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HOUSE BILL NO. 1248

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend and reenact §§ 6.2-1500, 6.2-1501, 6.2-1503, 6.2-1505, 6.2-1506, 6.2-1507, 6.2-1509, 6.2-1511, 6.2-1517, 6.2-1518, 6.2-1523, 6.2-1524, 6.2-1526 through 6.2-1530, 6.2-1532 through 6.2-1535, 6.2-1537, and 6.2-1543 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 6.2-1505.1, 6.2-1508.1, 6.2-1513.1, 6.2-1534.1, and 6.2-1537.1; and to repeal §§ 6.2-1502, 6.2-1508, 6.2-1512, 6.2-1513, 6.2-1516, 6.2-1519, 6.2-1531, 6.2-1538, and 6.2-1539 of the Code of Virginia, relating to the powers and duties of the State Corporation Commission regarding the licensure and administration of consumer finance companies.*

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1500, 6.2-1501, 6.2-1503, 6.2-1505, 6.2-1506, 6.2-1507, 6.2-1509, 6.2-1511, 6.2-1517, 6.2-1518, 6.2-1523, 6.2-1524, 6.2-1526 through 6.2-1530, 6.2-1532 through 6.2-1535, 6.2-1537, and 6.2-1543 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.2-1505.1, 6.2-1508.1, 6.2-1513.1, 6.2-1534.1, and 6.2-1537.1 as follows:

§ 6.2-1500. Definitions.

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

"Affiliate," for purposes of § 6.2-1503, means an entity of which 25 percent or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Arranging or brokering" means, with respect to consumer finance loans, directly or indirectly negotiating, placing, or finding consumer finance loans for others, or offering to negotiate, place, or find consumer finance loans for others. "Arranging or brokering" shall not include lead generation.

"Consumer finance company" means a person engaged in the business of making consumer finance loans to individuals for personal, family, household, or other nonbusiness purposes.

"License" means a single license issued under this chapter with respect to a single place of business.

"Consumer finance loan" means a loan made or credit extended to an individual for a personal, family, household, or other nonbusiness purpose.

"Depository institution" means a bank, savings institution, or credit union.

"Lead generation" means engaging in a form of marketing activity in which a person collects and transmits a prospective borrower's contact information and minimal information pertaining to potential consumer finance loans. A person does not engage in lead generation if such person collects a prospective borrower's social security number or sufficient personal information to enable a consumer finance company to evaluate, in whole or in part, the prospective borrower's creditworthiness.

"Licensee" means a consumer finance company to which ~~one or more~~ licenses have a license has been issued by the Commission pursuant to this chapter.

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

"Subsidiary," for purposes of § 6.2-1503, means an entity of which 25 percent or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

§ 6.2-1501. License required to engage in making consumer finance loans; exceptions; attempts to evade application of chapter; arranging or brokering consumer finance loans.

A. No person shall engage in the business of making consumer finance loans to individuals for personal, family, household, or other nonbusiness purposes, any consumer residing in the Commonwealth and charge, contract for, or receive, directly or indirectly, on or in connection with any consumer finance loan interest, charges, compensation, consideration, or expense that in the aggregate is greater than the interest permitted by ~~§ 6.2-303~~ 12 percent per year, whether or not the person has a location in the Commonwealth, except as provided in and authorized by accordance with the provisions of 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 The prohibition in subsection A shall not be construed to prevent any person, other than a licensee, from making a loan or extending

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59 *credit in accordance with the following laws:*

