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## HOUSE BILL NO. 2445

Offered January 20, 2017

A BILL to amend and reenact §§ 6.2-312 and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 22.1, consisting of sections numbered 6.2-2228 through 6.2-2250, relating to open-end credit plan loans.

Patrons—Levine and Helsel

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.2-312 and 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 22.1, consisting of sections numbered 6.2-2228 through 6.2-2250, 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 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 and 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~~ seller 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~~ 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 extending credit under this section 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 Chapter 22 (§ 6.2-2200 et seq.) or 22.1 (§ 6.2-2228 et seq.) at any office, suite, room, or place of business where a licensee conducts the business of making payday loans the seller sells goods as described in subsection A. 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 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.

## CHAPTER 22.1.

## OPEN-END CREDIT PLAN LOANS.

**§ 6.2-2228. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Licensee" means a person to whom a license has been issued under this chapter.

"Open-end credit plan loan" means a revolving loan made under an open-end credit or similar plan under which a finance charge is imposed only if the obligor fails to repay the loan in full prior to the next billing date, which must be at least 25 days after the date the agreement is entered into and at least 25 days after the prior billing date.

"Open-end credit plan loan agreement" means an agreement under which a lender makes an open-end credit plan loan to a consumer.

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59 "Person" means any individual, corporation, partnership, association, cooperative, limited liability  
60 company, trust, joint venture, or other legal or commercial entity.

61 "Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of  
62 the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in any other type of  
63 entity.

64 **§ 6.2-2229. License required.**

65 A. No person shall engage in the business of making open-end credit plan loans to any consumer  
66 residing in the Commonwealth, whether or not the person has a location in the Commonwealth, except  
67 in accordance with the provisions of this chapter and without having first obtained a license under this  
68 chapter from the Commission. If an open-end credit plan loan is made in violation of this section, the  
69 loan and the lender's security interest in any collateral securing the loan shall be void, and the lender  
70 shall have no right to collect or receive any principal, interest, or charges whatsoever. Any funds or  
71 property taken or received by an unlicensed lender shall be returned to the borrower. If the property is  
72 sold by the lender, the lender shall provide the borrower with the fair market value of the property.

73 B. No person shall engage in the business of arranging or brokering open-end credit plan loans for  
74 any consumer residing in the Commonwealth, whether or not the person has a location in the  
75 Commonwealth.

76 **§ 6.2-2230. Applicability.**

77 The provisions of this chapter shall not apply to any bank, savings institution, or credit union, or to  
78 a person licensed under Chapter 15 (§ 6.2-1500 et seq.), that does not elect to become licensed under  
79 this chapter.

80 **§ 6.2-2231. Application for license; form; content; fee.**

81 A. An application for a license under this chapter shall be made in writing, under oath and on a  
82 form provided by the Commissioner.

83 B. The application shall include:

84 1. The name and address of the applicant and (i) if the applicant is a partnership, firm, or  
85 association, the name and address of each partner or member; (ii) if the applicant is a corporation or  
86 limited liability company, the name and address of each director, member, registered agent, and  
87 principal; or (iii) if the applicant is a business trust, the name and address of each trustee and  
88 beneficiary;

89 2. The name and address of each manager and officer;

90 3. The addresses of the locations of the business to be licensed; and

91 4. Such other information concerning the financial responsibility, background, experience, and  
92 activities of the applicant and the persons referred to in this section as the Commissioner may require.

93 C. The application shall be accompanied by payment of an application fee of \$1,000.

94 D. The application fee shall not be refundable in any event. The fee shall not be abated by  
95 surrender, suspension, or revocation of the license.

96 **§ 6.2-2232. Bond required.**

97 The application for a license shall also be accompanied by a bond filed with the Commissioner with  
98 corporate surety authorized to execute such bond in the Commonwealth, in the sum of \$10,000 per  
99 location, not to exceed a total of \$50,000. The form of the bond shall be approved by the Commission.  
100 Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned  
101 upon the applicant or licensee performing all written agreements with borrowers or prospective  
102 borrowers, correctly and accurately accounting for all funds received by him in his licensed business,  
103 and conducting his licensed business in conformity with this chapter and all applicable law. Any person  
104 who may be damaged by noncompliance of the licensee with any condition of such bond may proceed  
105 on such bond against the principal or surety thereon, or both, to recover damages. The aggregate  
106 liability under the bond shall not exceed the penal sum of the bond.

107 **§ 6.2-2233. Investigation of applications.**

108 The Commissioner may make such investigations as he deems necessary to determine if the applicant  
109 has complied with all applicable provisions of law and regulations adopted thereunder.

