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HOUSE BILL NO. 188

Offered January 13, 2010
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A BILL to amend and reenact §§ 6.1-459, 6.1-460, and 6.1-461 of the Code of Virginia, relating to charges on payday loans.

Patron—Morrissey

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 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 date that the loan is due, 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 the date the loan is due, which date shall produce a loan term of at least two times the borrower's pay cycle 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 interest~~, fees, and charges~~.

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 a borrower as security for any loan.

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 (i) refinance, renew or extend any payday loan; (ii) make a loan to a person if the loan would cause the person to have more than one payday loan from any licensee outstanding at the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following the date that the person has paid or otherwise satisfied in full a payday loan through an extended payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time.

8. A check accepted by a licensee as security for any loan 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. In addition to any other remedies available at law, 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.

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

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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 Title 6.1 of the Code of Virginia, 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.

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.

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.

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~~ *include* the amount of any payment, *however* 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. 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. 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 a 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.

e. The licensee shall provide oral notice to any borrower who is eligible to enter into an extended payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability to pay the payday loan by means of an extended payment plan. The information contained in the notice shall be in a form provided by the Bureau of Financial Institutions.

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

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

b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a loan that complies with the terms and conditions otherwise applicable to payday loans under the terms of this chapter except that (i) the principal amount of the loan amount, and any interest ~~and fees~~ permitted by § 6.1-460, shall be payable in four equal installments over a payment period of 60 days following the date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150 days following the date the extended term loan is made.

§ 6.1-460. Rate of interest.

~~A.~~ A licensee ~~may~~ *shall not* charge ~~and~~ *or* receive on ~~each~~ *any payday* loan interest at a ~~simple annual~~ rate ~~not to exceed~~ *that exceeds* 36 percent *per year*. ~~A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.~~

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

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

§ 6.1-461. Additional charges.

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