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SENATE BILL NO. 1367

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 6.2-2201, 6.2-2215, and 6.2-2225 of the Code of Virginia, relating to motor vehicle title loans to nonresidents.*

Patron—Saslaw

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-2201, 6.2-2215, and 6.2-2225 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-2201. License required.

Unless exempted from the provisions of this chapter pursuant to § 6.2-2202:

1. No person shall engage in the business of making motor vehicle title loans to *residents of the Commonwealth or to any individual residing individuals* 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; and

2. No person shall engage in the business of arranging or brokering motor vehicle title loans for *residents of the Commonwealth, or any individual residing individuals* in the Commonwealth, whether or not the person has a location in the Commonwealth.

§ 6.2-2215. Required and prohibited business methods.

Each licensee shall comply with the following requirements and prohibitions:

1. Each motor vehicle title loan shall be evidenced by a written motor vehicle title loan agreement. Each motor vehicle title loan agreement shall:

a. Be signed by the borrower and by a person authorized by the licensee to sign such agreements;
b. Be dated the day it is executed by the borrower;
c. Set forth or contain, at a minimum: (i) the loan amount; (ii) the interest rate and any fees charged pursuant to the loan, which shall not exceed the maximum rate permitted pursuant to § 6.2-2216; (iii) the annual percentage rate, which shall be stated using that term, calculated in accordance with the Federal Reserve Board's Regulation Z; (iv) the amounts and scheduled due dates of the monthly installment payments of principal and interest; (v) the borrower's mailing address; (vi) the make, model, year, and vehicle identification number of the motor vehicle in which a security interest is being given as security for the loan; (vii) that the borrower shall have the right to cancel the loan agreement at any time before the close of business on the next business day following the day the loan agreement is executed by returning the original loan proceeds check to or paying to the licensee, in the form of cash or other good funds instrument, the loan proceeds; (viii) the loan's maturity date, which shall not be earlier than 120 days from the date the loan agreement is executed nor later than 12 months from the date the loan agreement is executed; and (ix) such other information relating to the title loan as the Commission shall determine, by regulation, is necessary in order to ensure that the borrower is provided adequate notice of the relevant provisions of the title loan;

d. Not cause any person to be obligated to the licensee for a principal amount that exceeds 50 percent of the fair market value of the motor vehicle in which the licensee is taking an interest, which value shall be determined by reference to the loan value for the motor vehicle specified in a recognized pricing guide if the motor vehicle is included in a recognized pricing guide; and

e. Contain the following notice in at least 14-point bold type immediately above the borrower's signature:

THE INTEREST RATE ON THIS LOAN IS HIGH. YOU SHOULD CONSIDER WHETHER THERE ARE OTHER LOWER COST LOANS AVAILABLE TO YOU.

THIS IS A MOTOR VEHICLE TITLE LOAN AGREEMENT. IT ALLOWS YOU TO RECEIVE LOAN PROCEEDS TO MEET YOUR IMMEDIATE CASH NEEDS. IT IS NOT INTENDED TO MEET YOUR LONG-TERM FINANCIAL NEEDS.

WHEN USING THIS LOAN, YOU SHOULD REQUEST THE MINIMUM AMOUNT REQUIRED TO MEET YOUR IMMEDIATE NEEDS AND YOU SHOULD REPAY THE LOAN AS QUICKLY AS POSSIBLE TO REDUCE THE AMOUNT OF INTEREST YOU ARE CHARGED.

YOU SHOULD TRY TO REPAY THIS LOAN AS QUICKLY AS POSSIBLE. YOU WILL BE REQUIRED TO PAY THE PRINCIPAL AND INTEREST ON THE LOAN IN MONTHLY SUBSTANTIALLY EQUAL INSTALLMENTS. YOU SHOULD TRY TO PAY EVEN MORE

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59 TOWARDS YOUR PRINCIPAL BALANCE EACH MONTH. DOING SO WILL SAVE YOU
60 MONEY.

61 YOU MAY RESCIND THIS LOAN WITHOUT COST OR FURTHER OBLIGATION IF YOU
62 RETURN THE LOAN PROCEEDS, IN CASH OR THE ORIGINAL LOAN CHECK, PRIOR TO THE
63 CLOSE OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY FOLLOWING THE EXECUTION
64 OF THIS AGREEMENT.

65 YOU ARE PLEDGING YOUR MOTOR VEHICLE AS COLLATERAL FOR THIS LOAN. IF YOU
66 FAIL TO REPAY THE LOAN PURSUANT TO THIS AGREEMENT, WE MAY REPOSSESS YOUR
67 MOTOR VEHICLE.

68 UNLESS YOU CONCEAL OR INTENTIONALLY DAMAGE THE MOTOR VEHICLE, OR
69 OTHERWISE IMPAIR OUR SECURITY INTEREST BY PLEDGING THE MOTOR VEHICLE TO A
70 THIRD PARTY OR PLEDGING A MOTOR VEHICLE TO US THAT IS ALREADY SUBJECT TO
71 AN UNDISCLOSED EXISTING LIEN, YOUR LIABILITY FOR DEFAULTING UNDER THIS LOAN
72 IS LIMITED TO THE LOSS OF THE MOTOR VEHICLE.

