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HOUSE BILL NO. 47

Offered January 10, 2018

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A BILL to amend and reenact §§ 6.2-303, 6.2-312, 6.2-1501, 6.2-2107, and 59.1-200 of the Code of Virginia; to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 18.1, consisting of sections numbered 6.2-1830 through 6.2-1838; and to repeal Chapter 18 (§§ 6.2-1800 through 6.2-1829) of Title 6.2 of the Code of Virginia, relating to payday lending; prohibition; penalties.

Patrons—Krizek, Ayala, Boysko, Carroll Foy, Carter, Convirs-Fowler, Delaney, Guzman, Hope, Lindsey, Lopez, McQuinn, Plum, Rasoul, Rodman, Simon, Turpin and Tyler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-303, 6.2-312, 6.2-1501, 6.2-2107, 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 18.1, consisting of sections numbered 6.2-1830 through 6.2-1838, as follows:

§ 6.2-303. Contracts for more than legal rate of interest.

A. Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan at a rate that exceeds 12 percent per year.

B. Laws that permit payment of interest at a rate that exceeds 12 percent per year are set out, without limitation, in:

1. Article 4 (§ 6.2-309 et seq.) of this chapter;
2. Chapter 15 (§ 6.2-1500 et seq.), relating to powers of consumer finance companies;
3. Chapter 18 (§ 6.2-1800 et seq.), relating to payday lenders;
4. Chapter 22 (§ 6.2-2200 et seq.), relating to interest chargeable by motor vehicle title lenders;
5. 4. § 36-55.31, relating to loans by the Virginia Housing Development Authority;
6. 5. § 38.2-1806, relating to interest chargeable by insurance agents;
7. 6. Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by premium finance companies;
8. 7. § 54.1-4008, relating to interest chargeable by pawnbrokers; and
9. 8. § 58.1-3018, relating to interest and origination fees payable under third-party tax payment agreements.

C. In the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.

D. Any provision of this chapter that provides that a loan or extension of credit may be enforced as agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of other loan fees and charges permitted by law, in addition to the stated interest rate. Such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

§ 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, Chapter 18.1 (§ 6.2-1830 et seq.), a seller or lender engaged in extending credit under an open-end credit plan may impose, on credit extended under the plan, finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the creditor and the obligor, if under the plan a finance charge is imposed upon the obligor if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date, which shall be at least 25 days later than the prior billing date.

B. Notwithstanding the provisions of § 6.2-327 and subject to the provisions of § 8.9A-204.1, any loan made under this section may be secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one- to four-family dwelling units.

C. (i) A licensee, as defined in § 6.2-1800, shall not engage in the extension of credit under an open-end credit plan described in this section and, (ii) a third party shall not engage in the extension of credit under an open-end credit plan described in this section at any office, suite, room, or place of business where a licensee conducts the business of making payday loans. 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,

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58 as such term is defined in § 6.2-2200, unless such loan or extension of credit is made in accordance
59 with, or is exempt from, the provisions of Chapter 22 (§ 6.2-2200 et seq.).

60 E. If a licensee, as defined in ~~§ 6.2-1800~~, surrenders its license under Chapter 18 (~~§ 6.2-1800 et seq.~~)
61 or has its license revoked, and if following such surrender or revocation of its license the former
62 licensee engages in the extension of credit under an open-end credit plan as described in this section,
63 then the Commission shall not issue to such former licensee, or to any affiliate of the former licensee, a
64 license under Chapter 18 (~~§ 6.2-1800 et seq.~~) for a period of 10 years from the date such license is
65 surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a business
66 entity that owns or controls, is owned or controlled by, or is under common ownership or control with,
67 the former licensee.

68 **§ 6.2-1501. Compliance with chapter; license required; attempts to evade application of chapter.**

69 A. No person shall engage in the business of making loans to individuals for personal, family,
70 household, or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on
71 or in connection with any loan interest, charges, compensation, consideration, or expense that in the
72 aggregate is greater than the interest permitted by § 6.2-303, except as provided in and authorized by
73 this chapter or Chapter 22 (§ 6.2-2200 et seq.) and without first having obtained a license from the
74 Commission.

75 B. Subject to subdivision C 3 and subsection C of § 6.2-1524, the prohibition in subsection A shall
76 not be construed to prevent any person, other than a licensee, from:

77 1. ~~Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.);~~

78 2. Making a mortgage loan pursuant to §§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328 in any
79 principal amount; or

80 3. Extending credit as described in § 6.2-312 in any amount.

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

83 1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or
84 otherwise; (ii) money; (iii) goods; or (iv) things in action;

85 2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or
86 purchase, whether real or pretended; receiving or charging compensation for goods or services, whether
87 or not sold, delivered, or provided; and

88 3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or
89 activity of a third person, whether real or fictitious.

