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HOUSE BILL NO. 443

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend and reenact §§ 6.2-1816, 6.2-2215, and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-560, relating to debt collection practices; penalties.*

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Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1816, 6.2-2215, 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 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-560, as follows:

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

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

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

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

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

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

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

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

9. Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored. In addition to any other remedies available at law, a licensee that knowingly violates this

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HB443

59 prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of
60 the dishonored check.

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

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

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

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

68 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
69 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
70 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to
71 all claims and defenses of the maker."

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

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

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

85 18. Each licensee shall conspicuously post in each approved office a schedule of fees and interest
86 charges, with examples using a \$300 loan payable in 14 days and 30 days.

87 19. Any advertising materials used to promote payday loans that includes the amount of any
88 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall
89 also include a statement of the interest, fees and charges, expressed as an annual percentage rate,
90 payable using as an example a \$300 loan payable in 14 and 30 days.

91 20. In any print media advertisement, including any web page, used to promote payday loans, the
92 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in
93 subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,
94 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to
95 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio
96 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure
97 statement shall last at least two seconds and the statement shall be spoken so that its contents may be
98 easily understood.

99 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of
100 the military services of the United States or the spouse or other dependent of a member of the military
101 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of
102 every prospective borrower if he is a member of the military services of the United States or the spouse
103 or other dependent of a member of the military services of the United States. The loan documents shall
104 include verification that the borrower is not a member of the military services of the United States or
105 the spouse or other dependent of a member of the military services of the United States.

106 22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions
107 and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15
108 U.S.C. § 1692 et seq.) or in Chapter 50 (§ 59.1-550 et seq.) of Title 59.1 regarding harassment or abuse,
109 false or misleading misrepresentations, and unfair practices in collections.

110 23. A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60
111 days after the date of default on a payday loan, during which period the licensee and borrower may
112 voluntarily enter into a repayment arrangement.

113 24. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in
114 connection with any payday loan.

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

117 26. A borrower may pay any outstanding payday loan from any licensee by means of an extended
118 payment plan as follows:

119 a. A borrower shall not be eligible to enter into more than one extended payment plan in any
120 12-month period.

121 b. To enter into an extended payment plan with respect to a payday loan, the borrower shall agree in
 122 a written and signed document to repay the amount owed in at least four equal installments over an
 123 aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the
 124 extended payment plan. The borrower may prepay an extended payment plan in full at any time without
 125 penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then
 126 the licensee may immediately accelerate the unpaid loan balance.

127 c. If the borrower enters into an extended payment plan, then no licensee may make a payday loan
 128 to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower
 129 pays or satisfies in full the balance of the loan under the terms of the extended payment plan.

130 d. At each approved office, the licensee shall post a notice in at least 24-point bold type, in a form
 131 established or approved by the Commission, informing persons that they may be eligible to enter into an
 132 extended payment plan.

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

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

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

145 b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a
 146 loan that complies with the terms and conditions otherwise applicable to payday loans under the terms
 147 of this chapter except that (i) the principal amount of the loan, and any interest and fees permitted by
 148 § 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the
 149 date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer
 150 of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150
 151 days following the date the extended term loan is made.

152 § 6.2-2215. Required and prohibited business methods.

153 Each licensee shall comply with the following requirements and prohibitions:

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

156 a. Be signed by the borrower and by a person authorized by the licensee to sign such agreements;

157 b. Be dated the day it is executed by the borrower;

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

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

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

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

180 THIS IS A MOTOR VEHICLE TITLE LOAN AGREEMENT. IT ALLOWS YOU TO RECEIVE
 181 LOAN PROCEEDS TO MEET YOUR IMMEDIATE CASH NEEDS. IT IS NOT INTENDED TO

182 MEET YOUR LONG-TERM FINANCIAL NEEDS.

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

186 YOU SHOULD TRY TO REPAY THIS LOAN AS QUICKLY AS POSSIBLE. YOU WILL BE
187 REQUIRED TO PAY THE PRINCIPAL AND INTEREST ON THE LOAN IN MONTHLY
188 SUBSTANTIALLY EQUAL INSTALLMENTS. YOU SHOULD TRY TO PAY EVEN MORE
189 TOWARDS YOUR PRINCIPAL BALANCE EACH MONTH. DOING SO WILL SAVE YOU
190 MONEY.