73 IF YOUR MOTOR VEHICLE IS SOLD DUE TO YOUR DEFAULT, YOU ARE ENTITLED TO
74 ANY SURPLUS OBTAINED AT SUCH SALE BEYOND WHAT IS OWED PURSUANT TO THIS
75 AGREEMENT ALONG WITH ANY REASONABLE COSTS OF RECOVERY AND SALE;

76 2. Before entering into a motor vehicle title loan, a licensee shall provide each borrower with a
77 pamphlet, in a form consistent with regulations adopted by the Commission, explaining in plain
78 language the rights and responsibilities of the borrower and providing a toll-free number at the
79 Commission for assistance with complaints;

80 3. The borrower shall have the right to prepay the title loan prior to maturity by paying the
81 outstanding balance at any time without penalty. A borrower shall also be permitted to make partial
82 payments on a motor vehicle equity loan without charge at any time prior to the date such amounts
83 would otherwise be due to the licensee. The licensee shall give the borrower signed, dated receipts for
84 any cash payment made in person;

85 4. A licensee shall give a duplicate original of the loan agreement to the borrower at the time it is
86 executed;

87 5. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
88 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee
89 or any third party to bring suit against the borrower in a court outside the Commonwealth; (iii) waiving
90 or modifying any right the borrower has under this chapter or Title 8.9A; or (iv) requiring the borrower
91 to use arbitration or other alternative dispute resolution mechanisms that do not conform to Chapter 21
92 (§ 8.01-577 et seq.) of Title 8.01;

93 6. A motor vehicle title loan agreement shall not (i) contain a provision by which a person acting on
94 behalf of the licensee is treated as an agent of the borrower in connection with its formation or
95 execution other than for purposes of filing or releasing a lien with the ~~Department of Motor Vehicles~~
96 *state where the motor vehicle is registered*, (ii) contain an acceleration clause under which a licensee
97 may demand immediate payment of any amount owed to it unless the borrower is in default under the
98 terms of the loan agreement, or (iii) be sold or otherwise assigned to any other person who is not also a
99 licensee, and if a loan agreement is sold or assigned to another licensee, the buyer or assignee of the
100 loan agreement shall be subject to the same obligations under this chapter that apply to the selling or
101 assigning licensee;

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

106 8. A licensee shall not obtain or accept from a borrower an authorization to electronically debit the
107 borrower's deposit account;

108 9. A licensee shall not take an interest in any real or personal property other than one motor vehicle
109 owned by the borrower as security for a title loan. For purposes of this subdivision, "motor vehicle"
110 includes any accessories or accessions to a motor vehicle that are affixed thereto;

111 10. A licensee shall not (i) make a motor vehicle title loan if, on the date the loan agreement is
112 signed by the borrower, the motor vehicle's certificate of title evidences that the motor vehicle is
113 security for another loan or otherwise is encumbered by a lien; (ii) make a loan to an individual who the
114 licensee knows is a borrower under another motor vehicle title loan, whether made by the same or
115 another licensee, or (iii) knowingly cause a borrower to be obligated upon more than one motor vehicle
116 title loan at any time. Prior to making a motor vehicle title loan, every licensee shall inquire of every
117 prospective borrower if the individual is obligated on a motor vehicle title loan with any licensee. Each
118 loan agreement shall include the borrower's certification that the borrower is not obligated on another
119 motor vehicle title loan;

120 11. A licensee shall (i) hold the certificate of title to the motor vehicle throughout the period that the

loan agreement is in effect and (ii) within seven days following the date of the motor vehicle title loan agreement, file to have its security interest in the motor vehicle added to its certificate of title by complying with the requirements of § 46.2-637, *or in the case of a motor vehicle registered in a state other than the Commonwealth by complying with that state's requirements for perfecting a security interest in a motor vehicle*;

12. A licensee shall not make a title 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's security interest in a motor vehicle shall be promptly released when the borrower's obligations under the loan agreement are satisfied in full. When releasing the security interest in a motor vehicle, a licensee shall (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower;

14. A licensee shall conspicuously post in each licensed location (i) a schedule of finance charges on a title loan, using as an example a \$1,000 loan that is repaid over a 12-month period 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 Commission shall furnish licensees with the appropriate contact information;

15. A licensee or affiliate shall not knowingly make a motor vehicle title loan to a covered member of the armed forces or a dependent of such member. Prior to making a motor vehicle title loan, every licensee or affiliate shall inquire of every prospective borrower if the individual is a covered member of the armed forces or a dependent of a covered member. The prospective borrower shall affirm in writing to the licensee or affiliate if he is not a covered member of the armed forces or a dependent of a covered member. For purposes of this section, "covered member of the armed forces" means a person on active duty under a call or order that does not specify a period of 30 days or less or on active guard and reserve duty. For purposes of this section, "dependent of a covered member of the armed forces" means the member's spouse, the member's child as defined by 38 U.S.C. § 101(4), or an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding the date the motor vehicle title loan is sought;

16. In collecting or attempting to collect a motor vehicle title 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, misleading or deceptive statements or representations, and unfair practices in collections;

17. A licensee shall not (i) engage in any unfair, misleading, deceptive, or fraudulent acts or practices in the conduct of its business, (ii) engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter, or (iii) threaten, or cause to be instigated, criminal proceedings against a borrower arising from the borrower's failure to pay any sum due under a loan agreement;

18. A licensee shall not conduct the business of making motor vehicle title 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 other such 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;

19. A licensee shall provide a safe place for the keeping of all certificates of title while they are in its possession;

20. A licensee may require a borrower to purchase or maintain property insurance upon a motor vehicle securing a title loan made pursuant to this chapter. A licensee may not require the borrower to obtain such insurance from a particular provider; and

21. If the licensee takes possession of a motor vehicle securing a title loan, the vehicle shall be stored in a secure location.

§ 6.2-2225. Application of chapter to Internet loans.

The provisions of this chapter, including specifically the licensure requirements of § 6.2-2201, shall apply to persons making motor vehicle title loans over the Internet to Virginia residents *or any individuals in Virginia*, whether or not the person making the loan maintains a physical presence in the Commonwealth.

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