

16102782D

HOUSE BILL NO. 250

Offered January 13, 2016

Prefiled December 30, 2015

A *BILL to amend and reenact §§ 6.2-312, 6.2-1520, 6.2-1816, 6.2-1817, 6.2-1818, and 6.2-2216 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5 of Chapter 4 of Title 6.2 a section numbered 6.2-438, relating to charges on consumer finance loans, payday loans, title loans, and certain open-end credit plans; prohibited lending practices.*

Patrons—Minchew, Yancey, Lindsey and Simon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-312, 6.2-1520, 6.2-1816, 6.2-1817, 6.2-1818, and 6.2-2216 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 4 of Title 6.2 a section numbered 6.2-438 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 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 interest at such rates and in such amounts and manner as may be agreed upon by the creditor and the obligor~~ *interest at such rates and in such amounts and manner as may be agreed upon by the creditor and the obligor* ~~a rate that does not violate the provisions of subsection F~~, if under the plan a ~~finance charge interest~~ *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. 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 section 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 section shall not charge a membership fee, participation fee, or transaction fee in connection with any such extension of credit.*

§ 6.2-438. Certain lend practices prohibited.

A. As used in this section, unless the context requires a different meaning:

"Account" means any checking, savings, or other consumer asset account held by a financial institution, directly or indirectly, established primarily for personal, family, or household purposes.

"Consumer" means any person who is the borrower under a regulated loan.

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59 *"Electronic check conversion transaction" means a transaction where a check, draft, or similar paper*
60 *instrument is used as a source of information to initiate an electronic fund transfer from a consumer's*
61 *account.*

62 *"Preauthorized transfer" means one of a series of recurring electronic fund transfers authorized in*
63 *advance to recur at substantially regular intervals from an account.*

64 *"Regulated loan" means any loan or extension of credit made under § 6.2-312, Chapter 15*
65 *(§ 6.2-1500 et seq.), Chapter 18 (§ 6.2-1800 et seq.), or Chapter 22 (§ 6.2-2200 et seq.).*

66 *B. No person making a regulated loan shall:*

67 *1. Condition the making of a regulated loan to a consumer on such consumer's repayment of*
68 *obligations by means of one or more preauthorized transfers;*

69 *2. Make a regulated loan pursuant to an agreement under which the consumer permits the lender to*
70 *access any account of the consumer through preauthorized transfers;*

71 *3. Use an electronic check conversion transaction as a method of receiving a payment or collecting*
72 *any amount due in connection with a regulated loan;*

73 *4. Enter into any agreement concerning a regulated loan under which the terms and conditions*
74 *imposed on the consumer, if the consumer was a covered member of the armed forces or a dependent of*
75 *such a member, would violate any requirement of § 670(a) of the Military Lending Act, 10 U.S.C. § 987,*
76 *as amended, or any federal rule or regulation adopted thereunder; or*

77 *5. Prohibit or otherwise restrict the authority of the consumer to disclose to any person the*
78 *provisions of any loan agreement or other document that sets forth the terms and conditions of a*
79 *regulated loan.*

80 *C. A consumer who suffers a loss as a result of a person's violation of any provision of subsection B*
81 *may bring an action against such person to recover actual damages and any sum authorized pursuant to*
82 *subsection E. In addition to any damages awarded, such borrower also may be awarded attorney fees*
83 *and court costs.*

84 *D. Any loan agreement or other document that sets forth the terms and conditions of a regulated*
85 *loan that does not comply with the applicable provisions of this section shall be void and unenforceable*
86 *against the consumer.*

87 *E. The person making a regulated loan that is found to have been entered into in violation of any*
88 *provision of this section shall not collect, receive, or retain any principal, interest, or charges*
89 *whatsoever with respect to the loan, and any principal or interest paid on the loan shall be recoverable*
90 *by the consumer by or for whom payment was made.*