- 60 1. ~~Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.), relating to payday lenders;~~
61 2. ~~Making a mortgage loan pursuant to §§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328 in any~~
62 ~~principal amount Article 4 (§ 6.2-309 et seq.) of Chapter 3, relating to mortgage loans, open-end credit~~
63 ~~plans, and certain other types of loans or extensions of credit, including those made by depository~~
64 ~~institutions and sellers of goods or services; or~~
65 3. ~~Extending credit as described in § 6.2-312 in any amount Chapter 22 (§ 6.2-2200 et seq.), relating~~
66 ~~to motor vehicle title lenders;~~
67 4. ~~Section 36-55.31, relating to loans by the Virginia Housing Development Authority;~~
68 5. ~~Section 38.2-1806, relating to interest chargeable by insurance agents;~~
69 6. ~~Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by insurance~~
70 ~~premium finance companies;~~
71 7. ~~Section 54.1-4008, relating to interest chargeable by pawnbrokers;~~
72 8. ~~Section 58.1-3018, relating to interest and origination fees payable under third-party tax payment~~
73 ~~agreements; or~~
74 9. ~~Any other laws of the Commonwealth that permit interest to be charged at an annual rate that~~
75 ~~exceeds 12 percent.~~

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

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

85 D. ~~No person shall engage in the business of arranging or brokering consumer finance loans for any~~
86 ~~consumer residing in the Commonwealth, whether or not the person has an office or conducts business~~
87 ~~at a location in the Commonwealth.~~

88 E. ~~The provisions of this chapter, including specifically the licensure requirement in subsection A,~~
89 ~~shall apply to persons making loans over the Internet to residents of the Commonwealth, whether or not~~
90 ~~the person making the loans maintains a physical presence in the Commonwealth.~~

91 F. ~~Notwithstanding any provision of this title to the contrary, a licensee that makes a motor vehicle~~
92 ~~title loan as defined in § 6.2-2200 shall make such loan in accordance with the provisions of this~~
93 ~~chapter relating to consumer finance loans. This subsection shall not apply to a licensee under this~~
94 ~~chapter that elects to become licensed under Chapter 22 (§ 6.2-2200 et seq.).~~

95 **§ 6.2-1503. Applicability of chapter.**

96 ~~This~~ The provisions of this chapter shall not apply to:

- 97 1. ~~Any business transacted by any person under the authority of and as permitted by any law of the~~
98 ~~Commonwealth or of the United States relating to banks, savings institutions, trust companies, building~~
99 ~~and loan associations, industrial loan associations, or credit unions;~~
100 2. ~~Any bona fide pawnbroking business transacted under a pawnbroker's license; or~~
101 3. ~~Any person operating in accordance with the specific provisions of any other provision of this title~~
102 ~~currently in effect or hereafter enacted any depository institution or any subsidiary or affiliate thereof~~
103 ~~that does not elect to become licensed under this chapter. Electing to become licensed under this~~
104 ~~chapter, however, shall constitute a waiver of the benefit of any and all laws of the Commonwealth and~~
105 ~~other states, territories, possessions, and districts of the United States and federal laws preemptive of, or~~
106 ~~inconsistent with, the provisions of this chapter.~~

107 **§ 6.2-1505. Application for license; application fee; investigation of applicants.**

108 A. Application for a license to make *consumer finance* loans under this chapter shall be in writing,
109 under oath, and in the form prescribed by the Commission.

110 B. The application shall contain:

- 111 1. The name and address of the applicant;
112 2. If the applicant is a partnership or association, the name and address of each partner or member of
113 the partnership or association;
114 3. If the applicant is a corporation or limited liability company, the name and address of each senior
115 officer, director, member, registered agent, and principal;
116 4. If the applicant is a business trust, the name and address of each trustee and beneficiary;
117 5. The address, ~~with street and number, if any,~~ *addresses of the locations* where the business is to be
118 conducted; and
119 6. Such other information as may be required by the Commission.
120 C. The application shall be accompanied by payment of an application fee of \$500.

§ 6.2-1505.1. Bond required.

An application for a license under this chapter shall be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute such bond in the Commonwealth, in the sum of \$25,000 per location, or such greater sum as the Commission may require, but not to exceed \$500,000. The form of such bond shall be approved by the Commission. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or licensee performing all written agreements with borrowers or prospective borrowers, correctly and accurately accounting for all funds received by it in its licensed business, and conducting its licensed business in conformity with this chapter and all applicable laws. Any person who may be damaged by noncompliance of the licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

§ 6.2-1506. Investigation of application; review period.

