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SENATE BILL NO. 755

Offered January 9, 2013

Prefiled December 17, 2012

A *BILL to amend and reenact §§ 6.2-303, 6.2-312, 6.2-1501, 6.2-2107, 59.1-200, and 59.1-203 of the Code of Virginia and to repeal Chapter 18 (§§ 6.2-1800 through 6.2-1829) of Title 6.2 of the Code of Virginia, relating to payday lending.*

Patron—Locke

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-303, 6.2-312, 6.2-1501, 6.2-2107, 59.1-200, and 59.1-203 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-303. Contracts for more than legal rate of interest.

A. Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan at a rate that exceeds 12 percent per year.

B. Laws that permit payment of interest at a rate that exceeds 12 percent per year are set out, without limitation, in:

1. Article 4 (§ 6.2-309 et seq.) of this chapter;

2. Chapter 15 (§ 6.2-1500 et seq.), relating to powers of consumer finance companies;

3. ~~Chapter 18 (§ 6.2-1800 et seq.), relating to payday lenders;~~

4. Chapter 22 (§ 6.2-2200 et seq.), relating to interest chargeable by motor vehicle title lenders;

5 4. § 36-55.31, relating to loans by the Virginia Housing Development Authority;

6 5. § 38.2-1806, relating to interest chargeable by insurance agents;

7 6. Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by premium finance companies;

8 7. § 54.1-4008, relating to interest chargeable by pawnbrokers; and

9 8. § 58.1-3018, relating to interest and origination fees payable under third-party tax payment agreements.

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

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

§ 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 C,~~ 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 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 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.)

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59 or has its license revoked, and if following such surrender or revocation of its license the former
60 licensee engages in the extension of credit under an open-end credit plan as described in this section;
61 then the Commission shall not issue to such former licensee, or to any affiliate of the former licensee, a
62 license under Chapter 18 (§ ~~6.2-1800 et seq.~~) for a period of 10 years from the date such license is
63 surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a business
64 entity that owns or controls, is owned or controlled by, or is under common ownership or control with,
65 the former licensee.

66 **§ 6.2-1501. Compliance with chapter; license required; attempts to evade application of chapter.**

67 A. No person shall engage in the business of making loans to individuals for personal, family,
68 household, or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on
69 or in connection with any loan interest, charges, compensation, consideration, or expense that in the
70 aggregate is greater than the interest permitted by § 6.2-303, except as provided in and authorized by
71 this chapter or Chapter 22 (§ 6.2-2200 et seq.) and without first having obtained a license from the
72 Commission.

73 B. Subject to subdivision C 3 and subsection C of § 6.2-1524, the prohibition in subsection A shall
74 not be construed to prevent any person, other than a licensee, from:

75 1. ~~Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.);~~

76 ~~2. Making a mortgage loan pursuant to §§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328 in any~~
77 ~~principal amount; or~~

78 ~~3 2. Extending credit as described in § 6.2-312 in any amount.~~

79 C. The provisions of subsection A shall apply to any person who seeks to evade its application by
80 any device, subterfuge, or pretense whatsoever, including:

81 1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or
82 otherwise; (ii) money; (iii) goods; or (iv) things in action;

83 2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or
84 purchase, whether real or pretended; receiving or charging compensation for goods or services, whether
85 or not sold, delivered, or provided; and

86 3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or
87 activity of a third person, whether real or fictitious.

88 **§ 6.2-2107. Prohibited practices.**

89 No person required to be registered under this chapter shall:

90 1. Engage in the business of making loans of *money*, credit, goods, or things; or discounting notes,
91 bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or
92 items without meeting the requirements of the laws of the Commonwealth;

93 2. Cash post-dated items, other than government or payroll checks;

94 3. Use, or cause to be published or disseminated, any advertisement or communication that (i)
95 contains any false, misleading, or deceptive statement or representation or (ii) identifies the person by
96 any name other than the name or trade name set forth on the registration; *or*

97 4. Engage in unfair, deceptive, or fraudulent practices; ~~or~~

98 ~~5. Make loans unless such person is licensed under, and the loans are made in accordance with,~~
99 ~~Chapter 18 (§ 6.2-1800 et seq.).~~

100 **§ 59.1-200. Prohibited practices.**

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

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

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

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

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

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

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

111 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
112 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
113 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
114 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
115 irregulars, imperfects or "not first class";

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

118 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
119 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
120 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph

shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

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

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

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

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

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

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

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

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

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

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

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32

(§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

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

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

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

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

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

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

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

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

~~36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;~~

~~37. Violating any provision of § 8.01-40.2;~~

~~38~~ 37. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

~~39~~ 38. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

~~40~~ 39. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

~~41~~ 40. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

~~42~~ 41. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

~~43~~ 42. Violating any provision of § 59.1-443.2;

~~44~~ 43. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

~~45~~ 44. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

~~46~~ 45. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

~~47~~ 46. Violating any provision of § 18.2-239;

~~48~~ 47. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

~~49~~ 48. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

~~50~~ 49. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;

~~51~~ 50. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

~~52~~ 51. Violating any provision of § 8.2-317.1; and

~~53~~ 52. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed.

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

§ 59.1-203. Restraining prohibited acts.

A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin any violation of § 59.1-200 or 59.1-200.1. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be proved.

B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town determines that a person subject to the provisions of this chapter intends to depart from

244 this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or
245 on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall,
246 before initiating any legal proceedings as provided in this section, give notice in writing that such
247 proceedings are contemplated, and allow such person a reasonable opportunity to appear before said
248 attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as
249 provided in § 59.1-202.

250 C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and
251 prevent violations of § 59.1-200 or 59.1-200.1.

252 D. The Commissioner of the Department of Agriculture and Consumer Services, or his duly
253 authorized representative, shall have the power to inquire into possible violations of subdivisions A 18,
254 28, 29, 31, ~~39~~ 39, and ~~41~~ 40, as it relates to motor fuels, of § 59.1-200 and § 59.1-335.12, and, if
255 necessary, to request, but not to require, an appropriate legal official to bring an action to enjoin such
256 violation.

257 **2. That Chapter 18 (§§ 6.2-1800 through 6.2-1829) of Title 6.2 of the Code of Virginia is repealed.**

258 **3. That nothing in this act shall prohibit the collection of any outstanding loan or extension of**
259 **credit made under Chapter 18 (§§ 6.2-1800 through 6.2-1829) of Title 6.2 of the Code of Virginia**
260 **by a licensee, as defined in § 6.2-1800 of the Code of Virginia, in accordance with the terms of a**
261 **loan agreement made prior to the effective date of this act; however, no additional extensions of**
262 **credit or advances shall be made under such a loan agreement on or after the effective date of this**
263 **act.**