or other dependent 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. Prior to making a payday loan, every licensee or affiliate shall inquire of every prospective borrower if he or she is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States. The loan documents shall include verification that the borrower is not a member of the military services of the United States or the spouse of a member of the military services of the United States.

22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection 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 licensee shall not obtain authorization to electronically debit a borrower's deposit account in connection with any payday loan.

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

26. A borrower may pay any outstanding payday loan from any licensee by means of an extended payment plan as follows:

a. A borrower shall not be eligible to enter into more than one extended payment plan in any 12-month period.

b. To enter into an extended payment plan with respect to a payday loan, the borrower shall agree in a written and signed document to repay the amount owed in at least four equal installments over an aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the extended payment plan. The borrower may prepay an extended payment plan in full at any time without penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then the licensee may immediately accelerate the unpaid loan balance.

c. If the borrower enters into an extended payment plan, then no licensee may make another payday loan to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower pays or satisfies in full the balance of the loan under the terms of the extended payment plan.

d. At each licensed location, the licensee shall post a notice in at least 24-point bold type, in a form established or approved by the Commission, informing persons that they may be eligible to enter into an extended payment plan.

183 27. In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to
184 any person within a period of 180 days shall be made only in compliance with either of the following:

185 a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday
186 loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such
187 borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise
188 satisfied in full and (ii) the borrower may elect, at any time prior to its due date, to repay such fifth
189 payday loan by means of an extended payment plan as provided in subdivision 26 b; or

190 b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a
191 loan that complies with the terms and conditions otherwise applicable to payday loans under the terms
192 of this chapter except that (i) the principal amount of the loan amount, and any interest and fees
193 permitted by § 6.1-460, shall be payable in four equal installments over a payment period of 60 days
194 following the date the loan is made and (ii) no licensee may make a payday loan to such borrower
195 during the longer of (a) 60 days following the date the extended term loan is paid or otherwise satisfied
196 in full or (b) 120 days following the date the extended term loan is made.

197 § 6.1-460. Rate of interest, loan fee, and verification fee.

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

202 B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the
203 amount of the loan proceeds advanced to the borrower.

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

207 § 6.1-461. Additional charges.

208 In addition to the loan principal, interest, and the fee fees permitted under § 6.1-460, no further or
209 other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or
210 recovered except (i) any deposit item return fee incurred by the licensee, not to exceed \$25, if the check
211 given by the borrower as security is returned because the account on which it was drawn was closed by
212 the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if
213 judgment is obtained against the borrower, court costs and reasonable attorneys' fees if awarded by the
214 court, incurred as a result of the returned check in an amount not to exceed \$250. A licensee shall not
215 be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to §§ 6.1-330.54,
216 8.01-27.2, or § 8.01-382.

217 § 6.1-467. Fines for violations.

218 In addition to the authority conferred under §§ 6.1-464 and 6.1-465, the Commission may impose a
219 fine or penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in
220 accordance with the Rules of Practice and Procedure of the Commission, has violated any of the
221 provisions of this chapter, the regulations promulgated by the Commission pursuant thereto, or any
222 other law or regulation applicable to the conduct of the lender's business. For the purposes of this
223 section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case
224 of a violation of § 6.1-445, each loan made or arranged shall constitute a separate violation.

225 § 6.1-469. Validity of noncompliant loan agreement; private right of action.

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

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

231 § 6.1-469.1. Application of chapter to Internet loans.

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

235 2. That the Bureau of Financial Institutions of the Virginia State Corporation Commission shall
236 report to the Chairmen of the House and Senate Commerce and Labor Committees regarding the
237 utilization of payday loans, including: patterns of repeat and consecutive borrowing, use of
238 extended payment plans, compliance with restrictions on lending by licensees, and; effectiveness of
239 the prohibitions on military lending, as soon as possible after the Bureau has received 12 months
240 of data from the database provider.

241 3. That the provisions of subsection A of § 6.1-453.1 of the Code of Virginia shall become effective
242 July 1, 2008, and that all other provisions of this act shall become effective on January 1, 2009.