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HOUSE BILL NO. 725

Offered January 11, 2012

Prefiled January 11, 2012

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 interest and other charges on payday loans, title loans, and certain open-end credit plans.

Patrons—Yancey, Cosgrove, Lopez and Pogge

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

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59 Regulation Z (12 C.F.R. Part 226); (iv) evidence of receipt from the borrower of a check, dated as of
60 the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement
61 by the licensee not to present the check for payment or deposit until the date the loan is due, which date
62 shall produce a loan term of at least two times the borrower's pay cycle and after which date interest
63 shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement
64 by the licensee that the borrower shall have the right to cancel the loan transaction at any time before
65 the close of business on the next business day following the date of the transaction by paying to the
66 licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and
67 (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying
68 the licensee the principal amount advanced and any accrued and unpaid interest; fees, and charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

return it to the borrower, and retain a copy in its records.

18. Each licensee shall conspicuously post in 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

182 b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a
183 loan that complies with the terms and conditions otherwise applicable to payday loans under the terms
184 of this chapter except that (i) the principal amount of the loan, and any interest and fees permitted by
185 § 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the
186 date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer
187 of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150
188 days following the date the extended term loan is made.

189 § 6.2-1817. Rate of interest.

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

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

195 C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan
196 made under this chapter. The verification fee shall be used in part to defray the costs of submitting a
197 database inquiry as provided in subdivision B 4 of § 6.2-1810.

198 § 6.2-1818. Additional charges.

199 In addition to the loan principal, ~~and interest, and fees permitted under § 6.2-1817~~, no further or
200 other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or
201 recovered ~~in connection with a payday loan~~ except (i) any deposit item return fee incurred by the
202 licensee, not to exceed \$25, if the check given by the borrower as security is returned because the
203 account on which it was drawn was closed by the borrower or contained insufficient funds, or the
204 borrower stopped payment on the check, and (ii) if judgment is obtained against the borrower, court
205 costs and reasonable attorney fees if awarded by the court, incurred as a result of the returned check in
206 an amount not to exceed \$250. A licensee shall not be entitled to collect or recover from a borrower
207 any sum otherwise permitted pursuant to § 6.2-302, 8.01-27.2, or 8.01-382.

208 § 6.2-2216. Interest and other charges; term; monthly payments.

209 A. A licensee ~~may shall not charge and or collect interest on a motor vehicle title loan at rates not to~~
210 ~~exceed the following:~~

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

212 2. Eighteen percent per month on the portion of the principal that exceeds \$700 but does not exceed
213 \$1,400; and

214 3. Fifteen percent per month on the portion of the principal that exceeds \$1,400 ~~a rate that exceeds~~
215 ~~36 percent per year.~~

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

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

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

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

229 D. In addition to the loan principal and interest permitted under subsection A, a licensee shall not
230 directly or indirectly charge, contract for, collect, receive, recover, or require a borrower to pay any
231 further or other fee, charge, or amount whatsoever except for (i) a licensee's actual cost of perfecting its
232 security interest in a motor vehicle securing the borrower's obligations under a loan agreement and (ii)
233 reasonable costs of repossession and sale of the motor vehicle in accordance with § 6.2-2217. A licensee
234 shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to
235 § 6.2-302, 8.01-27.2, or 8.01-382. In no event shall the borrower be liable for fees incurred in
236 connection with the storage of a motor vehicle securing a title loan following the motor vehicle's
237 repossession by the licensee or its agent, or the voluntary surrender of possession of the motor vehicle
238 by the borrower to the licensee.

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

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

- 244** G. A licensee may impose a late charge for failure to make timely payment of any amount due under
245 the loan agreement provided that such late charge does not exceed the amount permitted by § 6.2-400.
246 H. Payments shall be credited by the licensee on the date received.