191 YOU MAY RESCIND THIS LOAN WITHOUT COST OR FURTHER OBLIGATION IF YOU
192 RETURN THE LOAN PROCEEDS, IN CASH OR THE ORIGINAL LOAN CHECK, PRIOR TO THE
193 CLOSE OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY FOLLOWING THE EXECUTION
194 OF THIS AGREEMENT.

195 YOU ARE PLEDGING YOUR MOTOR VEHICLE AS COLLATERAL FOR THIS LOAN. IF YOU
196 FAIL TO REPAY THE LOAN PURSUANT TO THIS AGREEMENT, WE MAY REPOSSESS YOUR
197 MOTOR VEHICLE.

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

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

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

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

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

217 5. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
218 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee
219 or any third party to bring suit against the borrower in a court outside the Commonwealth; (iii) waiving
220 or modifying any right the borrower has under this chapter or Title 8.9A; or (iv) requiring the borrower
221 to use arbitration or other alternative dispute resolution mechanisms that do not conform to Chapter 21
222 (§ 8.01-577 et seq.) of Title 8.01;

223 6. A motor vehicle title loan agreement shall not (i) contain a provision by which a person acting on
224 behalf of the licensee is treated as an agent of the borrower in connection with its formation or
225 execution other than for purposes of filing or releasing a lien with the state where the motor vehicle is
226 registered, (ii) contain an acceleration clause under which a licensee may demand immediate payment of
227 any amount owed to it unless the borrower is in default under the terms of the loan agreement, or (iii)
228 be sold or otherwise assigned to any other person who is not also a licensee, and if a loan agreement is
229 sold or assigned to another licensee, the buyer or assignee of the loan agreement shall be subject to the
230 same obligations under this chapter that apply to the selling or assigning licensee;

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

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

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

240 10. A licensee shall not (i) make a motor vehicle title loan if, on the date the loan agreement is
241 signed by the borrower, the motor vehicle's certificate of title evidences that the motor vehicle is
242 security for another loan or otherwise is encumbered by a lien; (ii) make a loan to an individual who the
243 licensee knows is a borrower under another motor vehicle title loan, whether made by the same or

244 another licensee, or (iii) knowingly cause a borrower to be obligated upon more than one motor vehicle
 245 title loan at any time. Prior to making a motor vehicle title loan, every licensee shall inquire of every
 246 prospective borrower if the individual is obligated on a motor vehicle title loan with any licensee. Each
 247 loan agreement shall include the borrower's certification that the borrower is not obligated on another
 248 motor vehicle title loan;

249 11. A licensee shall (i) hold the certificate of title to the motor vehicle throughout the period that the
 250 loan agreement is in effect and (ii) within seven days following the date of the motor vehicle title loan
 251 agreement, file to have its security interest in the motor vehicle added to its certificate of title by
 252 complying with the requirements of § 46.2-637, or in the case of a motor vehicle registered in a state
 253 other than the Commonwealth by complying with that state's requirements for perfecting a security
 254 interest in a motor vehicle;

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

258 13. A licensee's security interest in a motor vehicle shall be promptly released when the borrower's
 259 obligations under the loan agreement are satisfied in full. When releasing the security interest in a motor
 260 vehicle, a licensee shall (i) mark the original loan agreement with the word "paid" or "canceled," return
 261 it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the
 262 termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to
 263 the borrower;

264 14. A licensee shall conspicuously post in each licensed location (i) a schedule of finance charges on
 265 a title loan, using as an example a \$1,000 loan that is repaid over a 12-month period and (ii) a notice
 266 containing the following statement: "Should you wish to file a complaint against us, you may contact
 267 the Bureau of Financial Institutions at [insert contact information]." The Commission shall furnish
 268 licensees with the appropriate contact information;

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

280 16. In collecting or attempting to collect a motor vehicle title loan, a licensee shall comply with the
 281 restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices
 282 Act (15 U.S.C. § 1692 et seq.) or in Chapter 50 (§ 59.1-550 et seq.) of Title 59.1 regarding harassment
 283 or abuse, false, misleading or deceptive statements or representations, and unfair practices in collections;