A. Upon the filing of the application and the payment of the application fee, the Commission The Commissioner shall make such investigation relative to the application and the requirements provided for in § 6.2-1507 as it deems appropriate as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations adopted thereunder.

B. The Commission shall grant or deny each application for a license within 60 days from the date the application, together with all required information and the application fee, is filed unless the period is extended by order of the Commission that recites the reasons for the extension.

§ 6.2-1507. Qualifications.

A. The Upon the filing and investigation of an application for a license, the Commission shall issue and deliver to the applicant a license to make consumer finance loans in accordance with the provisions of this chapter at the location in the Commonwealth locations specified in the application if it finds:

1. That the financial responsibility, experience, character, and general fitness of the applicant and its members, senior officers, directors, and principals are such as to command the confidence of the public and to warrant belief that this business will be operated lawfully, honestly, fairly and, efficiently within the purpose of this chapter, in the public interest, and in accordance with law;

2. That the applicant has available, for the operation of the business at the specified location, unencumbered liquid assets of at least \$50,000 if the specified location is in a locality with a population of more than 20,000, or of at least \$25,000 if the per location is not in a locality with a population of more than 20,000; and

3. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by § provisions of §§ 6.2-1505 and 6.2-1505.1.

B. If the Commission fails to make the findings required by subdivisions A 1, 2, and 3, it shall deny the application for a license and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

B. Notwithstanding the provisions of subsection A, if the applicant has an existing license at another location in the Commonwealth, the Commission shall issue and deliver to the applicant a license to make loans in accordance with the provisions of this chapter at the location specified in the application if it finds:

1. That the general fitness of the licensee is such as to command the confidence of the public and to warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within the purpose of this chapter; and

2. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by § 6.2-1505.

If the Commission fails to make the findings required by subdivisions 1 and 2, it shall deny the application for a license.

C. If the Commission denies an application for a license, it shall notify the applicant of the denial. The Commission shall retain the application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

§ 6.2-1508.1. Additional offices; relocation of offices.

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 does not have the required liquid assets or surety bond, or has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been sent by the Commission to the applicant within 30 days of the date the application is received by the Commission.

§ 6.2-1509. Contents, posting, transfer, and duration of license.

182 A. Each license shall contain:

183 1. ~~The address~~ *State the address* at which the business is to be conducted; *and*

184 2. ~~The full State~~ *fully the name* of the licensee or, if the licensee is a partnership or association, the
185 names of the partners or members; and

186 3. If the licensee is a corporation, the date and place of incorporation as well as any fictitious name
187 by which the licensee is operating its business.

188 B. The licensee shall ~~keep post~~ the license conspicuously posted prominently in its each approved
189 place of business of the licensee and on its website.

190 C. ~~The license~~ Licenses shall not be transferable or assignable, by operation of law or otherwise.

191 D. Each license shall remain in full force and effect until surrendered, revoked, or suspended as
192 provided by this chapter or by lawful order of the Commission. *The surrender, revocation, or*
193 *suspension of a license shall not affect any preexisting legal right or obligation of the licensee.*

194 **§ 6.2-1511. Suspension or revocation of license.**

195 A. The Commission, upon 10 days' written notice to the licensee stating the contemplated action and
196 in general the grounds therefor, and upon reasonable opportunity to be heard, may suspend or revoke
197 any license issued hereunder if it finds that under this chapter upon any of the following grounds:

198 1. ~~The licensee has failed~~ *Failure* to pay the annual any fee assessed pursuant to §- 6.2-1532,
199 assessment, or expense imposed by this chapter;

200 2. Failure to comply with any order of the Commission lawfully made pursuant to and within the
201 authority of this chapter;

202 2. The licensee, either knowingly or without the exercise of due care to prevent the same, has
203 violated any 3. Any violation of a provision of this chapter or any regulation lawfully made adopted by
204 the Commission under § 6.2-1535, or violation of any other law or regulation applicable to the conduct
205 of the licensee's business; or

206 3. 4. A course of conduct consisting of the failure to perform written agreements with borrowers;

207 5. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

208 6. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;

209 7. Entry of a federal or state administrative order against the licensee for violation of any law or
210 any regulation applicable to the conduct of his business;

211 8. Refusal to permit an investigation or examination by the Commission; or

212 9. Any fact or condition exists that clearly would have warranted the Commission to refuse originally
213 to issue the ground for denial of a license under this chapter.

