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HOUSE BILL NO. 1093

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 6.1-330.78 of the Code of Virginia, relating to information required from certain lenders making secured open-end loans; report by State Corporation Commission.

Patron—Sickles

Referred to Committee on Commerce and Labor

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~~ *subsections E and H*, 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~~ 25 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

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59 section at any office, suite, room, or place of business where a licensee conducts the business of making
60 payday loans. In addition to any other remedies or penalties provided for a violation of this section, any
61 such extension of credit made by a licensee or third party in violation of this subsection shall be
62 unenforceable against the borrower.

63 F. No prohibition in subsection E shall apply to an extension of credit under an open-end credit or
64 similar plan that is secured by a security interest in a motor vehicle, as such term is defined in
65 § 46.2-100.

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

74 H. As a condition to extending credit under an open-end credit or similar plan pursuant to
75 subsection A, each lender that is not licensed by the Commission, the comparable regulatory agency of
76 another state, or an agency of the federal government, and that extends credit in the Commonwealth
77 under an open-end credit or similar plan that is secured by a nonpurchase money security interest in a
78 motor vehicle, as such term is defined in § 46.2-100, shall submit to the Commission, by March 1 of
79 each year commencing in 2011, the following information:

80 1. The lender's name and address;

81 2. If the lender is a corporation, limited liability company, partnership, or other business entity, the
82 name and address of each director, officer, member, manager, or partner thereof, as applicable, and
83 each person owning a 10 percent or greater interest in the business entity;

84 3. The addresses of each location at which the lender makes such loans;

85 4. For each location in the Commonwealth, and aggregated for each of its locations in the
86 Commonwealth if more than one, during the preceding calendar year: (i) the number of loans made; (ii)
87 the amount advanced to borrowers; (iii) the interest charged on each loan, stated as an annual
88 percentage rate, and any other fees or charges assessed and collected with respect to the loan; (iv) the
89 length of time the revolving loan has been in effect; (v) amounts received by payments on each loan,
90 stating separately amounts applied to principal, interest, and other fees and charges; (vi) the number of
91 loans repaid in full; (vii) the number of loans on which the borrower has defaulted, with a description
92 of the nature of the default; (viii) the number of motor vehicles repossessed as a result of the borrower's
93 default; (ix) for each motor vehicle repossessed that was sold, the vehicle's sales price, the expenses of
94 sale, proceeds from the sale applied to the borrower's indebtedness, and the amount of the sales
95 proceeds if any returned to the borrower; (x) the number of court proceedings instituted against a
96 borrower to collect sums owed under such a loan, whether or not the motor vehicle securing the loan
97 has been repossessed and sold, and for each, the disposition of the proceeding, including the amount of
98 any judgment entered against the borrower; and (xi) for each loan agreement terminated or otherwise
99 ending, the duration the agreement was in effect and all sums advanced and paid or otherwise collected
100 thereunder during its term;

101 5. A copy of any form of written loan agreement used by the lender for such loans; and

102 6. Such other or supplemental information relating to the lender's practices and loans made by it, as
103 the Commission shall request the lender to provide, in accordance with regulations adopted by the
104 Commission.

105 The information submitted to the Commission pursuant to this subsection shall not be disclosed by
106 the Commission except as provided in § 6.1-1.1; however, in any legal action regarding a loan made
107 under subsection A that is secured by a security interest in a motor vehicle, the Commission upon
108 request shall disclose whether the lender is in compliance with the reporting requirements of this
109 subsection.

110 2. That the State Corporation Commission, by September 1 of each year commencing in 2011,
111 shall prepare a report summarizing the information submitted pursuant to subsection H of
112 § 6.1-330.78 of the Code of Virginia. Such report shall be submitted to the Governor and the
113 General Assembly as provided in the procedures of the Division of Legislative Automated Systems
114 for the processing of legislative documents and reports. The report shall identify each lender that
115 has complied with the requirements of subsection H of § 6.1-330.78 of the Code of Virginia, and
116 such identification shall be prima facie evidence that the lender has satisfied the condition
117 established by such subsection H upon a lender's authority to extend credit pursuant to subsection
118 A of § 6.1-330.78 of the Code of Virginia.

119 3. That the provisions of this act shall expire on January 1, 2015.