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

289 18. A licensee shall not conduct the business of making motor vehicle title loans under this chapter
 290 at any office, suite, room, or place of business where any other business is solicited or conducted except
 291 a registered check cashing business or such other business as the Commission determines should be
 292 permitted, and subject to such conditions as the Commission deems necessary and in the public interest.
 293 No other such business shall be allowed except as permitted by Commission regulation or upon the
 294 filing of a written application with the Commission, payment of a \$300 fee, and provision of such
 295 information as the Commission may deem pertinent. The Commission shall not, however, permit the
 296 sale of insurance or the enrolling of borrowers under group insurance policies;

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

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

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

304 § 59.1-200. Prohibited practices.

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

307 1. Misrepresenting goods or services as those of another;

308 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

309 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
310 services, with another;

311 4. Misrepresenting geographic origin in connection with goods or services;

312 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
313 benefits;

314 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

315 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
316 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
317 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
318 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
319 irregulars, imperfects or "not first class";

320 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
321 at the price or upon the terms advertised.

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

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

331 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
332 installed;

333 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
334 or bill for merchandise or services previously ordered;

335 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
336 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
337 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
338 manufacturing the goods or services advertised or offered for sale;

339 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
340 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
341 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
342 or under federal statutes or regulations;

343 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
344 with a consumer transaction;

345 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain
346 animals by pet dealers which is described in such sections, is a violation of this chapter;

347 16. Failing to disclose all conditions, charges, or fees relating to:

348 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
349 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
350 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
351 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
352 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
353 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
354 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
355 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
356 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
357 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
358 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
359 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
360 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
361 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
362 § 46.2-100;

363 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
364 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
365 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
366 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches

- 367 the agreement;
- 368 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
 369 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
 370 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
 371 receiving overpayments. If the credit balance information is incorporated into statements of account
 372 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 373 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
 374 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
 375 agreement;
- 376 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
 377 title;
- 378 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
 379 seq.) of this title;
- 380 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
 381 seq.) of this title;
- 382 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
 383 (§ 59.1-207.17 et seq.) of this title;
- 384 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;
- 385 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
 386 (§ 59.1-424 et seq.) of this title;
- 387 24. Violating any provision of § 54.1-1505;
- 388 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
 389 17.6 (§ 59.1-207.34 et seq.) of this title;
- 390 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 391 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
 392 title;
- 393 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
 394 this title;
- 395 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
 396 seq.) of this title;
- 397 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
 398 seq.) of this title;
- 399 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
 400 title;
- 401 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 402 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 403 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 404 35. Using the consumer's social security number as the consumer's account number with the supplier,
 405 if the consumer has requested in writing that the supplier use an alternate number not associated with
 406 the consumer's social security number;
- 407 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 408 37. Violating any provision of § 8.01-40.2;
- 409 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 410 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;
- 411 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 412 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
 413 (§ 59.1-525 et seq.) of this title;
- 414 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
- 415 43. Violating any provision of § 59.1-443.2;
- 416 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;
- 417 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 418 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 419 47. Violating any provision of § 18.2-239;
- 420 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 421 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
 422 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
 423 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
 424 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
 425 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
 426 children's products that are used, secondhand or "seconds";
- 427 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;

428 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

429 52. Violating any provision of § 8.2-317.1; ~~and~~

430 53. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
431 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
432 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
433 which defective drywall has been permanently installed or affixed; *and*

434 54. Violating any provision of Chapter 50 (§ 59.1-550 et seq.) of this title.

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

440 CHAPTER 50.

441 DEBT COLLECTION PRACTICES.

442 § 59.1-550. Definitions.

443 As used in this chapter, unless the context requires otherwise:

444 "Communication" means the conveying of information regarding a debt directly or indirectly to any
445 person through any medium.

446 "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

447 "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is
448 owed, but such term does not include any person to the extent that he receives an assignment or
449 transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

450 "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a
451 transaction in which the money, property, insurance, or services which are the subject of the transaction
452 are primarily for personal, family, or household purposes, whether or not such obligation has been
453 reduced to judgment.

