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SENATE BILL NO. 250

Offered January 13, 2010

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A BILL to amend and reenact §§ 6.1-249, 6.1-330.55, 6.1-330.78, and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 21, consisting of sections numbered 6.1-480 through 6.1-507, relating to the regulation of lenders engaged in open-end lending; penalties.

Patron—Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-249, 6.1-330.55, 6.1-330.78, and 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 21, consisting of sections numbered 6.1-480 through 6.1-507, as follows:

§ 6.1-249. Compliance with chapter; license required.

A. No person shall engage in the business of lending any principal amounts to individuals for personal, family, household or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, compensation, consideration or expense which in the aggregate is greater than the interest permitted by § 6.1-330.55, except as provided in and authorized by this chapter or Chapter 18 (§ 6.1-444 et seq.) ~~of this title or Chapter 21 (§ 6.1-480 et seq.)~~ and without first having obtained a license from the Commission.

B. However, subject to §§ 6.1-251 and 6.1-281 of this chapter, the prohibition in subsection A of this section shall not be construed to prevent any person, other than a licensee, from making a mortgage loan pursuant to §§ 6.1-330.69 and 6.1-330.70 or §§ 6.1-330.71 and 6.1-330.72 in any principal amount ~~or from extending credit as described in § 6.1-330.78 in any amount.~~

§ 6.1-330.55. Contracts for more than legal rate of interest.

Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan greater than ~~twelve~~ 12 percent per year.

For statutes which permit payment of interest greater than ~~twelve~~ 12 percent per year, reference is hereby made to Article 6 (§ 6.1-330.60 et seq.), Article 7 (§ 6.1-330.64), Article 8 (§ 6.1-330.65 et seq.), Article 9 (§ 6.1-330.69 et seq.), Article 10 (§ 6.1-330.75 et seq.) and Article 11 (§ 6.1-330.77 et seq.) of this chapter. Further reference is hereby made to Chapter 6 (§ 6.1-244 et seq.) ~~of this title~~, relating to powers of consumer finance companies; to Chapter 18 (§ 6.1-444 et seq.) ~~of this title~~, relating to payday lenders; to § 38.2-1806, relating to interest chargeable by insurance agents; to §§ 38.2-4700 through 38.2-4712, relating to interest chargeable by premium finance companies; ~~and to § 58.1-3018, relating to interest and origination fees payable under third-party taxpayer agreements; and to Chapter 21 (§ 6.1-480 et seq.), relating to interest chargeable by open-end credit plan lenders.~~

In the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.

Those provisions of this chapter providing that a loan or extension of credit may be enforced as agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of other loan fees and charges permitted by law, in addition to the stated interest rate, and such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

§ 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 goods to be used for personal, family, or household purposes may extend credit to the purchaser thereof, for the sole purpose of financing the bona fide purchase price of such goods,~~ 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

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59 used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a
60 consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is
61 located in this Commonwealth, other than an application form or solicitation included in a magazine,
62 newspaper, or other publication distributed by someone other than the creditor, shall contain or be
63 accompanied by any of the following disclosures:

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

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

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

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

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

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

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

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

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

97 F. ~~No prohibition in subsection E shall apply to an extension of credit under an open-end credit or~~
98 ~~similar plan that is secured by a security interest in a motor vehicle, as such term is defined in~~
99 ~~§ 46.2-100.~~

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

108 CHAPTER 21.

109 OPEN-END CREDIT PLAN LOANS.

110 § 6.1-480. Definitions.

111 As used in this chapter, unless the context requires a different meaning:

112 "Bureau" means the Bureau of Financial Institutions.

113 "Commissioner" means the Commissioner of Financial Institutions.

114 "Licensee" means a person to whom a license has been issued under this chapter.

115 "Open-end credit plan loan" means a revolving loan, whether secured or unsecured, made under an
116 open-end credit or similar plan under which a finance charge is imposed upon the obligor, if payment
117 in full of the unpaid balance is not received at the place designated by the creditor prior to the next
118 billing date, which shall be at least 25 days later than the prior billing date.

119 "Open-end credit plan loan agreement" means an agreement under which a lender makes an
120 open-end credit plan loan to a consumer.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, or other legal or commercial entity.

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in any other type of entity.

§ 6.1-481. License required.

A. No person shall engage in the business of making open-end credit plan loans to any consumer residing in the Commonwealth, whether or not the person has a location in the Commonwealth, except in accordance with the provisions of this chapter and without having first obtained a license under this chapter from the Commission. If an open-end credit plan loan is made in violation of this section, the loan and the lender's security interest in any collateral securing the loan shall be void, and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever. Any funds or property taken or received by an unlicensed lender shall be returned to the borrower. If the property is sold by the lender, the lender shall provide the borrower with the fair market value of the property.