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

216 **§ 6.2-1513.1. Procedure for revocation or suspension of license; notice of proposed revocation or**
217 **suspension.**

218 The Commission shall not revoke or suspend the license of any person licensed under this chapter
219 upon any of the grounds set forth in § 6.2-1511 until it has given the licensee 21 days' notice in writing
220 of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and
221 be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or
222 other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the
223 contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file
224 with the Clerk of the Commission a written request for a hearing. If a hearing is requested, the
225 Commission shall not suspend or revoke the license except on the basis of findings made at such
226 hearing. The hearing shall be conducted in accordance with the Commission's Rules.

227 **§ 6.2-1517. Conducting business in accordance with license.**

228 A. Not more than one place of business shall be maintained under the same license.

229 B. The Commission may issue more than one license to the same licensee upon compliance, as to
230 each additional license, with all applicable provisions of this chapter governing issuance of a single
231 license.

232 C. ~~No~~ A licensee shall not use any name other than the legal name or fictitious name set forth on
233 the license issued by the Commission. A licensee shall not conduct the business of making consumer
234 finance loans provided for by this chapter under any other name or at within any place of business
235 within the Commonwealth other than as is designated in the license issued by the Commission.

236 **§ 6.2-1518. Other business.**

237 A. A licensee shall not conduct the business of making consumer finance loans under this chapter
238 within at any office, suite, room, or other place of business in which where any other business is
239 solicited or engaged in, or in association or conjunction with any conducted except the offering and
240 selling of credit life insurance or credit accident and sickness insurance in accordance with the
241 provisions of Title 38.2 or such other business, unless the licensee has first given 30 days' written notice
242 to the Commission as the Commission determines should be permitted, and subject to such conditions as
243 the Commission deems necessary and in the public interest. Every notice shall be accompanied by 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 fee of \$300, and provision of such information as the Commission may deem pertinent.

B. Upon receipt of such notice and fee, the Commission may require the licensee to provide information relating to the other business, including how and by whom it will be conducted. The Commission shall grant or deny each application submitted under subsection A within 60 days from the date the application, together with all required information and the application fee, is filed unless the period is extended by order of the Commission that recites the reasons for the extension. The Commission shall have the authority to investigate the conduct of such other businesses in the licensee's place of business.

C. The provisions of this section shall not affect (i) any regulations adopted by the Commission prior to July 1, 2000, governing the conduct of other businesses in the place of business designated in a license or (ii) the authority of the Commission to adopt such regulations as the Commission deems necessary.

D. If the Commission finds that the other business (i) is of such a nature or is being conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of this chapter or regulations adopted pursuant to it; (ii) is contrary to the public interest; or (iii) is otherwise being conducted in an unlawful manner, the Commission may, after notice to the licensee and an opportunity for a hearing, prohibit or limit the conduct of such other business in the place of business designated in the license.

E. Any authority permission granted under this section shall remain in full force and effect until surrendered, or until revoked or suspended by the Commission as provided in this chapter or by lawful order of the Commission.

F. This section shall not apply to any other business that is transacted solely with persons residing outside of the Commonwealth.

§ 6.2-1523. Additional charges prohibited; exceptions.

In addition to the interest, late charges, and processing fee permitted under § 6.2-1520, no further or other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, or other thing or otherwise shall be directly or indirectly charged, contracted for, collected, or received, except:

1. Insurance premiums actually paid out by the licensee to any insurance company or agent duly authorized to do business in the Commonwealth or another state for insurance for the protection and benefit of the borrower written in connection with any loan;

2. The actual cost of recordation fees or, on loans over \$100, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of not recording any instrument securing the loan; and

3. A handling fee not to exceed \$15 for each check returned to the licensee because the drawer had no account or insufficient funds in the payor bank.