454 "Debt collector" means any person engaged in the Commonwealth in a business the principal
455 purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly
456 or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion
457 provided by subdivision 6, the term includes any creditor who, in the process of collecting his own
458 debts, uses any name other than his own which would indicate that a third person is collecting or
459 attempting to collect such debts. For the purpose of subdivision 6 of § 59.1-555, such term also includes
460 any person who uses any instrumentality of interstate commerce or the mails in any business the
461 principal purpose of which is the enforcement of security interests. The term does not include:

462 1. Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such
463 creditor;

464 2. Any person while acting as a debt collector for another person, both of whom are related by
465 common ownership or affiliated by corporate control, if the person acting as a debt collector does so
466 only for persons to whom he is so related or affiliated and if the principal business of such person is
467 not the collection of debts;

468 3. Any officer or employee of the government of the United States or any state to the extent that
469 collecting or attempting to collect any debt is in the performance of his official duties;

470 4. Any person while serving or attempting to serve legal process on any other person in connection
471 with the judicial enforcement of any debt;

472 5. Any person licensed pursuant to Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2 that, at the request of
473 consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of
474 their debts by receiving payments from such consumers and distributing such amounts to creditors; and

475 6. Any person collecting or attempting to collect any debt owed or due or asserted to be owed or
476 due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide
477 escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt
478 which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained
479 by such person as a secured party in a commercial credit transaction involving the creditor.

480 "Location information" means a consumer's place of abode and his telephone number at such place,
481 or his place of employment.

482 § 59.1-551. Acquisition of location information.

483 Any debt collector communicating with any person other than the consumer for the purpose of
484 acquiring location information about the consumer shall:

485 1. Identify himself, state that he is confirming or correcting location information concerning the
486 consumer, and, only if expressly requested, identify his employer;

487 2. Not state that such consumer owes any debt;

488 3. Not communicate with any such person more than once unless requested to do so by such person
489 or unless the debt collector reasonably believes that the earlier response of such person is erroneous or

490 incomplete and that such person now has correct or complete location information;

491 4. Not communicate by post card;

492 5. Not use any language or symbol on any envelope or in the contents of any communication effected
493 by the mails or telegram that indicates that the debt collector is in the debt collection business or that
494 the communication relates to the collection of a debt; and

495 6. After the debt collector knows the consumer is represented by an attorney with regard to the
496 subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not
497 communicate with any person other than that attorney, unless the attorney fails to respond within a
498 reasonable period of time to the communication from the debt collector.

499 § 59.1-552. Communication in connection with debt collection.

500 A. Without the prior consent of the consumer given directly to the debt collector or the express
501 permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer
502 in connection with the collection of any debt:

503 1. At any unusual time or place or a time or place known or which should be known to be
504 inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt
505 collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m.
506 and before 9:00 p.m. at the consumer's location;

507 2. If the debt collector knows the consumer is represented by an attorney with respect to such debt
508 and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney
509 fails to respond within a reasonable period of time to a communication from the debt collector or unless
510 the attorney consents to direct communication with the consumer; or

511 3. At the consumer's place of employment if the debt collector knows or has reason to know that the
512 consumer's employer prohibits the consumer from receiving such communication.

513 B. Except as provided in § 59.1-551, without the prior consent of the consumer given directly to the
514 debt collector, or the express permission of a court of competent jurisdiction, or as reasonably
515 necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in
516 connection with the collection of any debt, with any person other than a consumer, his attorney, a
517 consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or
518 the attorney of the debt collector.

519 C. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that
520 the consumer wishes the debt collector to cease further communication with the consumer, the debt
521 collector shall not communicate further with the consumer with respect to such debt, except:

522 1. To advise the consumer that the debt collector's further efforts are being terminated;

523 2. To notify the consumer that the debt collector or creditor may invoke specified remedies which are
524 ordinarily invoked by such debt collector or creditor; or

525 3. Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a
526 specified remedy.

527 If such notice from the consumer is made by mail, notification shall be complete upon receipt.

528 D. For the purpose of this section, the term "consumer" includes the consumer's spouse; parent, if
529 the consumer is a minor; guardian; executor; or administrator.

530 § 59.1-553. Harassment or abuse.