90 **CHAPTER 18.1.**

91 **PAYDAY LENDING PROHIBITION ACT.**

92 **§ 6.2-1830. Payday lending prohibited.**

93 A. *No person shall engage in any business that consists in whole or in part of making, offering,*
94 *arranging, or acting as an agent in the making of loans on the security of (i) a check or other draft*
95 *drawn on the account of an individual at a bank, savings institution, or credit union, (ii) any form of*
96 *assignment of an interest in the account of an individual at a bank, savings institution, or credit union,*
97 *or (iii) any form of assignment of income payable to an individual, other than loans based on income*
98 *tax refunds, unless the person is:*

99 1. *A lender subject to the general supervision of or subject to examination by the Commissioner*
100 *pursuant to Chapter 7 (§ 6.2-700 et seq.), 8 (§ 6.2-800 et seq.), 11 (§ 6.2-1100 et seq.), 13 (§ 6.2-1300*
101 *et seq.), or 14 (§ 6.2-1400 et seq.); or*

102 2. *A lender authorized to engage in business as a bank, savings institution, or credit union under the*
103 *laws of the United States or any state, and subsidiaries and affiliates of such a bank, savings institution,*
104 *or credit union if the subsidiary or affiliate is subject to the general supervision or regulation of or*
105 *subject to audit or examination by a regulatory body or agency of the United States or any state.*

106 B. *It is a violation of this section to purport to be the agent of an entity that is permitted to make*
107 *such loans if the purported agent, instead of the entity, holds, acquires, or maintains the predominant*
108 *economic interest in the revenues generated by the loan.*

109 C. *No loan transaction shall include the deferred presentment of a check or other negotiable*
110 *instrument; the selling or providing of an item, service, or commodity incidental to the advance of*
111 *funds; or any other element introduced to disguise the true nature of the transaction as an extension of*
112 *credit.*

113 D. *This section shall not apply to persons who do not hold themselves out to the public as being in*
114 *the business of making loans.*

115 **§ 6.2-1831. Criminal penalty.**

116 *Any person who makes a loan in violation of § 6.2-1830 is guilty of a Class 1 misdemeanor.*

117 **§ 6.2-1832. Regulations.**

118 *The Commission may adopt such regulations as it deems appropriate to effect the purposes of this*
119 *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.

§ 6.2-1833. Cease and desist orders.

If the Commission determines that any person has violated any provision of this chapter or any regulation adopted hereunder, 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 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 on the basis of findings made at such hearing. Such hearing shall be conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

§ 6.2-1834. Civil penalties.

In addition to the authority conferred under § 6.2-1833, the Commission may impose a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any of the provisions of this chapter, the regulations adopted by the Commission pursuant thereto, or 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 civil penalty herein prescribed, and each loan made or arranged shall constitute a separate violation.

§ 6.2-1835. 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.

§ 6.2-1836. Application of chapter to Internet loans.

The provisions of this chapter shall apply to persons making loans that violate § 6.2-1830 over the Internet to Virginia residents, whether or not the person making the loan maintains a physical presence in the Commonwealth.

§ 6.2-1837. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation of, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. Upon such referral, the Attorney General is authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

B. Upon such referral by the Commission, the Attorney General may also seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

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

§ 6.2-1838. 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.).

§ 6.2-2107. Prohibited practices.

No person required to be registered under this chapter shall:

1. Engage in the business of making loans of credit, goods, or things; or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items without meeting the requirements of the laws of the Commonwealth;

2. Cash post-dated items, other than government or payroll checks;

3. Use, or cause to be published or disseminated, any advertisement or communication that (i) contains any false, misleading, or deceptive statement or representation or (ii) identifies the person by any name other than the name or trade name set forth on the registration;

4. Engage in unfair, deceptive, or fraudulent practices; or

5. Make loans unless such person is licensed under, and the loans are made in accordance with, Chapter 18 (§ 6.2-1800 et seq.).

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer

181 transaction are hereby declared unlawful:

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

197 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or

198 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms

199 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph

200 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such

201 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or

202 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement

203 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

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

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

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

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

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

- 218 13a. Failing to provide to a consumer, or failing to use or include in any written document or
- 219 material provided to or executed by a consumer, in connection with a consumer transaction any
- 220 statement, disclosure, notice, or other information however characterized when the supplier is required
- 221 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
- 222 information in connection with the consumer transaction;

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

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

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

- 228 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
- 229 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
- 230 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
- 231 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
- 232 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
- 233 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
- 234 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
- 235 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
- 236 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
- 237 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
- 238 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
- 239 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
- 240 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
- 241 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
- 242 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.);

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

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

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

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

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

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.);

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.);

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

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

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

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

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~~ 18.1 (§ ~~6.2-1800~~ 6.2-1830 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.);

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.);

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

43. Violating any provision of § 59.1-443.2;

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

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.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);

304 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
305 52. Violating any provision of § 8.2-317.1;
306 53. Violating subsection A of § 9.1-149.1;
307 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
308 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
309 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
310 which defective drywall has been permanently installed or affixed;
311 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
312 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
313 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
314 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
315 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1; and
316 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.).
317 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
318 lease solely by reason of the failure of such contract or lease to comply with any other law of the
319 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
320 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
321 such contract or lease.
322 **2. That Chapter 18 (§§ 6.2-1800 through 6.2-1829) of Title 6.2 of the Code of Virginia is repealed.**
323 **3. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
324 **extension of credit made under former Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of**
325 **Virginia in accordance with the terms of a loan agreement made prior to the effective date of this**
326 **act; however, no additional extensions of credit or advances that violate the provisions of this act**
327 **shall be made under such a loan agreement on or after the effective date of this act.**