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

A. Each licensee shall maintain at all times the minimum *unencumbered liquid* 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 § 6.2-1507.

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 Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026).

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

305 full installments. The licensee may apply the payment first to any amounts that are due and unpaid at
306 the time of such payment.

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

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

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

318 J. A licensee shall not take any note, promise to pay, or instrument of security in which blanks are
319 left to be filled in after execution, or that does not give the amount of the loan, a clear description of
320 the installment payments required, and the rate of interest charged. A licensee may also include the
321 disclosures required by Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026) in the
322 note, promise to pay, or instrument of security.

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

329 **§ 6.2-1526. Wage assignments.**

330 A. A valid assignment or order for the payment of future salary, wages, commissions, or other
331 compensation for services may be given as security for a loan made by any licensee, notwithstanding the
332 provisions of any other law to the contrary.

333 B. No assignment of, or order for payment of, any salary, wages, commissions, or other
334 compensation for services, earned or to be earned, given to secure any loan made by any licensee shall
335 be valid unless:

336 1. ~~The amount of the loan is paid to the borrower simultaneously with its execution; and~~

337 2. ~~The~~ the assignment or order is in writing, signed in person by the borrower, and not by an
338 attorney, or if the borrower is married unless it is signed in person by both ~~husband and wife~~ spouses,
339 and not by an attorney. Written assent of a spouse shall not be required when ~~husband and wife~~ the
340 spouses have been living separate and apart for a period of at least five months prior to the giving of
341 the assignment or order. The provisions of this section are in addition to, and not in derogation of, the
342 general statutes pertaining to the subject.

343 C. Under the assignment or order, an amount equal to not more than 10 percent of the borrower's
344 salary, wages, commissions, or other compensation for services shall be collectible from the employer of
345 the borrower by the licensee at the time of each payment to the borrower of the salary, wages,
346 commission, or other compensation for services, from the time that a copy of the assignment, verified
347 by the oath of the licensee or his agent, together with a similarly verified statement of the amount
348 unpaid upon the loan and a printed copy of this section, is served upon the employer.

349 **§ 6.2-1527. Liens on household furniture.**

350 No chattel mortgage or other lien on household furniture then in the possession and use of the
351 borrower given to secure any loan made by a licensee shall be valid unless it *complies with applicable*
352 *federal law* and is in writing, signed ~~in person~~ by the borrower, and not by an attorney, or if the
353 borrower is married unless it is signed ~~in person~~ by both ~~husband and wife~~ spouses, and not by an
354 attorney. Written assent of a spouse shall not be required when a ~~husband and wife~~ the spouses have
355 been living separate and apart for a period of at least five months prior to the giving of the mortgage or
356 lien.

357 **§ 6.2-1528. Exemptions unimpaired.**

358 A. Nothing in this chapter shall have the effect of impairing any rights on the part of anyone as to
359 exemptions under the poor debtors law or under any other applicable exemption law now in effect or
360 hereafter enacted.

361 B. The provisions of ~~subdivision~~ subsection B 2 of § 6.2-1526 and § 6.2-1527 are in addition to, and
362 not in derogation of, the general statutes pertaining to the subject.

363 **§ 6.2-1529. Collection of loans made outside Commonwealth.**

364 A. No loan made outside the Commonwealth for which greater rates of interest, consideration or
365 charges than are permitted by the law applicable to such loan in the state in which the loan was made,
366 have been charged, contracted for, or received shall be collected in the Commonwealth. Every person in

any way participating in an effort to enforce the collection of such loan in the Commonwealth shall be subject to the provisions of this chapter.

B. The prohibition in subsection A shall not apply to loans that are made by a licensee in accordance with the provisions of this chapter.

§ 6.2-1530. Investigations and examinations.

