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SENATE BILL NO. 406

Offered January 13, 2016

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A BILL to amend and reenact §§ 6.2-312, 6.2-1524, and 6.2-2215 of the Code of Virginia, relating to motor vehicle title lender locations; loans by open-end lenders or consumer finance companies.

Patrons—Saslaw, Favola and Howell

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-312, 6.2-1524, and 6.2-2215 of the Code of Virginia are amended and reenacted 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 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 as described in this section and; (ii) a third party shall not engage in the extension of credit under an open-end credit plan as 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 shall make a loan or engage in the extension of credit under an open-end credit plan as described in this section at or from any office, suite, room, place of business, or other location at which a person to whom a license has been issued under Chapter 22 (§ 6.2-2200 et seq.) is authorized to conduct business under Chapter 22. In addition to any other remedies or penalties provided for a violation of this section, any such loan or extension of credit made in violation of this subsection shall be unenforceable against the borrower.

§ 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

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59 to prevent misunderstanding by prospective borrowers. The Commission may permit or require licensees
60 to refer in their advertising to the fact that their business is under state supervision, subject to conditions
61 imposed by it to prevent false, misleading, or deceptive impression as to the scope or degree of
62 protection provided by this chapter.

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

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

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

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

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

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

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

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

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

97 *L. A licensee shall not make a loan or otherwise conduct business at or from any office, suite, room,*
98 *place of business, or other location at which a person to whom a license has been issued under Chapter*
99 *22 (§ 6.2-2200 et seq.) is authorized to conduct business under Chapter 22. Any loan that is made by a*
100 *licensee at or from such an office, place of business, or other location shall be unenforceable against*
101 *the borrower.*

102 **§ 6.2-2215. Required and prohibited business methods.**

103 Each licensee shall comply with the following requirements and prohibitions:

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

- 106 a. Be signed by the borrower and by a person authorized by the licensee to sign such agreements;
107 b. Be dated the day it is executed by the borrower;
108 c. Set forth or contain, at a minimum: (i) the loan amount; (ii) the interest rate and any fees charged
109 pursuant to the loan, which shall not exceed the maximum rate permitted pursuant to § 6.2-2216; (iii)
110 the annual percentage rate, which shall be stated using that term, calculated in accordance with the
111 Federal Reserve Board's Regulation Z; (iv) the amounts and scheduled due dates of the monthly
112 installment payments of principal and interest; (v) the borrower's mailing address; (vi) the make, model,
113 year, and vehicle identification number of the motor vehicle in which a security interest is being given
114 as security for the loan; (vii) that the borrower shall have the right to cancel the loan agreement at any
115 time before the close of business on the next business day following the day the loan agreement is
116 executed by returning the original loan proceeds check to or paying to the licensee, in the form of cash
117 or other good funds instrument, the loan proceeds; (viii) the loan's maturity date, which shall not be
118 earlier than 120 days from the date the loan agreement is executed nor later than 12 months from the
119 date the loan agreement is executed; and (ix) such other information relating to the title loan as the
120 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 THERE ARE OTHER LOWER COST LOANS AVAILABLE TO YOU.

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

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

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

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

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

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

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

2. Before entering into a motor vehicle title loan, a licensee shall provide each borrower with a pamphlet, in a 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;

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

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

5. 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; (iii) waiving or modifying any right the borrower has under this chapter or Title 8.9A; or (iv) requiring the borrower to use arbitration or other alternative dispute resolution mechanisms that do not conform to Chapter 21 (§ 8.01-577 et seq.) of Title 8.01;

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

7. Loan proceeds shall be disbursed (i) in cash, (ii) by the licensee's business check, or (iii) by debit

card provided that the borrower will not be directly charged a fee by the licensee in connection with the withdrawal of the funds. No fee shall be charged by the licensee or check casher for cashing a title loan proceeds check;

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

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

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 a covered member of the armed forces or a dependent of such 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 prospective borrower shall affirm in writing to the licensee or affiliate if he is not a covered member of the armed forces or a dependent of a covered member. For purposes of this section, "covered member of the armed forces" means a person on active duty under a call or order that does not specify a period of 30 days or less or on active guard and reserve duty. For purposes of this section, "dependent of 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;

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

244 filing of a written application with the Commission, payment of a \$300 fee, and provision of such
245 information as the Commission may deem pertinent. The Commission shall not, however, permit the
246 sale of insurance or the enrolling of borrowers under group insurance policies;

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

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

252 21. If the licensee takes possession of a motor vehicle securing a title loan, the vehicle shall be
253 stored in a secure location; *and*

254 22. *A licensee shall not authorize or permit (i) any person making a loan or extending credit under*
255 *an open-end credit plan as described in § 6.2-312 or (ii) any consumer finance company licensed under*
256 *Chapter 15 (§ 6.2-1500 et seq.) to make any loan, extend credit, or otherwise conduct business at any*
257 *office, suite, room, place of business, or other location at which the licensee is authorized to conduct*
258 *business under this chapter. An office, suite, room, place of business, or other location at which a*
259 *licensee is authorized to conduct business shall encompass any premises with the same address or*
260 *addresses at which the licensee's business is to be conducted as stated on the license pursuant to*
261 *subsection A of § 6.2-2207. Any loan or extension of credit made under an open-end credit plan as*
262 *described in § 6.2-312 from such an office, suite, room, place of business, or other location shall be*
263 *unenforceable against the borrower. Any loan contract made by a consumer finance company from such*
264 *an office, suite, room, place of business, or other location shall be unenforceable against the borrower.*

265 **2. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
266 **extension of credit made under § 6.2-312 or Chapter 15 (§ 6.2-1500 et seq.) of the Code of Virginia**
267 **in accordance with the terms of a loan agreement made prior to the effective date of this act;**
268 **however, no additional extension of credit or advance that violates the provisions of this act shall**
269 **be made under such a loan agreement on or after the effective date of this act.**