91 *F. Any waiver by a consumer of any of the provisions of this section shall be deemed void and*
92 *unenforceable by a person making a regulated loan as contrary to public policy of the Commonwealth,*
93 *and any attempt by such person to have a consumer waive rights given by this section shall constitute a*
94 *violation of this section.*

95 **§ 6.2-1520. Rate of interest; late charges; processing fees.**

96 *A. A licensee may charge and receive interest on loans of:*

97 *1. Not more than \$2,500, at a single annual rate not to exceed 36 percent; and*

98 *2. More than \$2,500, at such single annual rate as shall be stated in the loan contract.*

99 *The annual rate of interest shall be charged only upon principal balances outstanding from time to*
100 *time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or*
101 *received in advance. For the purpose of calculating interest under this section, a year may be any period*
102 *of time consisting of 360 or 365 days.*

103 *B. A licensee may impose a late charge for failure to make timely payment of any installment due*
104 *on a debt, which late charge shall not exceed five percent of the amount of such installment payment.*
105 *The late charge shall be specified in the loan contract between the lender and the borrower. For*
106 *purposes of this section, "timely payment" means a payment made by the date fixed for payment or*
107 *within a period of seven calendar days after such fixed date.*

108 *C. A licensee may charge and receive a processing fee, charged on the principal amount of the loan,*
109 *for processing the loan contract. The processing fee shall be stated in the loan contract. Such processing*
110 *fee shall be deemed to constitute interest charged on the principal amount of the loan for purposes of*
111 *determining whether the interest charged on a loan of not more than \$2,500 exceeds the 36 percent*
112 *annual interest rate limitation imposed by subdivision subsection A 1.*

113 **§ 6.2-1816. Required and prohibited business methods.**

114 *Each licensee shall comply with the following requirements:*

115 *1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the*
116 *borrower and a person authorized by the licensee to sign such agreements and dated the same day the*
117 *loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount*
118 *of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated*
119 *using that term, applicable to the transaction calculated in accordance with Federal Reserve Board*
120 *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.

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

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

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

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

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

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

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

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

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

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

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

197 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of
198 the military services of the United States or the spouse or other dependent of a member of the military
199 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of
200 every prospective borrower if he is a member of the military services of the United States or the spouse
201 or other dependent of a member of the military services of the United States. The loan documents shall
202 include verification that the borrower is not a member of the military services of the United States or
203 the spouse or other dependent of a member of the military services of the United States.

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

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

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

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

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

217 a. A borrower shall not be eligible to enter into more than one extended payment plan in any
218 12-month period.

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

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

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

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

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

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

243 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.

§ 6.2-1817. Rate of interest.

A. A licensee may charge and receive on each loan interest at a simple annual rate not to exceed 36 percent. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.

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

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

§ 6.2-1818. Additional charges.

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

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

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

1. Twenty-two percent per month on the portion of the principal that does not exceed \$700;
2. Eighteen percent per month on the portion of the principal that exceeds \$700 but does not exceed \$1,400; and
3. Fifteen percent per month on the portion of the principal that exceeds \$1,400 a rate that exceeds 36 percent per year.

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

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

1. The date that the motor vehicle securing the title loan is repossessed by the licensee making the loan; or
2. Sixty days after the borrower has failed to make a monthly payment on a motor vehicle title loan as required by the loan agreement unless the borrower has not surrendered the motor vehicle and the borrower is concealing the motor vehicle.

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

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

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

305 G. A licensee may impose a late charge for failure to make timely payment of any amount due under
306 the loan agreement provided that such late charge does not exceed the amount permitted by § 6.2-400.

307 H. Payments shall be credited by the licensee on the date received.

308 **2. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
309 **extension of credit made under former § 6.2-312, 6.2-1520, 6.2-1816, 6.2-1817, 6.2-1818, or**
310 **6.2-2216 of the Code of Virginia in accordance with the terms of a loan agreement made prior to**
311 **the effective date of this act; however, no additional extensions of credit or advances that violate**
312 **the provisions of this act shall be made under such a loan agreement on or after the effective date**
313 **of this act.**