A. For the purpose of discovering violations of this chapter or securing information lawfully required under it, the Commission, by its designated officers and employees, may at any time as often as it deems necessary investigate and examine, insofar as they pertain to any business for which a license is required by this chapter, the loans, books, accounts, affairs, business, premises, and records of any person who:

1. Is engaged, or appears to the Commission to be engaged, in a business for which the person is licensed or required to be licensed and supervised under this chapter;

2. Advertises for, solicits, or holds itself out as willing to make loans subject to the provisions of this chapter; or

3. The Commission has reason to believe is violating any provision of this chapter, whether such person shall act or claim to act under or without the authority of this chapter, or as principal, agent, broker, or otherwise or any person who may be violating § 6.2-1501. Examinations of licensees shall be conducted at least once in each three-year period.

B. In furtherance the course of the such an investigation the Commission shall:

1. Have and be given free or examination, the owners, members, officers, directors, partners, trustees, beneficiaries, and employees of such person being investigated or examined, upon demand of the person making such investigation or examination, shall afford full access to the offices, places of business, books, papers, accounts, records, files, safes, and vaults of all such persons; and

2. Have and information that the person making such investigation or examination deems necessary. Any person making such investigation or examination shall have authority to compel the production of papers and objects of all kinds, to require attendance of witnesses, to administer oaths, and to examine under oath any person whose testimony may be required relative to any such loans or business or to the subject matter of the investigation examination or hearing all of the aforementioned persons.

C. Before making an investigation as provided for in this section as to any person who is neither licensed nor an applicant for a license under this chapter, an order shall be entered by the Commission. The order shall specifically direct the investigation to be made, command submission by the person whose business is to be investigated, and set forth all other details the Commission finds necessary. The Commission shall not enter such an order except upon (i) at least one affidavit, which may be given by an employee of the Commission or by any other person; (ii) documentary data; (iii) admissions of the person to be investigated; or (iv) any combination of the foregoing, satisfactorily establishing, prima facie, facts sufficient to warrant the investigation provided for by subsection A. If the person involved consents to the investigation, the foregoing requirements may be dispensed with and the investigation may be made upon direction of the Commission or the Commissioner.

D. No criminal prosecution or action for the imposition of any penalty or forfeiture provided for by this chapter may be maintained against a person not a licensee or an applicant for a license under this chapter who is investigated following entry of an order as provided in subsection C. This subsection shall not:

1. Prevent prosecution for the violation of any other criminal law or of any other law providing for penalty or forfeiture; and

2. Provide immunity from prosecution for any officer, agent, or employee of the person whose business is investigated.

E. If the Commission compels a person not a licensee or an applicant for a license under this chapter to give verbal testimony, the person so compelled to testify shall not be subject to criminal prosecution or the imposition of any penalty or forfeiture in connection with the subject matter as to which such testimony is compelled.

F. The immunities provided pursuant to subsections D and E shall not impair (i) any civil right of action, not involving penalty or forfeiture, of any person and (ii) the authority of the Attorney General to institute and prosecute a proceeding for injunctive relief as provided for in § 6.2-1537. Any facts discovered and disclosures made in the course of any investigation following entry of an order as provided in subsection C or verbal testimony compelled as provided in subsection E shall be available in any proceeding involving any civil right of action or for obtaining an injunction under this chapter against the person so investigated or so compelled to testify.

G. A licensee shall furnish promptly by mail or otherwise such facts and statements in connection with its business transacted pursuant to this chapter that the Commission may request from time to time.

§ 6.2-1532. Fees for examination, supervision and regulation.

