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HOUSE BILL NO. 1366

Offered January 22, 2016

A BILL to amend and reenact §§ 6.2-1816 and 6.2-2215 of the Code of Virginia, relating to payday loans and title loans; prohibited practices.

Patron—Kory

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1816 and 6.2-2215 of the Code of Virginia are amended and reenacted 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 prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of the dishonored check.

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

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

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

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

64 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
65 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
66 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to
67 all claims and defenses of the maker."

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

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

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

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

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

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

95 21. A licensee or affiliate shall not knowingly make a payday loan to a ~~person~~ *an individual* who is
96 a ~~covered member of the military services of the United States or the spouse or other a dependent of a~~
97 ~~member of the military services of the United States covered member.~~ Prior to making a payday loan,
98 every licensee or affiliate shall inquire of every prospective borrower if ~~he the individual~~ is a *covered*
99 ~~member of the military services of the United States or the spouse or other a dependent of a covered~~
100 ~~member of the military services of the United States.~~ The loan documents shall include ~~verification the~~
101 ~~prospective borrower's written affirmation to the licensee or affiliate that the borrower~~ *he* is not a
102 ~~covered member of the military services of the United States or the spouse or other a dependent of a~~
103 ~~covered member of the military services of the United States.~~ For purposes of this subdivision, (i)
104 *"covered member" means (a) a member of the armed forces who is on active duty under a call or order*
105 *that does not specify a period of 30 days or less, (b) a member of the Virginia National Guard or the*
106 *Armed Forces Reserves on active duty, or (c) a member of the Virginia National Guard not on active*
107 *duty and (ii) "dependent," with respect to a covered member, means a person described in*
108 *subparagraph (A), (D), (E), or (I) of 10 U.S.C. § 1072(2).*

109 22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions
110 and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15
111 U.S.C. § 1692 et seq.) regarding harassment or abuse, false or misleading misrepresentations, and unfair
112 practices in collections.

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

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

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

120 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

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

§ 6.2-2215. Required and prohibited business methods.

Each licensee shall comply with the following requirements and prohibitions:

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

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

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

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

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

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

THE INTEREST RATE ON THIS LOAN IS HIGH. YOU SHOULD CONSIDER WHETHER

182 THERE ARE OTHER LOWER COST LOANS AVAILABLE TO YOU.

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

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

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

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

198 YOU ARE PLEDGING YOUR MOTOR VEHICLE AS COLLATERAL FOR THIS LOAN. IF YOU
199 FAIL TO REPAY THE LOAN PURSUANT TO THIS AGREEMENT, WE MAY REPOSSESS YOUR
200 MOTOR VEHICLE.

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

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

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

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

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

220 5. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
221 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee
222 or any third party to bring suit against the borrower in a court outside the Commonwealth; (iii) waiving
223 or modifying any right the borrower has under this chapter or Title 8.9A; or (iv) requiring the borrower
224 to use arbitration or other alternative dispute resolution mechanisms that do not conform to Chapter 21
225 (§ 8.01-577 et seq.) of Title 8.01;

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

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

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

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

243 10. A licensee shall not (i) make a motor vehicle title loan if, on the date the loan agreement is

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

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

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

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

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

15. A licensee or affiliate shall not knowingly make a motor vehicle title loan to *an individual who is a covered member of the armed forces* or a dependent of *such a covered member*. Prior to making a motor vehicle title loan, every licensee or affiliate shall inquire of every prospective borrower if the individual is a covered member of the armed forces or a dependent of a covered member. The *loan documents shall include the prospective borrower shall affirm in writing borrower's written affirmation* to the licensee or affiliate *if that* he is not a covered member of the armed forces or a dependent of a covered member. For purposes of this ~~section~~ *subdivision*, (i) "covered member of the armed forces" means (a) a ~~person~~ *member of the armed forces who is on active duty under a call or order that does not specify a period of 30 days or less or, (b) a member of the Virginia National Guard or the Armed Forces Reserves on active guard and reserve duty. For purposes of this section, or (c) a member of the Virginia National Guard not on active duty and (ii) "dependent of," with respect to a covered member of the armed forces*, means the member's spouse, the member's child as defined by 38 U.S.C. § 101 (4), or an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding the date the motor vehicle title loan is sought; *a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. § 1072(2);*

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

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

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

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

305 its possession;

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

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

311 **2. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
312 **extension of credit made under former § 6.2-1816 or 6.2-2215 of the Code of Virginia in**
313 **accordance with the terms of a loan agreement made prior to the effective date of this act;**
314 **however, no additional extensions of credit or advances that violate the provisions of this act shall**
315 **be made under such a loan agreement on or after the effective date of this act.**