B. No person shall engage in the business of arranging or brokering open-end credit plan loans for any consumer residing in the Commonwealth, whether or not the person has a location in the Commonwealth.

§ 6.1-482. Applicability.

A. The provisions of this chapter shall not apply to any bank, savings institution, or credit union that does not elect to become licensed under this chapter. Electing to become licensed under this chapter, however, shall constitute a waiver of the benefit of any and all laws of the Commonwealth and other states, territories, possessions, and districts of the United States and federal laws preemptive of, or inconsistent with, the provisions of this chapter.

B. The provisions of this chapter shall not apply to extensions of credit secured by purchase money security interests.

§ 6.1-483. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath and on a form provided by the Commissioner.

B. The application shall include:

1. The name and address of the applicant and (i) if the applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and address of each trustee and beneficiary;

2. The name and address of each manager and officer;

3. The addresses of the locations of the business to be licensed; and

4. Such other information concerning the financial responsibility, background, experience, and activities of the applicant and the persons referred to in this section as the Commissioner may require.

C. The application shall be accompanied by payment of an application fee of \$1,000.

D. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

§ 6.1-484. Bond required.

The application for a license shall also be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute such bond in this Commonwealth, in the sum of \$10,000 per location, not to exceed a total of \$50,000. The form of the bond shall be approved by the Commission. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or licensee performing all written agreements with borrowers or prospective borrowers, correctly and accurately accounting for all funds received by him in his licensed business, and conducting his licensed business in conformity with this chapter and all applicable law. Any person who may be damaged by noncompliance of the licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

§ 6.1-485. Investigation of applications.

The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations adopted thereunder.

§ 6.1-486. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ 6.1-483 and 6.1-484, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter at the locations specified in the application if it finds:

1. That the financial responsibility, character, reputation, experience, and general fitness of the

182 applicant and its members, senior officers, directors, trustees, and principals are such as to warrant
183 belief that the business will be operated efficiently and fairly, in the public interest, and in accordance
184 with law; and

185 2. That the applicant has unencumbered liquid assets per location available for the operation of the
186 business of at least \$25,000.

187 B. If the Commission fails to make such findings, no license shall be issued and the Commissioner
188 shall notify the applicant of the denial and the reasons for such denial.

189 § 6.1-487. Licenses; places of business; changes.

190 A. Each license shall state the address or addresses at which the business is to be conducted and
191 shall state fully the legal name of the licensee as well as any fictitious name by which the licensee is
192 operating in the Commonwealth. Each license shall be posted prominently in each place of business of
193 the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No
194 licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth
195 on the license issued by the Commission.

196 B. No licensee shall open an additional office or relocate any place of business without prior
197 approval of the Commission. Applications for such approval shall be made in writing on a form
198 provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable
199 application fee. The application shall be approved unless the Commission finds that the applicant has
200 not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance
201 with law. After approval, the applicant shall give written notice to the Commissioner within 10 days of
202 the commencement of business at the additional location or relocated place of business.

203 C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any
204 business location and of the name, address, and position of each new senior officer, member, trustee,
205 partner, or director and provide such other information with respect to any such change as the
206 Commissioner may reasonably require.

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

210 § 6.1-488. Acquisition of control; application.

211 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or
212 more of the voting shares of a corporation or 25 percent or more of the ownership of any other person
213 licensed to conduct business under this chapter unless such person first:

214 1. Files an application with the Commission in such form as the Commissioner may prescribe from
215 time to time;

216 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
217 the financial responsibility, background, experience, and activities of the applicant, its directors, senior
218 officers, principals, and members, and of any proposed new directors, senior officers, principals, or
219 members of the licensee; and

220 3. Pays such application fee as the Commission may prescribe.

221 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
222 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
223 senior officers, trustees, and principals, and any proposed new directors, members, senior officers,
224 trustees, and principals have the financial responsibility, character, reputation, experience, and general
225 fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest,
226 and in accordance with law. The Commission shall grant or deny the application within 60 days from
227 the date a completed application accompanied by the required fee is filed unless the period is extended
228 by order of the Commissioner reciting the reasons for the extension. If the application is denied, the
229 Commission shall notify the applicant of the denial and the reasons for the denial.