A. To defray the costs of their examination, supervision, and regulation of licensed consumer finance

428 companies, every licensee *under this chapter* shall pay an annual fee to be calculated in accordance with
429 a schedule set by the Commission. ~~The~~ *Through December 31, 2018, the* schedule shall bear a
430 reasonable relationship to the total assets, including loans under this chapter and other loans, of various
431 licensees and their affiliates doing business in ~~authorized~~ *approved* consumer finance company offices,
432 to the actual cost of their respective examinations, and to other factors relating to their supervision and
433 regulation. *Beginning January 1, 2019, the schedule shall bear a reasonable relationship to the business*
434 *volume of such licensees, the actual cost of their respective examinations, and other factors relating to*
435 *their supervision and regulation.* Fees shall be assessed pursuant to this section on or before May 1 of
436 every calendar year through 2019, and on or before September 15 of every calendar year thereafter,
437 based on the schedule in effect for the preceding calendar year. All such fees shall be paid by the
438 licensees to the State Treasurer on or before June 1 following each assessment made through 2019, and
439 on or before October 15 following each assessment made in 2020 and thereafter.

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

446 **§ 6.2-1533. Books, accounts, and records; pledge or deposit of notes and securities.**

447 A. Each licensee shall maintain in its ~~authorized consumer finance company office, or at such other~~
448 ~~place within or outside the Commonwealth as the Commission may approve,~~ *approved offices* such
449 books, accounts, and records as the Commission may reasonably require to determine whether the
450 licensee is complying with the provisions of this chapter and with regulations adopted in furtherance
451 thereof. Such books, accounts, and records shall be maintained in paper form or, with the Commission's
452 approval, in any electronic format available for examination on the basis of computer printed
453 reproduction, video display, or other medium. Any books, accounts, and records not maintained in paper
454 form shall be convertible into clearly legible paper documents within a reasonable time. Every licensee
455 shall preserve the books, accounts, and *Such records relating to consumer finance loans shall be*
456 *retained for at least three years after making the final entry payment is made on any consumer finance*
457 *loan recorded therein. Such books, accounts, and records shall be maintained apart and separate from*
458 *any other business in which the licensee is involved.*

459 B. If any note or security taken under this chapter shall be pledged as collateral or deposited within
460 or outside the Commonwealth, the licensee shall notify promptly the Commission in writing of the
461 identity and location of the person holding such paper. Prior approval of the Commission shall not be
462 required. Any pledged or deposited paper shall be subject to examination by the Commission in
463 accordance with subsection C as fully as if maintained in an approved location.

464 C. All books, accounts, and records shall be subject to examination by the Commission. If such
465 books, accounts, and records are examined outside the Commonwealth, all reasonable costs associated
466 with such examination shall be paid by the licensee.

467 **§ 6.2-1534. Annual reports.**

468 Each licensee shall annually, on or before April 1, file a report with the Commission giving
469 *Commissioner* containing such relevant information as *the Commissioner* may reasonably be required
470 require concerning its business and operations during the preceding calendar year as to each ~~authorized~~
471 *approved* consumer finance company office. Reports shall be made under oath and shall be in the form
472 prescribed by the ~~Commission~~ *Commissioner*.

473 **§ 6.2-1534.1. Other reporting requirements.**

474 A. A licensee shall file a report with the Commissioner within 15 days following the occurrence of
475 any of the following:

- 476 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
- 477 2. The institution of administrative or regulatory proceedings against the licensee by any
478 governmental authority;
- 479 3. Any felony indictments of the licensee or any of its members, partners, directors, officers, or
480 principals;
- 481 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or
482 principals; and
- 483 5. Such other event as the Commission may prescribe by regulation.

484 B. The report required by subsection A shall be in writing and describe the event and its expected
485 impact on the business of the licensee.

486 C. Every licensee shall notify the Commissioner, in writing and within 10 days, of (i) the closing of
487 any business location and (ii) the name, address, and position of each new senior officer, member,
488 partner, or director. The licensee also shall provide such other information with respect to any such
489 event as the Commissioner may reasonably require.

§ 6.2-1535. Regulations.

The Commission shall adopt such 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 Commission's Rules. A copy of each regulation and order adopting it shall be ~~mailed~~ *sent* to all licensees at least 10 days before the effective date thereof.

§ 6.2-1537. Authority of Attorney General; impoundment of property and receivership.

