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**HOUSE BILL NO. 1990**

Offered January 14, 2015

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*A BILL to amend and reenact §§ 6.2-303, 6.2-312, 6.2-1501, 6.2-1800, 6.2-1801, 6.2-1802, 6.2-1824, 6.2-1827, and 6.2-2107 of the Code of Virginia and to repeal §§ 6.2-1803 through 6.2-1821 and 6.2-1823 of the Code of Virginia, relating to a prohibition on payday loans.*

Patron—Morrissey

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, 6.2-1800, 6.2-1801, 6.2-1802, 6.2-1824, 6.2-1827, and 6.2-2107 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. 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 **§ 6.2-1800. Definitions.**

89 As used in this chapter, unless the context requires a different meaning:

90 "Check" means a draft drawn on the account of an individual at a depository institution.

91 "Depository institution" means a bank, savings institution, or credit union.

92 "Licensee" means a person to whom a license has been issued under this chapter.

93 "Payday loan" means a small, short-maturity loan on the security of (i) a check, (ii) any form of  
94 assignment of an interest in the account of an individual at a depository institution, or (iii) any form of  
95 assignment of income payable to an individual, other than loans based on income tax refunds.

96 "Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of  
97 the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a nonstock  
98 corporation or a limited liability company.

99 **§ 6.2-1801. Payday lending prohibited.**

100 A. No person shall engage in the business of making payday loans to any consumer residing in the  
101 Commonwealth, whether or not the person has an office or conducts business at a location in the  
102 Commonwealth, except in accordance with the provisions of this chapter and without having first  
103 obtained a license under this chapter from the Commission.

104 B. No person shall engage in the business of arranging or brokering payday loans for any consumer  
105 residing in the Commonwealth, whether or not the person has an office or conducts business at a  
106 location in the Commonwealth.

107 **§ 6.2-1802. Applicability.**

108 The provisions of this chapter shall not apply to any depository institution that does not elect to  
109 become licensed under this chapter. Electing to become licensed under this chapter shall constitute a  
110 waiver of the benefit of any and all laws of the Commonwealth and other states and federal laws  
111 preemptive of, or inconsistent with, the provisions of this chapter.

112 **§ 6.2-1824. Civil penalties.**

113 In addition to the authority conferred under §§ 6.2-1821 and 6.2-1822, the Commission may  
114 impose a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings  
115 commenced in accordance with the Commission's Rules, has violated any of the provisions of this  
116 chapter, or the regulations adopted by the Commission pursuant thereto, or any other law or regulation  
117 applicable to the conduct of the lender's business. For the purposes of this section, each separate  
118 violation shall be subject to the civil penalty herein prescribed, and in the case of a violation of §  
119 6.2-1801, each loan made or arranged shall constitute a separate violation.

120 **§ 6.2-1827. Application of chapter to payday loans made over the Internet.**

The provisions of this chapter, including specifically the licensure requirements of ~~§ 6.2-1801~~, shall apply to persons making payday loans over the Internet to Virginia residents, whether or not the person making the loan maintains a physical presence in the Commonwealth.

**§ 6.2-2107. Prohibited practices.**

No person required to be registered under this chapter shall:

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

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

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

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

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

2. That §§ 6.2-1803 through 6.2-1821 and 6.2-1823 of the Code of Virginia are repealed.