230 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
231 directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed
232 under this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, by merger or
233 consolidation by or with a person affiliated through common ownership with the licensee; or (iii) the
234 acquisition of an interest in a licensee by bequest, descent, survivorship, or operation of law. The
235 person acquiring an interest in a licensee in a transaction that is exempt from filing an application by
236 this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its
237 closing.

238 § 6.1-489. Retention of books, accounts, and records.

239 A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the
240 Commissioner may reasonably require in order to determine whether such licensee is complying with
241 the provisions of this chapter and regulations adopted in furtherance thereof. Such books, accounts, and
242 records shall be maintained apart and separate from any other business in which the licensee is
243 involved.

B. Each licensee shall retain, for at least three years after final payment is made on any open-end credit plan loan, copies of the loan application, loan agreement, and such other papers or records relating to the open-end credit plan loan as may be required by regulation.

C. When the Bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the Bureau's investigation, enforcement, or examination of compliance with applicable laws and regulations, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the Bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the Bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the Bureau, and when considering a request for an extension of time to respond, the Bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Bureau determines to be relevant under the circumstances.

§ 6.1-490. Annual report.

Each licensee under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commission may require concerning his business and operations, including the number of loans made, any collateral in which the lender obtained an interest to secure the loan, and loan amounts, during the preceding calendar year as to each licensed place of business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

§ 6.1-491. Filing of written report with Commissioner; events impacting activities of licensee.

Within 15 days of becoming aware of the occurrence of any of the events listed below, a licensee shall file a written report with the Commissioner describing such event and its expected impact, if any, on the activities of the licensee in the Commonwealth:

- 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;*
- 2. The institution of revocation or suspension proceedings against the licensee by any governmental authority;*
- 3. The denial of the opportunity to engage in business by any governmental authority;*
- 4. Any felony indictment of the licensee or any of its members, employees, officers, directors, trustees, or principals;*
- 5. Any felony conviction of the licensee or any of its members, employees, officers, directors, trustees, or principals;*
- 6. The licensee surrenders its license to engage in business in another state in lieu of threatened or pending license revocation, license suspension, or other regulatory or enforcement action;*
- 7. The institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or*
- 8. Such other events as the Commission may determine and identify by regulation.*

§ 6.1-492. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any person licensed or required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

§ 6.1-493. Annual fees.

A. In order to defray the costs of their examination, supervision, and regulation, every licensee under this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before August 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before September 1 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee under this chapter at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on

305 account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate
306 approved by the Commission.

307 § 6.1-494. Interest and other charges.

308 A. A licensee may charge and receive on each loan interest at a simple annual rate not to exceed 36
309 percent. A licensee may also charge (i) a loan fee as provided in subsection B, (ii) a verification fee as
310 provided in subsection C, and (iii) any fees permitted under subsection D.

311 B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the
312 amount of loan proceeds advanced to the borrower upon the borrower's first advance under the loan
313 agreement.

314 C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan
315 made under this chapter. The verification fee shall be used in part to defray the costs of determining
316 that any collateral in which it takes an interest to secure a loan is not encumbered by any other lien.

317 D. A licensee shall not directly or indirectly charge, contract for, collect, receive, recover, or require
318 a borrower to pay any further or other amount whatsoever except for (i) a licensee's actual cost of
319 perfecting a lien on any collateral in which it takes an interest to secure a loan and (ii) reasonable
320 costs of repossession, preparation for sale, and sale of any collateral in which it takes an interest to
321 secure a loan in accordance with § 6.1-495. A licensee shall not be entitled to collect or recover from a
322 borrower any sum otherwise permitted pursuant to § 6.1-330.54, 8.01-27.2, or 8.01-382.

323 E. Notwithstanding anything set forth in this chapter or in a open-end credit plan loan agreement, if
324 payment in full of the unpaid balance is received at the place designated in the loan agreement prior to
325 the next billing date, which shall be at least 25 days later than the prior billing date, no finance charge
326 shall be imposed, assessed, or payable thereunder for such billing period.

327 F. Any amounts collected or received by a licensee in violation of this section shall be refunded to
328 the borrower.

329 § 6.1-495. Repossession and sale of collateral.

330 Except as otherwise provided in this chapter, the repossession and sale of any collateral in which the
331 lender takes an interest to secure a loan shall be subject to the provisions of Title 8.9A.

332 § 6.1-496. Required and prohibited business methods.