A. Whenever the Attorney General has reasonable cause to believe that (i) any person, not licensed under this chapter, is violating, has violated, is threatening to violate or intends to violate any provision of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter and (ii) the facts justify it, the Attorney General shall institute and prosecute a lawsuit for monetary or injunctive relief or both in the Circuit Court of the City of Richmond, in the name of the Commonwealth. The court may grant monetary relief or may enjoin and restrain or both any such person from engaging in or continuing any such violation or from doing any act or acts in furtherance thereof. In any such suit a decree or order may be entered awarding such monetary relief or preliminary or final injunctive relief as may be deemed proper.

B. In addition to all other means provided by law for the enforcement of an award of monetary relief, a temporary restraining order, temporary injunction, or final injunction, the court may impound, and appoint a receiver for, (i) the property and business of the defendant, including books, papers, documents, and records pertaining thereto, (ii) so much thereof as the court deems reasonably necessary to prevent further violation of this chapter through or by means of the use of such property and business, or (iii) so much thereof as is necessary to identify borrowers who have been damaged and the amount of their damages, and to refund the amount of any such damages to the borrowers pursuant to subsection C. The receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, payment of debts and liquidation of the property and business as from time to time are conferred upon him by the court.

C. The Attorney General may seek and the circuit court may order or decree such other relief allowed by law, including restitution to the extent available to borrowers under § 6.2-1541.

D. In any action brought by the Attorney General by virtue of the authority granted in this section, the Attorney General shall be entitled to seek attorney fees and costs.

E. Nothing in this section shall be construed to preclude any person who suffers a loss as a result of a violation of § 6.2-1501 from maintaining an action to recover damages or restitution under § 6.2-1541.

F. No individual shall be entitled to refuse to testify in a suit brought under this section because the person's testimony would tend to incriminate such person or subject the individual to penalty or forfeiture. If called to testify by the Commonwealth or by the court trying the case, the individual may not thereafter be prosecuted for any crime or subjected to any penalty or forfeiture growing out of the transaction concerning which the individual testifies.

G. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply, mutatis mutandis, to civil investigative demands issued pursuant to this section.

§ 6.2-1537.1. 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 a licensee'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. 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.

§ 6.2-1543. Civil penalties.

The Commission may impose a civil penalty not exceeding ~~\$10,000~~ *\$1,000* upon any ~~licensee~~ *person* who it determines, in proceedings conducted in accordance with the Commission's Rules, has violated any provision of this chapter ~~or of, any regulation or order of adopted by the Commission pursuant thereto, either knowingly or without the exercise of due care to prevent the violation or any other law or regulation applicable to the conduct of the person's business. In any proceeding under this section, a~~

551 licensee shall not be penalized for any act or omission done in reasonable reliance on any regulation,
552 order, letter, or other written directive or request of the Commission. *For the purposes of this section,*
553 *each separate violation shall be subject to the civil penalty herein prescribed, and in the case of a*
554 *violation of § 6.2-1501, each loan made, arranged, or brokered shall constitute a separate violation.*

555 2. That §§ 6.2-1502, 6.2-1508, 6.2-1512, 6.2-1513, 6.2-1516, 6.2-1519, 6.2-1531, 6.2-1538, and
556 6.2-1539 of the Code of Virginia are repealed.

557 3. That any person not licensed under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of
558 Virginia who will be required to be licensed when the provisions of the first and second
559 enactments of this act become effective shall apply for a license on or before October 1, 2018. Any
560 license issued by the State Corporation Commission to any such person prior to January 1, 2019,
561 shall become effective on January 1, 2019.

562 4. That every person licensed under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of
563 Virginia prior to January 1, 2019, shall, on or before January 1, 2019, (i) file a surety bond with
564 the Commissioner of Financial Institutions that meets the requirements of § 6.2-1505.1 as added by
565 this act and (ii) submit proof to the Commissioner of Financial Institutions that such person has
566 available for the operation of its business the unencumbered liquid assets prescribed by § 6.2-1507,
567 as amended by this act.

568 5. That the provisions of the first and second enactments of this act shall become effective on
569 January 1, 2019.