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SENATE BILL NO. 1125

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 16, 2017)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 6.2-312 and 59.1-200 of the Code of Virginia, relating to the Virginia Consumer Protection Act; open-end credit plans.

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 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 or 6.2-2201, 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. Any person that makes a loan or otherwise extends credit under an open-end credit plan shall comply with the following:

1. The person shall not obtain or accept from a borrower an authorization to electronically debit the borrower's deposit account;

2. In collecting or attempting to collect a loan, the person 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;

3. The person shall not make a loan or otherwise extend credit under an open-end credit plan to a borrower if the loan or extension would cause the borrower to have more than one loan or extension under an open-end credit plan outstanding at the same time; and

4. The person shall not file or initiate a legal proceeding of any kind against a borrower until 60 days after the date of default on an open-end credit plan, during which period the person and the borrower may voluntarily enter into a repayment arrangement.

G. The provisions of this section shall apply to any person that makes a loan or otherwise extends credit under an open-end credit plan over the Internet to Virginia residents or any individuals in Virginia, whether or not the person making the loan or extending the credit maintains a physical presence in the Commonwealth.

H. Any violation of the provisions of this section 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

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60 *Consumer Protection Act (§ 59.1-196 et seq.).*

61 **§ 59.1-200. Prohibited practices.**

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

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

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

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

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

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

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

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

100 13a. Failing to provide to a consumer, or failing to use or include in any written document or
101 material provided to or executed by a consumer, in connection with a consumer transaction any
102 statement, disclosure, notice, or other information however characterized when the supplier is required
103 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
104 information in connection with the consumer transaction;

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

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

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

110 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
111 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
112 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
113 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
114 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
115 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
116 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
117 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
118 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
119 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
120 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
121 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;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

183 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
184 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
185 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
186 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
187 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
188 children's products that are used, secondhand or "seconds";
189 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) ~~of this title~~;
190 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
191 52. Violating any provision of § 8.2-317.1;
192 53. Violating subsection A of § 9.1-149.1; ~~and~~
193 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
194 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
195 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
196 which defective drywall has been permanently installed or affixed; *and*
197 55. *Violating any provision of § 6.2-312.*
198 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
199 lease solely by reason of the failure of such contract or lease to comply with any other law of the
200 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
201 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
202 such contract or lease.