531 A debt collector may not engage in any conduct the natural consequence of which is to harass,
532 oppress, or abuse any person in connection with the collection of a debt. Without limiting the general
533 application of the foregoing, the following conduct is a violation of this section:

534 1. The use or threat of use of violence or other criminal means to harm the physical person,
535 reputation, or property of any person;

536 2. The use of obscene or profane language or language the natural consequence of which is to abuse
537 the hearer or reader;

538 3. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer
539 reporting agency or to persons meeting the requirements of 15 U.S.C. § 603(f) or 15 U.S.C. § 604(a)(3);

540 4. The advertisement for sale of any debt to coerce payment of the debt;

541 5. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or
542 continuously with intent to annoy, abuse, or harass any person at the called number; or

543 6. Except as provided in § 59.1-551, the placement of telephone calls without meaningful disclosure
544 of the caller's identity.

545 § 59.1-554. False or misleading representations.

546 A debt collector may not use any false, deceptive, or misleading representation or means in
547 connection with the collection of any debt. Without limiting the general application of the foregoing, the
548 following conduct is a violation of this section:

549 1. The false representation or implication that the debt collector is vouched for, bonded by, or
550 affiliated with the United States or any state, including the use of any badge, uniform, or facsimile

551 *thereof.*

552 2. *The false representation of:*

553 a. *The character, amount, or legal status of any debt; or*

554 b. *Any service rendered or compensation which may be lawfully received by any debt collector for*
555 *the collection of a debt;*

556 3. *The false representation or implication that any individual is an attorney or that any*
557 *communication is from an attorney;*

558 4. *The representation or implication that nonpayment of any debt will result in the arrest or*
559 *imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of*
560 *any person unless such action is lawful and the debt collector or creditor intends to take such action;*

561 5. *The threat to take any action that cannot legally be taken or that is not intended to be taken;*

562 6. *The false representation or implication that a sale, referral, or other transfer of any interest in a*
563 *debt shall cause the consumer to:*

564 a. *Lose any claim or defense to payment of the debt; or*

565 b. *Become subject to any practice prohibited by this chapter;*

566 7. *The false representation or implication that the consumer committed any crime or other conduct*
567 *in order to disgrace the consumer;*

568 8. *Communicating or threatening to communicate to any person credit information which is known*
569 *or which should be known to be false, including the failure to communicate that a disputed debt is*
570 *disputed;*

571 9. *The use or distribution of any written communication which simulates or is falsely represented to*
572 *be a document authorized, issued, or approved by any court, official, or agency of the United States or*
573 *any state, or which creates a false impression as to its source, authorization, or approval;*

574 10. *The use of any false representation or deceptive means to collect or attempt to collect any debt*
575 *or to obtain information concerning a consumer;*

576 11. *The failure to disclose in the initial written communication with the consumer and, in addition, if*
577 *the initial communication with the consumer is oral, in that initial oral communication, that the debt*
578 *collector is attempting to collect a debt and that any information obtained will be used for that purpose,*
579 *and the failure to disclose in subsequent communications that the communication is from a debt*
580 *collector, except that this paragraph shall not apply to a formal pleading made in connection with a*
581 *legal action;*

582 12. *The false representation or implication that accounts have been turned over to innocent*
583 *purchasers for value;*

584 13. *The false representation or implication that documents are legal process;*

585 14. *The use of any business, company, or organization name other than the true name of the debt*
586 *collector's business, company, or organization;*

587 15. *The false representation or implication that documents are not legal process forms or do not*
588 *require action by the consumer; or*

589 16. *The false representation or implication that a debt collector operates or is employed by a*
590 *consumer reporting agency as defined by 15 U.S.C. § 603(f).*

591 § 59.1-555. *Unfair practices.*

592 A debt collector may not use unfair or unconscionable means to collect or attempt to collect any
593 debt. Without limiting the general application of the foregoing, the following conduct is a violation of
594 this section:

595 1. *The collection of any amount, including any interest, fee, charge, or expense incidental to the*
596 *principal obligation, unless such amount is expressly authorized by the agreement creating the debt or*
597 *permitted by law;*

598 2. *The acceptance by a debt collector from any person of a check or other payment instrument*
599 *postdated by more than five days unless such person is notified in writing of the debt collector's intent*
600 *to deposit such check or instrument not more than 10 nor less than three business days prior to such*
601 *deposit;*

