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## HOUSE BILL NO. 1441

Offered January 12, 2011

Prefiled November 12, 2010

A BILL to amend and reenact §§ 6.2-312, 6.2-1816, 6.2-1817, 6.2-1818, and 6.2-2216 of the Code of Virginia, relating to charges on payday loans, title loans, and certain open-end credit plans.

Patrons—Oder, Abbott and Ebbin

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.2-312, 6.2-1816, 6.2-1817, 6.2-1818, and 6.2-2216 of the Code of Virginia are amended and reenacted as follows:**

§ 6.2-312. Open-end credit plans.

A. Notwithstanding any provision of this chapter other than § 6.2-327, and except as provided in subsection ~~subsections C and F~~, a seller or lender engaged in extending credit under an open-end credit plan may impose, on credit extended under the plan, ~~finance charges and other charges and fees interest~~ at such rates and in such amounts and manner as may be agreed upon by the creditor and the obligor, if under the plan a ~~finance charge interest~~ 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 25 days later than the prior billing date.

B. Notwithstanding the provisions of § 6.2-327 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. (i) A licensee, as defined in § 6.2-1800, shall not engage in the extension of credit under an open-end credit plan described in this section and, (ii) a third party shall not engage in the extension of credit under an open-end credit 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.

D. No person shall make a loan or otherwise extend credit under an open-end credit plan or any other lending arrangement that is secured by a non-purchase money security interest in a motor vehicle, as such term is defined in § 6.2-2200, unless such loan or extension of credit is made in accordance with, or is exempt from, the provisions of Chapter 22 (§ 6.2-2200 et seq.).

E. If a licensee, as defined in § 6.2-1800, surrenders its license under Chapter 18 (§ 6.2-1800 et seq.) 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 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 (§ 6.2-1800 et seq.) 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.

*F. No person extending credit under the provisions of subsection A may charge and receive interest at a single annual rate that exceeds 36 percent. Any lender making a loan described in this subsection may charge and receive a processing fee, charged on the principal amount of the loan, for processing the loan contract, provided that the processing fee shall be stated in a written loan contract signed by the borrower and shall be deemed to constitute interest charged on the principal amount of the loan for purposes of determining whether the interest charged on the loan exceeds an annual rate of 36 percent. A lender making a loan described in this subsection shall not charge a membership fee, participation fee, or transaction fee in connection with any such extension of credit.*

§ 6.2-1816. 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 (12 C.F.R. Part 226); (iv) evidence of receipt from the borrower of a check, dated as of

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59 the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement  
60 by the licensee not to present the check for payment or deposit until the date the loan is due, which date  
61 shall produce a loan term of at least two times the borrower's pay cycle and after which date interest  
62 shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement  
63 by the licensee that the borrower shall have the right to cancel the loan transaction at any time before  
64 the close of business on the next business day following the date of the transaction by paying to the  
65 licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and  
66 (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying  
67 the licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.

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

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

74 4. A licensee shall not require or accept more than one check from a borrower as security for any  
75 loan.

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

78 6. A licensee shall not (i) refinance, renew or extend any payday loan; (ii) make a loan to a person if  
79 the loan would cause the person to have more than one payday loan from any licensee outstanding at  
80 the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise  
81 satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following  
82 the date that the person has paid or otherwise satisfied in full a payday loan through an extended  
83 payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days  
84 following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within  
85 a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within the  
86 longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an  
87 extended term loan or (b) 150 days following the date that the person enters into an extended term loan,  
88 as provided in subdivision 27 b.

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

90 8. A check accepted by a licensee as security for any loan shall be dated as of the date the loan is  
91 due.

92 9. Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or  
93 cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is  
94 dishonored. In addition to any other remedies available at law, a licensee that knowingly violates this  
95 prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of  
96 the dishonored check.

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

99 11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other  
100 product or service sold at the licensee's office location.

101 12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be  
102 charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

103 13. A check given as security for a loan shall not be negotiated to a third party.

104 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an  
105 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18  
106 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to  
107 all claims and defenses of the maker."

108 15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in  
109 form consistent with regulations adopted by the Commission, explaining in plain language the rights and  
110 responsibilities of the borrower and providing a toll-free number at the Commission for assistance with  
111 complaints.

112 16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and  
113 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet  
114 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash  
115 needs.

116 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on  
117 the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated  
118 receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the  
119 loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled,"  
120 return it to the borrower, and retain a copy in its records.

18. Each licensee shall conspicuously post in each approved office 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 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 or other dependent 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 approved office, 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.

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, and any interest and fees permitted by § 6.2-1817, 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.

§ 6.2-1817. 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 § 6.2-1810.

§ 6.2-1818. Additional charges.

In addition to the loan principal, ~~and interest, and fees permitted under § 6.2-1817~~, 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 attorney 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 § 6.2-302, 8.01-27.2, or 8.01-382.

§ 6.2-2216. Interest and other charges; term; monthly payments.

A. A licensee ~~may shall not charge and or collect interest on a motor vehicle title loan at rates not to exceed the following: a rate that exceeds 36 percent per year.~~

1. Twenty-two percent per month on the portion of the principal that does not exceed \$700;

2. Eighteen percent per month on the portion of the principal that exceeds \$700 but does not exceed \$1,400; and

3. Fifteen percent per month on the portion of the principal that exceeds \$1,400.

B. The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance. ~~On motor vehicle title loans in excess of \$700, a licensee may accrue interest utilizing a single blended interest rate provided the maximum charge allowed pursuant to subsection A is not exceeded.~~

C. Notwithstanding anything set forth in subsection A, other provisions of this chapter, or in a motor vehicle title loan agreement, interest shall not accrue on the principal balance of a motor vehicle title loan from and after:

1. The date that the motor vehicle securing the title loan is repossessed by the licensee making the loan; or

2. Sixty days after the borrower has failed to make a monthly payment on a motor vehicle title loan as required by the loan agreement unless the borrower has not surrendered the motor vehicle and the borrower is concealing the motor vehicle.

D. In addition to the loan principal and interest permitted under subsection A, a licensee shall not directly or indirectly charge, contract for, collect, receive, recover, or require a borrower to pay any further or other fee, charge, or amount whatsoever except for (i) a licensee's actual cost of perfecting its security interest in a motor vehicle securing the borrower's obligations under a loan agreement and (ii) reasonable costs of repossession and sale of the motor vehicle in accordance with § 6.2-2217. A licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to § 6.2-302, 8.01-27.2, or 8.01-382. In no event shall the borrower be liable for fees incurred in connection with the storage of a motor vehicle securing a title loan following the motor vehicle's repossession by the licensee or its agent, or the voluntary surrender of possession of the motor vehicle by the borrower to the licensee.

E. Every title loan shall be a term loan providing for repayment of the principal and interest in substantially equal monthly installments of principal and interest; however, nothing in this chapter shall prohibit a loan agreement from providing for an odd first payment period and an odd first payment greater than other monthly payments because of such odd first payment period.

F. A title loan agreement may not be extended, renewed, or refinanced.

G. A licensee may impose a late charge for failure to make timely payment of any amount due under the loan agreement provided that such late charge does not exceed the amount permitted by § 6.2-400.

**244** H. Payments shall be credited by the licensee on the date received.