

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 860

An Act to amend and reenact § 6.1-330.78 of the Code of Virginia, relating to a prohibition on certain lenders extending credit under open-end credit plans.

[S 1470]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-330.78 of the Code of Virginia is amended and reenacted as follows:

§ 6.1-330.78. Open-end sales and loan plans.

A. Notwithstanding any provision of this chapter other than § 6.1-330.71, *and except as provided in subsection E*, any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a finance charge is imposed upon the obligor, if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date), may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the seller or lender and the obligor.

B. Notwithstanding the provisions of § 6.1-330.71 and subject to the provisions of § 8.9A-204.1, any loan made under this section may be secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one to four family dwelling units.

C. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is located in this Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by any of the following disclosures:

1. A disclosure of each of the following if applicable:

a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.

b. Any membership or participation fee that may be imposed for availability of a credit card account.

c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.

d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;

2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or

3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.

D. An open-end credit or similar plan between a seller or lender and an obligor shall be governed solely by federal law, and by the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.

E. *Except as provided in subsection F, a licensee, as defined in § 6.1-444, shall not engage in the extension of credit under an open-end credit or similar plan described in this section, and a third party shall not engage in the extension of credit under an open-end credit or similar plan described in this section at any office, suite, room, or place of business where a licensee conducts the business of making payday loans. In addition to any other remedies or penalties provided for a violation of this section, any such extension of credit made by a licensee or third party in violation of this subsection shall be unenforceable against the borrower.*

F. No prohibition in subsection E shall apply to an extension of credit under an open-end credit or similar plan that is secured by a security interest in a motor vehicle, as such term is defined in § 46.2-100.

G. If a licensee, as defined in § 6.1-444, surrenders its license under Chapter 18 (§ 6.1-444 et seq.) of this title or has its license revoked, and if following such surrender or revocation of its license the former licensee engages in the extension of credit under an open-end credit or similar plan as described in this section, then the Commission shall not issue to such former licensee, or to any affiliate of the former licensee, a license under Chapter 18 of this title for a period of 10 years from the date such license is surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a business entity that owns or controls, is owned or controlled by, or is under common ownership or control with, the former licensee.

2. That nothing contained in subsection E of § 6.1-330.78 of the Code of Virginia shall prohibit the collection of any outstanding loan or extension of credit made under § 6.1-330.78 by a licensee, as defined in § 6.1-444 of the Code of Virginia, in accordance with the terms of a loan agreement made prior to the effective date of this act; however, no additional extensions of credit or advances shall be made under such a loan agreement on or after the effective date of this act.

3. That an emergency exists and this act is in force from its passage.