602 3. *The solicitation by a debt collector of any postdated check or other postdated payment instrument*
603 *for the purpose of threatening or instituting criminal prosecution;*

604 4. *Depositing or threatening to deposit any postdated check or other postdated payment instrument*
605 *prior to the date on such check or instrument;*

606 5. *Causing charges to be made to any person for communications by concealment of the true*
607 *purpose of the communication. Such charges include, but are not limited to, collect telephone calls and*
608 *telegram fees;*

609 6. *Taking or threatening to take any nonjudicial action to effect dispossession or disablement of*
610 *property if:*

611 a. *There is no present right to possession of the property claimed as collateral through an*
612 *enforceable security interest;*

613 *b. There is no present intention to take possession of the property; or*
614 *c. The property is exempt by law from such dispossession or disablement;*
615 *7. Communicating with a consumer regarding a debt by post card; or*
616 *8. Using any language or symbol, other than the debt collector's address, on any envelope when*
617 *communicating with a consumer by use of the mails or by telegram, except that a debt collector may*
618 *use his business name if such name does not indicate that he is in the debt collection business.*
619 *§ 59.1-556. Validation of debts.*
620 *A. Within five days after the initial communication with a consumer in connection with the collection*
621 *of any debt, a debt collector shall, unless the following information is contained in the initial*
622 *communication or the consumer has paid the debt, send the consumer a written notice containing:*
623 *1. The amount of the debt;*
624 *2. The name of the creditor to whom the debt is owed;*
625 *3. A statement that unless the consumer, within 30 days after receipt of the notice, disputes the*
626 *validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;*
627 *4. A statement that if the consumer notifies the debt collector in writing within the 30-day period*
628 *that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt*
629 *or a copy of a judgment against the consumer and a copy of such verification or judgment will be*
630 *mailed to the consumer by the debt collector; and*
631 *5. A statement that, upon the consumer's written request within the 30-day period, the debt collector*
632 *will provide the consumer with the name and address of the original creditor, if different from the*
633 *current creditor.*
634 *B. If the consumer notifies the debt collector in writing within the 30-day period described in*
635 *subsection A that the debt, or any portion thereof, is disputed, or that the consumer requests the name*
636 *and address of the original creditor, the debt collector shall cease collection of the debt, or any*
637 *disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a*
638 *judgment, or the name and address of the original creditor, and a copy of such verification or judgment,*
639 *or name and address of the original creditor, is mailed to the consumer by the debt collector.*
640 *C. The failure of a consumer to dispute the validity of a debt under this section may not be*
641 *construed by any court as an admission of liability by the consumer.*
642 *§ 59.1-557. Multiple debts.*
643 *If any consumer owes multiple debts and makes any single payment to any debt collector with*
644 *respect to such debts, such debt collector may not apply such payment to any debt which is disputed by*
645 *the consumer and, where applicable, shall apply such payment in accordance with the consumer's*
646 *directions.*
647 *§ 59.1-558. Legal actions by debt collectors.*
648 *A. Any debt collector who brings any legal action on a debt against any consumer shall:*
649 *1. In the case of an action to enforce an interest in real property securing the consumer's obligation,*
650 *bring such action only in the city or county in which such real property is located; or*
651 *2. In the case of an action not described in subdivision 1, bring such action only in the city or*
652 *county:*
653 *a. In which such consumer signed the contract sued upon; or*
654 *b. In which such consumer resides at the commencement of the action.*
655 *B. Nothing in this title shall be construed to authorize the bringing of legal actions by debt*
656 *collectors.*
657 *§ 59.1-559. Furnishing certain deceptive forms.*
658 *No debt collector or any other person shall design, compile, and furnish any form knowing that such*
659 *form would be used to create the false belief in a consumer that a person other than the creditor of*
660 *such consumer is participating in the collection of or in an attempt to collect a debt such consumer*
661 *allegedly owes such creditor, when in fact such person is not so participating.*
662 *§ 59.1-560. Violation of the Virginia Consumer Protection Act.*
663 *Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance*
664 *with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia*
665 *Consumer Protection Act (§ 59.1-196 et seq.).*