333 A. Each licensee shall comply with the following requirements and prohibitions:

334 1. Each open-end credit plan loan shall be made under a written open-end credit plan loan
335 agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such
336 agreements. The agreement shall be dated on or before the day the loan is made and disbursed, and
337 shall set forth or contain, at a minimum: (i) the maximum principal balance that may be outstanding at
338 any one time under the loan ; (ii) the interest rate and any fees charged; (iii) the annual percentage
339 rate, which shall be stated using that term, calculated in accordance with the Federal Reserve Board's
340 Regulation Z; (iv) a description of any collateral in which the lender takes an interest to secure a loan
341 used as security for the loan; (v) an agreement by the licensee that the borrower shall have the right to
342 cancel the loan transaction at any time before the close of business on the next business day following
343 the date of the transaction by paying to the licensee, in the form of cash or other good funds
344 instrument, the amount advanced to the borrower; (vi) an agreement that the borrower shall have the
345 right to terminate the loan agreement prior to maturity by paying the licensee the principal amount
346 advanced and any accrued and unpaid interest, fees, and charges; (vii) a requirement that the loan be
347 repaid in monthly installments of accrued and unpaid interest and not less than five percent of the
348 principal amount advanced; (viii) a requirement that payments shall be credited by the licensee on the
349 date received; (ix) the terms and conditions under which the borrower may make additional borrowings,
350 including re-borrowing principal amounts previously repaid, during the term of the revolving credit
351 arrangement; and (x) a requirement that the term of the open-end credit plan loan agreement not
352 exceed 24 months.

353 2. No open-end credit plan loan agreement shall provide for (a) the waiver or modification of any
354 provisions of this chapter or Title 8.9A or (b) the waiver of borrower's rights to proceed in a court of
355 law to enforce his rights under the law including the right to a trial by jury;

356 3. A licensee shall give a duplicate original of the loan agreement to the borrower at the time it is
357 executed;

358 4. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
359 person power of attorney or authority to confess judgment for the borrower or (ii) authorizing the
360 licensee or any third party to bring suit against the borrower in a court outside the Commonwealth;

361 5. A licensee shall not refinance, renew, or extend an open-end credit plan loan;

362 6. A licensee shall not make a loan to a person if the loan would cause the person to have more
363 than one open-end credit plan loan from any licensee outstanding at the same time or (ii) make a loan
364 to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous open-end
365 credit plan loan;

366 7. If a licensee obtains a security interest in a motor vehicle to secure an open-end credit plan loan

agreement, the licensee, within seven days following the date of the open-end credit plan loan agreement, shall have its security interest in the motor vehicle added to the certificate of title to the motor vehicle by complying with the requirements of § 46.2-637;

8. A licensee shall not require or accept a lien upon personal property that already has an outstanding lien on its title;

9. 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;

10. Loan proceeds shall be disbursed (i) in cash, (ii) by the licensee's business check, or (iii) by debit card provided that the borrower will not be directly or indirectly charged a fee by the licensee or an affiliate of the licensee in connection with the withdrawal of the funds. No fee shall be charged by the licensee or an affiliated check casher for cashing a loan proceeds check;

11. Before entering into a open-end credit plan loan, a licensee shall provide each borrower with a pamphlet, in form consistent with regulations adopted 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;

12. A licensee shall not make a loan to a borrower to enable the borrower to (i) pay for any other product or service sold at the licensee's business location or (ii) repay any amount owed to the licensee or an affiliate of the licensee in connection with another credit transaction;

13. A licensee shall not sell or otherwise assign an open-end credit plan loan agreement to a third party;

14. A borrower shall be permitted to make partial payments on an open-end credit plan loan without charge at any time prior to the date such amounts would otherwise be due to the licensee. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the outstanding balance due on the loan;

15. A licensee shall conspicuously post in each licensed location (i) a schedule of fees and interest charges, with examples using a \$500 loan that is repaid in 15 days, 30 days, and 60 days; and (ii) a notice containing the following statement: "Should you wish to file a complaint against us, you may contact the Bureau of Financial Institutions at [insert contact information]." The Commissioner shall furnish licensees with the appropriate contact information;

16. Upon repayment of a loan in full, a licensee shall (i) mark the original open-end credit plan loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records and (ii) take any action necessary to reflect the termination of its security interest in any collateral securing the open-end credit plan loan agreement;

17. A licensee or affiliate shall not knowingly make an open-end credit plan 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 an open-end credit plan 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;

18. In collecting or attempting to collect a open-end credit plan 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;

19. 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 an open-end credit plan loan, during which period the licensee and borrower may voluntarily enter into a repayment arrangement;

20. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in connection with any open-end credit plan loan; and

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

§ 6.1-497. Advertising.

A. No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading, or deceptive statement or representation; or (ii) identifies the person by any name other than the name set forth on the license issued by the Commission.

