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**HOUSE BILL NO. 189**

Offered January 9, 2008

Prefiled December 26, 2007

*A BILL to amend and reenact §§ 6.1-459, 6.1-460, and 6.1-461 of the Code of Virginia, relating to payday loans; powers of localities.*

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 Patron—Marshall, R.G.

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 Referred to Committee on Commerce and Labor

**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 as follows:**

§ 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 interest 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 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 fees.

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 refinance, renew or extend any 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 a pamphlet, in form consistent with regulations promulgated by the Commission, explaining in plain language the rights

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59 and responsibilities of the borrower and providing a toll-free number at the Commission for assistance  
60 with complaints.

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

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

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

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

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

84 21. If the borrower is a member of the military services of the United States or the spouse of a  
85 member of the military services of the United States, the licensee:

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

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

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

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

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

99 § 6.1-460. Powers of localities.

100 *AA. Any locality may, by ordinance, provide that a licensee may operating within its jurisdiction*  
101 *shall not charge, as a fee for each on any payday loan, an amount not to exceed fifteen percent of the*  
102 *amount of the loan proceeds advanced to the borrower interest, whether designated as a fee or*  
103 *otherwise, at an annual rate that exceeds a maximum interest rate which shall be prescribed by such*  
104 *locality.*

105 *B. Any locality may, by ordinance, establish the maximum number of payday loans a licensee*  
106 *operating within its jurisdiction may, in a calendar year, make to a borrower residing in the locality.*

107 § 6.1-461. Additional charges.

108 In addition to the loan principal and the fee interest permitted under § 6.1-460, no further or other  
109 amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or  
110 recovered except (i) any deposit item return fee incurred by the licensee, not to exceed \$25, if the check  
111 given by the borrower as security is returned because the account on which it was drawn was closed by  
112 the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if  
113 judgment is obtained against the borrower, court costs and reasonable attorneys' fees if awarded by the  
114 court, incurred as a result of the returned check in an amount not to exceed \$250. A licensee shall not  
115 be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to §§ 6.1-330.54,  
116 8.01-27.2, or § 8.01-382.