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HOUSE BILL NO. 974

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 6.2-301, 6.2-312, and 6.2-1501 of the Code of Virginia, relating to open-end credit agreements.

Patrons—Yancey and Krizek

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-301, 6.2-312 and 6.2-1501 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-301. Legal rate of interest; when legal rate implied.

A. The legal rate of interest shall be an annual rate of six percent.

B. Except as provided in subsection (b) of § 8.3A-112 and § 6.2-302, the legal rate of interest shall be implied when there is an obligation to pay interest and no express contract to pay interest at a specified rate.

C. The seller or provider of goods sold or services provided on an open account shall be entitled to, and may collect, interest at the legal rate upon the unpaid balance if (i) there exists no written agreement for closed-end credit under § 6.2-311 or open-end credit ~~plan~~ *agreement* under § 6.2-312 and (ii) the purchaser or recipient of the goods or services fails to make payment in full within 60 days after mailing or presentation of a billing statement or invoice. Such interest shall begin to accrue on the day following such 60-day period.

§ 6.2-312. Open-end credit agreements.

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 of goods to be used for personal, family, or household purposes may extend credit to the purchaser thereof, for the sole purpose of financing the bona fide purchase price of such goods,~~ under an open-end credit ~~plan~~ *may agreement*. Such an open-end credit agreement may allow the seller to impose, on credit extended under the ~~plan~~ *agreement*, finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the ~~creditor~~ *seller* and the obligor, if under the ~~plan~~ *agreement* 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~~ *seller* 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, ~~seller making a loan under an open-end credit agreement described in subsection A~~ 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 ~~any other chapter of this title~~.

D. 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 seller~~ in violation of this ~~subsection~~ *section* 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.

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§ 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 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.); *or*

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.

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