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HOUSE BILL NO. 346

Offered January 13, 2016

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A BILL to amend and reenact §§ 6.2-1501 and 6.2-1524 of the Code of Virginia, relating to loans by consumer finance companies; prohibited practices.

Patrons—Farrell and Krizek

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 6.2-1501 and 6.2-1524 of the Code of Virginia are amended and reenacted as follows:****§ 6.2-1501. Compliance with chapter; license required; attempts to evade application of chapter.**

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

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

1. Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.);
2. Making a mortgage loan pursuant to §§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328 in any principal amount; or
3. Extending credit as described in § 6.2-312 in any amount.

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

1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or otherwise; (ii) money; (iii) goods; or (iv) things in action;
2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and
3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

§ 6.2-1524. Required and prohibited activities and conduct.

A. Each licensee shall maintain at all times the minimum assets prescribed by this chapter for each license, either (i) in liquid form available for the operation of the business at the location specified in each license or (ii) actually used, whether pledged or not, in the conduct of the business at the location specified in each license.

B. A licensee or other person subject to this chapter shall not advertise, display, distribute or broadcast, or cause or permit to be advertised, displayed, distributed or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans made under this chapter. The Commission may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as it deems necessary to prevent misunderstanding by prospective borrowers. The Commission may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by it to prevent false, misleading, or deceptive impression as to the scope or degree of protection provided by this chapter.

C. A licensee shall not take a lien upon real estate as security for any loan made under the provisions of this chapter, except a lien arising upon rendition of a judgment. Any lien taken in violation of this subsection shall be void.

D. A licensee shall, at the time any loan is made, deliver to the borrower, or if there are two or more borrowers to one of them, a statement disclosing (i) the names and addresses of the licensee and of the principal debtor on the loan contract, and (ii) a statement in compliance with Federal Reserve Board Regulation Z (12 C.F.R. Part 226).

E. A licensee shall give the borrower a receipt for all cash payments. The Commission may specify the form and content of such receipts in keeping with the intent and purpose of this chapter.

F. A licensee shall permit payment to be made in advance in whole, or in part equal to one or more full installments. The licensee may apply the payment first to any amounts that are due and unpaid at

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HB346

59 the time of such payment.

60 G. A licensee shall, upon repayment of the loan in full, (i) mark plainly every obligation and security
61 other than a security agreement executed by the borrower with the word "Paid" or "Canceled," (ii) mark
62 satisfied any judgment, (iii) restore any pledge, (iv) cancel and return any note and any assignment
63 given by the borrower to the licensee, and (v) release any security agreement or other form of security
64 instrument that no longer secures an outstanding loan between the borrower and the licensee.

65 H. In the event of collection by foreclosure sale or otherwise, a licensee shall pay and return to the
66 borrower, or to another person entitled thereto, any surplus arising after the payment of the expenses of
67 collection, sale or foreclosure and satisfaction of the debt.

68 I. A licensee shall not take any confession of judgment or any power of attorney running to himself
69 or to any third person to confess judgment or to appear for the borrower in a judicial proceeding. Any
70 such confession of judgment or power of attorney to confess judgment shall be void.

71 J. A licensee shall not take any note, promise to pay, or instrument of security in which blanks are
72 left to be filled in after execution, or that does not give the amount of the loan, a clear description of
73 the installment payments required, and the rate of interest charged. A licensee may also include the
74 disclosures required by Federal Reserve Board Regulation Z (12 C.F.R. Part 226) in the note, promise to
75 pay, or instrument of security.

76 K. Every loan contract shall be in writing, be signed by the borrower, and provide for repayment of
77 the amount loaned in substantially equal monthly installments of principal and interest. Nothing
78 contained in this chapter shall prevent (i) a loan being considered a new loan because the proceeds of
79 the loan are used to pay an existing loan contract or (ii) a licensee from entering into a loan contract
80 providing for an odd first payment period of up to 45 days and an odd first payment greater than other
81 monthly payments because of such odd first payment period.

82 *L. A licensee shall not make a loan that is secured by a non-purchase money security interest in a*
83 *motor vehicle at or from any office, suite, room, place of business, or other location at which a person*
84 *to whom a license has been issued under Chapter 22 (§ 6.2-2200 et seq.) is authorized to conduct*
85 *business under Chapter 22. Any loan that is made by a licensee in violation of this subsection shall be*
86 *unenforceable against the borrower.*

87 **2. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
88 **extension of credit made under Chapter 15 (§ 6.2-1500 et seq.) of the Code of Virginia in**
89 **accordance with the terms of a loan agreement made prior to the effective date of this act;**
90 **however, no additional extension of credit or advance that violates the provisions of this act shall**
91 **be made under such a loan agreement on or after the effective date of this act.**