110 **§ 6.2-2234. Qualifications.**

111 A. Upon the filing and investigation of an application for a license, and compliance by the applicant  
112 with the provisions of §§ 6.2-2231 and 6.2-2232, the Commission shall issue and deliver to the applicant  
113 the license applied for to engage in business under this chapter at the locations specified in the  
114 application if it finds:

115 1. That the financial responsibility, character, reputation, experience, and general fitness of the  
116 applicant and its members, senior officers, directors, trustees, and principals are such as to warrant  
117 belief that the business will be operated efficiently and fairly, in the public interest, and in accordance  
118 with law; and

119 2. That the applicant has unencumbered liquid assets per location available for the operation of the  
120 business of at least \$25,000.

*B. If the Commission fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons for such denial.*

**§ 6.2-2235. Licenses; places of business; changes.**

*A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious name by which the licensee is operating in the Commonwealth. Each license shall be posted prominently in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth on the license issued by the Commission.*

*B. No licensee shall open an additional office or relocate any place of business without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The application shall be approved unless the Commission finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. After approval, the applicant shall give written notice to the Commissioner within 10 days of the commencement of business at the additional location or relocated place of business.*

*C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any business location and of the name, address, and position of each new senior officer, member, trustee, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.*

*D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.*

**§ 6.2-2236. Acquisition of control; application.**

*A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or more of the voting shares of a corporation or 25 percent or more of the ownership of any other person licensed to conduct business under this chapter unless such person first:*

*1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;*

*2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals, and members, and any proposed new directors, senior officers, principals, or members of the licensee; and*

*3. Pays such application fee as the Commission may prescribe.*

*B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant; its members, if applicable; its directors, senior officers, trustees, and principals; and any proposed new directors, members, senior officers, trustees, and principals have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.*

*C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed under this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, by merger or consolidation by or with a person affiliated through common ownership with the licensee; or (iii) the acquisition of an interest in a licensee by bequest, descent, survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.*

**§ 6.2-2237. Retention of books, accounts, and records.**

*A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the Commissioner may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from any other business in which the licensee is involved.*

*B. Each licensee shall retain, for at least three years after final payment is made on any open-end credit plan loan, copies of the loan application, loan agreement, and such other papers or records relating to the open-end credit plan loan as may be required by regulation.*

*C. When the Bureau requests a written response, books, records, documentation, or other*

182 information from a licensee in connection with the Bureau's investigation, enforcement, or examination  
183 of compliance with applicable laws and regulations, the licensee shall deliver a written response as well  
184 as any requested books, records, documentation, or information within the time period specified in the  
185 Bureau's request. If no time period is specified, a written response as well as any requested books,  
186 records, documentation, or information shall be delivered by the licensee to the Bureau not later than  
187 30 days from the date of such request. In determining the specified time period for responding to the  
188 Bureau, and when considering a request for an extension of time to respond, the Bureau shall take into  
189 consideration the volume and complexity of the requested written response, books, records,  
190 documentation, or information and such other factors as the Bureau determines to be relevant under the  
191 circumstances.

192 **§ 6.2-2238. Annual report.**

193 Each licensee under this chapter shall annually, on or before March 25, file a written report with  
194 the Commissioner containing such information as the Commission may require concerning his business  
195 and operations, including the same categories of information that payday lenders licensed under  
196 Chapter 18 (§ 6.2-1800 et seq.) and motor vehicle title loan lenders licensed under Chapter 22  
197 (§ 6.2-2200 et seq.) are required to include in their reports, mutatis mutandis, during the preceding  
198 calendar year as to each licensed place of business. Reports shall be made under oath and shall be in  
199 the form prescribed by the Commissioner.

200 **§ 6.2-2239. Filing of written report with Commissioner; events impacting activities of licensee.**

201 Within 15 days of becoming aware of the occurrence of any of the events listed below, a licensee  
202 shall file a written report with the Commissioner describing such event and its expected impact, if any,  
203 on the activities of the licensee in the Commonwealth:

- 204 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
- 205 2. The institution of revocation or suspension proceedings against the licensee by any governmental  
206 authority;
- 207 3. The denial of the opportunity to engage in business by any governmental authority;
- 208 4. Any felony indictment of the licensee or any of its members, employees, officers, directors,  
209 trustees, or principals;
- 210 5. Any felony conviction of the licensee or any of its members, employees, officers, directors,  
211 trustees, or principals;
- 212 6. The surrender by the licensee of its license to engage in business in another state in lieu of  
213 threatened or pending license revocation, license suspension, or other regulatory or enforcement action;
- 214 7. The institution of an action against the licensee under the Virginia Consumer Protection Act (§  
215 59.1-196 et seq.) by the Attorney General or any other governmental authority; or
- 216 8. Such other events as the Commission may determine and identify by regulation.

217 **§ 6.2-2240. Investigations; examinations.**

218 The Commission may, by its designated officers and employees, as often as it deems necessary,  
219 investigate and examine the affairs, business, premises, and records of any person licensed or required  
220 to be licensed under this chapter insofar as they pertain to any business for which a license is required  
221 by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In  
222 the course of such investigations and examinations, the owners, members, officers, directors, partners,  
223 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand  
224 of the person making such investigation or examination, afford full access to all premises, books,  
225 records, and information that the person making such investigation or examination deems necessary.  
226 For the foregoing purposes, the person making such investigation or examination shall have authority to  
227 administer oaths, examine under oath all the aforementioned persons, and compel the production of  
228 papers and objects of all kinds.

