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**SENATE BILL NO. 588**  
**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by Senator Stolle  
 on February 12, 2008)

(Patron Prior to Substitute—Senator Puckett)

*A BILL to amend and reenact §§ 6.1-451, 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 §§ 6.1-451, 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:**

§ 6.1-451. 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 name of the licensee. Each license shall be prominently posted 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 other than the 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~~ *Except as provided in subsection E, the* application shall be approved unless the Commission finds that the applicant does not have the required liquid assets or has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within thirty days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within ten days of the commencement of business at the additional location or relocated place of business.

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

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

*E. Effective July 1, 2008, the Commission shall not issue a license that authorizes any person to open an office at, or relocate any office to, a location that is within one and one-half miles of a site where any person is authorized to conduct the business of making payday loans. This subsection shall not affect the authority of any licensee to continue operating an office at a location approved by the Commission prior to July 1, 2008.*

§ 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 making the loan is permissible under the provisions of this chapter. Prior to the 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 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*

60 *licensees' compliance with the provisions of this chapter.*

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

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

71 5. *The Commission shall collect and turn in to the state treasury all database inquiry fees, and all*  
72 *amounts so collected and the unexpended balances thereof may be used only for the payment of the*  
73 *expenses of the administration of this chapter and of the performance of other functions of the Bureau*  
74 *of Financial Institutions of the Commission. All salaries and expenses necessarily incurred in the*  
75 *administration of this chapter shall be paid out of the annual and other fees collected and turned in to*  
76 *the state treasury under the provisions of this chapter, upon the basis of duly verified itemized vouchers,*  
77 *approved by the Commission. The Comptroller shall issue his warrant on the State Treasurer for, and*  
78 *the State Treasurer shall pay, the salaries and expenses out of the proceeds in the state treasury from*  
79 *these fees, in accordance with appropriations as from time to time are made.*

80 6. *If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if*  
81 *a borrower defaults on a payday loan, then the licensee making the loan shall report such loan,*  
82 *payment, satisfaction, or default to the database not later than the close of business on the date the loan*  
83 *is made, paid, or satisfied or the default occurs.*

84 § 6.1-459. Required and prohibited business methods.

85 Each licensee shall comply with the following requirements:

86 1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the  
87 borrower and a person authorized by the licensee to sign such agreements and dated the same day the  
88 loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount  
89 of the loan; (ii) the *interest and any fee* charged; (iii) the annual percentage rate, which shall be stated  
90 using that term, applicable to the transaction calculated in accordance with Federal Reserve Board  
91 Regulation Z; (iv) evidence of receipt from the borrower of a check, dated the same date, as security for  
92 the loan, stating the amount of the check; (v) an agreement by the licensee not to present the *borrower's*  
93 check for payment or deposit until a specified maturity date, which date shall be at least seven days  
94 after the date the loan is made and after which date interest shall not accrue on the amount advanced at  
95 a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have  
96 the right to cancel the loan transaction at any time before the close of business on the next business day  
97 following the date of the transaction by paying to the licensee, in the form of cash or other good funds  
98 instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have  
99 the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and  
100 any accrued and unpaid *interest, fees, and charges.*

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

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

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

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

111 6. A licensee shall not (i) refinance, renew or extend any loan, (ii) *make a loan to a borrower if the*  
112 *loan would cause the borrower to have more than one loan from any licensee outstanding at the same*  
113 *time, (iii) make a loan to a borrower on the same day that a borrower pays or otherwise satisfies a*  
114 *previous payday loan, (iv) make a payday loan to a person within the 90 days following the date that*  
115 *the person has paid an extended payment plan in full, or (v) make a payday loan to a person within the*  
116 *90 days following the date the person has paid or satisfied a payday loan, not through an extended*  
117 *payment plan, if the person was in default on that payday loan for a period exceeding 60 days.*

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

120 8. ~~A licensee shall not require or accept a post-dated check as security for, or in payment of, a~~  
121 ~~loan~~ *accepts a check as security for, or in payment of, a payday loan, then the check shall be dated as*

of the date the loan is due.

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. *A licensee that knowingly violates this prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of the dishonored check. Any borrower who is paid such a penalty shall be barred from exercising any other remedy for such licensee's conduct.*

10. *A Other than a check payable to the licensee, a licensee shall not take an interest in any other 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 *or on a website owned or controlled by the licensee.*

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 *or assigned* 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 and responsibilities of the borrower and providing a toll-free number at the Commission for assistance with complaints. *If a borrower applies for a payday loan via the Internet, the pamphlet shall be provided electronically.*

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. *If a borrower applies for a payday loan via the Internet, the notice shall be provided electronically.*

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. *If a payday loan transaction is conducted via the Internet, the licensee shall mark the electronic loan agreement with the words "duplicate original" and "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. *If payday loans are solicited or made by a licensee via the Internet, the schedule shall be conspicuously posted on the licensee's website.*

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~~

183 made to the member or the member's spouse;

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

186 e. Shall not make a loan to a member of the military services of the United States if a military base  
187 commander has declared that a specific location of the licensee's business is off limits to military  
188 personnel. Because a licensee may rely on the accuracy of a loan applicant's representation regarding  
189 whether the loan applicant is a member of the military services of the United States or the spouse or  
190 other dependent of a member of the military services of the United States, a licensee is not subject to  
191 any administrative penalty or civil liability if that information is later determined to be inaccurate.

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

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

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

201 25. a. A borrower who obtains and pays a payday loan from any licensee acquires the right to pay  
202 the principal amount of the payday loan by means of an extended payment plan. If the borrower enters  
203 into an extended payment plan and pays that plan in full, then: (i) a waiting period of 90 days must  
204 elapse between the date that the borrower pays the extended payment plan in full and the date that any  
205 licensee may make a new payday loan to the borrower; and (ii) the borrower may not enter into more  
206 than two extended payment plans in any 12-month period.

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

213 c. At each licensed location, the licensee shall post a notice in at least 12-point bold type, in a form  
214 established or approved by the Commission, informing persons that they may be eligible to enter into an  
215 extended payment plan.

216 § 6.1-460. Rate of interest, processing fee, and verification fee.

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

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

223 C. A licensee may charge and receive a verification fee in an amount not to exceed \$10 for a loan  
224 made under this chapter. The verification fee shall be used in part to defray the costs of submitting a  
225 database inquiry as provided in subdivision 4 of § 6.1-453.1 and complying with the other provisions of  
226 this chapter.

227 § 6.1-461. Additional charges.

228 In addition to the loan principal, ~~interest~~, and the ~~fee~~ fees permitted under § 6.1-460, no further or  
229 other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or  
230 recovered except (i) any ~~deposit item return~~ fee incurred by charged to the licensee by its depository  
231 institution, not to exceed \$25, if the check given by the borrower as security is returned or rejected  
232 because the ~~borrower's deposit~~ account on which it was drawn was closed by the borrower or contained  
233 insufficient funds, or the borrower stopped payment on the check, and (ii) if judgment is obtained  
234 against the borrower, court costs and reasonable attorneys' fees if awarded by the court, incurred as a  
235 result of the returned check in an amount not to exceed \$250. A licensee shall not be entitled to collect  
236 or recover from a borrower any sum otherwise permitted pursuant to §§ 6.1-330.54, 8.01-27.2, or  
237 § 8.01-382.

238 § 6.1-467. Fines for violations.

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

245 of a violation of § 6.1-445, each loan made or arranged shall constitute a separate violation.

246 § 6.1-469. Validity of noncompliant loan agreement; private right of action.

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

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

252 § 6.1-469.1. *Application of chapter to Internet loans.*

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