B. Any advertising materials used to promote open-end credit plan loans that include the amount of any payment, expressed either as a percentage or dollar amount, or the amount of any interest charges, shall also include a statement of the fees and interest charges, expressed as an annual percentage rate, payable using as an example a \$500 loan payable in 30 days, 90 days, and 120 days.

C. In any print media advertisement, including any Web page, used to promote open-end credit plan

loans, the disclosure statement required by subsection B 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 open-end credit plan loans, the visual disclosure legend shall include 20 scan lines in size. In a radio advertisement or advertisement communicated by telephone used to promote open-end credit plan loans, the disclosure statement shall last at least two seconds and the statement shall be spoken so that its contents may be easily understood.

§ 6.1-498. Rules and regulations.

The Commission shall adopt such rules and regulations as it deems appropriate to effect the purposes of this chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Rules of Practice and Procedure of the Commission.

§ 6.1-499. Suspension or revocation of license.

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

1. Any ground for denial of a license under this chapter;
2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;
3. A course of conduct consisting of the failure to perform written agreements with borrowers;
4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;
6. Entry of a federal or state administrative order against the licensee for violation of any law or any regulation applicable to the conduct of his business;
7. Refusal to permit an investigation or examination by the Commission;
8. Failure to pay any fee or assessment imposed by this chapter; or
9. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner, trustee, beneficiary, or principal shall be deemed acts of the lender.

§ 6.1-500. Other business.

No licensee shall conduct the business of making open-end credit plan loans under this chapter at any office, suite, room, or place of business where any other business is solicited or conducted except a registered check cashing business or such other business as the Commission determines should be permitted, and subject to such conditions as the Commission deems necessary and in the public interest. No such other business shall be allowed except as permitted by Commission regulation or upon the filing of a written application with the Commission, payment of a \$300 fee, and provision of such information as the Commission may deem pertinent. The Commission shall not, however, permit the sale of insurance or the enrolling of borrowers under group insurance policies.

§ 6.1-501. Cease and desist orders.

If the Commission determines that any person has violated any provision of this chapter or any regulation adopted by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of the lender's business, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

§ 6.1-502. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § 6.1-499 until it has given the licensee 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the Clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure.

§ 6.1-503. Fines for violations.

In addition to the authority conferred under §§ 6.1-499 and 6.1-501, the Commission may impose a fine or penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission, has violated any of the provisions of this chapter or regulations promulgated by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of the lender's business. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and each open-end credit plan loan made or arranged by an unlicensed person shall constitute a separate violation.

§ 6.1-504. Criminal penalty.

Any person violating § 6.1-481 shall, upon conviction, be guilty of a Class 1 misdemeanor. For the purposes of this section, each violation shall constitute a separate offense.

§ 6.1-505. Validity of noncompliant loan agreement; private right of action.

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

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

§ 6.1-506. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

B. Upon such referral of the Commission, the Attorney General may also seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

C. In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek reasonable attorney fees and costs.

§ 6.1-507. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

- 551 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
552 installed;
- 553 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
554 or bill for merchandise or services previously ordered;
- 555 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
556 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
557 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
558 manufacturing the goods or services advertised or offered for sale;
- 559 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
560 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
561 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
562 or under federal statutes or regulations;
- 563 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
564 with a consumer transaction;
- 565 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain
566 animals by pet dealers which is described in such sections, is a violation of this chapter;
- 567 16. Failing to disclose all conditions, charges, or fees relating to:
- 568 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
569 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
570 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
571 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
572 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
573 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
574 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
575 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
576 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
577 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
578 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
579 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
580 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
581 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
582 § 46.2-100;
- 583 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
584 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
585 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
586 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
587 the agreement;
- 588 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
589 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
590 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
591 receiving overpayments. If the credit balance information is incorporated into statements of account
592 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 593 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
594 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
595 agreement;
- 596 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
597 title;
- 598 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
599 seq.) of this title;
- 600 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
601 seq.) of this title;
- 602 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
603 (§ 59.1-207.17 et seq.) of this title;
- 604 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;
- 605 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
606 (§ 59.1-424 et seq.) of this title;
- 607 24. Violating any provision of § 54.1-1505;
- 608 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
609 17.6 (§ 59.1-207.34 et seq.) of this title;
- 610 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 611 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
612 title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds"; ~~and~~

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title; *and*

51. *Violating any provision of Chapter 21 (§ 6.1-480 et seq.) of Title 6.1.*

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

2. That nothing contained in this act shall prohibit the collection of any outstanding loan or extension of credit made under § 6.1-330.78 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.