229 **§ 6.2-2241. Annual fees.**

230 A. In order to defray the costs of their examination, supervision, and regulation, every licensee under  
231 this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission.  
232 The schedule shall bear a reasonable relationship to the business volume of such licensees, to the actual  
233 costs of their examinations, and to other factors relating to their supervision and regulation. All such  
234 fees shall be assessed on or before August 1 for every calendar year. All such fees shall be paid by the  
235 licensee to the State Treasurer on or before September 1 following each assessment.

236 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or  
237 investigate the books and records of a licensee under this chapter at a location outside the  
238 Commonwealth, the licensee shall be liable for and shall pay to the Commission, within 30 days of the  
239 presentation of an itemized statement, the actual travel and reasonable living expenses incurred on  
240 account of its examination, supervision, and regulation or shall pay at a reasonable per diem rate  
241 approved by the Commission.

242 **§ 6.2-2242. Rules and regulations.**

243 The Commission shall adopt such rules and regulations as it deems appropriate to effect the

purposes of this chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Rules of Practice and Procedure of the Commission.

**§ 6.2-2243. Suspension or revocation of license.**

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

1. Any ground for denial of a license under this chapter;
2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;
3. A course of conduct consisting of the failure to perform written agreements with borrowers;
4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;
6. Entry of a federal or state administrative order against the licensee for violation of any law or any regulation applicable to the conduct of his business;
7. Refusal to permit an investigation or examination by the Commission;
8. Failure to pay any fee or assessment imposed by this chapter; or
9. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner, trustee, beneficiary, or principal shall be deemed acts of the lender.

**§ 6.2-2244. Other business.**

No licensee shall conduct the business of making open-end credit plan 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 such other 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.

**§ 6.2-2245. Cease and desist orders.**

If the Commission determines that any person has violated any provision of this chapter or any regulation adopted by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of the lender's business, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

**§ 6.2-2246. Notice of proposed suspension or revocation.**

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § 6.2-2243 until it has given the licensee 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure.

**§ 6.2-2247. Fines for violations.**

In addition to the authority conferred under §§ 6.2-2243 and 6.2-2245, the Commission may impose a fine or penalty not exceeding \$1,000 upon any person that it determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission, has violated any of the provisions of this chapter or regulations promulgated by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of the lender's business. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and each open-end credit plan loan made or arranged by an unlicensed person shall constitute a separate violation.

**§ 6.2-2248. Validity of noncompliant loan agreement; private right of action.**

A. If any provision of a written loan agreement violates this chapter, such provision shall be unenforceable against the borrower.

B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any person who is successful in such action shall recover reasonable attorney fees, expert witness fees, and court costs incurred by bringing such action.

**§ 6.2-2249. Application of chapter to Internet loans.**

The provisions of this chapter, including specifically the licensure requirements of § 6.2-2229, shall apply to persons making open-end credit plan loans over the Internet to Virginia residents, whether or not the person making the loan maintains a physical presence in the Commonwealth.

**§ 6.2-2250. Violation of the Virginia Consumer Protection Act.**

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

**§ 59.1-200. Prohibited practices.**

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

428 37. Violating any provision of § 8.01-40.2;  
429 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;  
430 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;  
431 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;  
432 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46  
433 (§ 59.1-525 et seq.) of this title;  
434 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;  
435 43. Violating any provision of § 59.1-443.2;  
436 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;  
437 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;  
438 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;  
439 47. Violating any provision of § 18.2-239;  
440 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);  
441 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has  
442 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
443 presumption that a supplier has reason to know a children's product was recalled if notice of the recall  
444 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale  
445 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to  
446 children's products that are used, secondhand or "seconds";  
447 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;  
448 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;  
449 52. Violating any provision of § 8.2-317.1;  
450 53. Violating subsection A of § 9.1-149.1; and  
451 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential  
452 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective  
453 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in  
454 which defective drywall has been permanently installed or affixed; and  
455 55. *Violating any provision of Chapter 22.1 (§ 6.2-2228 et seq.) of Title 6.2.*  
456 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or  
457 lease solely by reason of the failure of such contract or lease to comply with any other law of the  
458 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation  
459 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable  
460 such contract or lease.  
461 **2. That nothing in this act shall prohibit the collection of any outstanding loan or extension of**  
462 **credit made under § 6.2-312 of the Code of Virginia, as amended by this act, in accordance with**  
463 **the terms of a loan agreement made prior to the effective date of this act; however, no additional**  
464 **extensions of credit or advances shall be made under such a loan agreement, and such a loan**  
465 **agreement shall not be extended or renewed, on or after the effective date of this act.**