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HOUSE BILL NO. 956

Offered January 10, 2018

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A *BILL to amend and reenact §§ 6.2-1800, 6.2-1810, 6.2-1816, and 6.2-1817 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.2-1815.1 and 6.2-1816.1, relating to payday lending; interest and other charges; installments; minimum term; rollovers; refunds upon prepayment.*

Patron—Yancey

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1800, 6.2-1810, 6.2-1816, and 6.2-1817 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.2-1815.1 and 6.2-1816.1 as follows:

§ 6.2-1800. Definitions.

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

"Check" means a draft drawn on the account of an individual at a depository institution.

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

"Installment payday loan" means a payday loan that is fully amortizing, with a finance charge calculated on the principal balances scheduled to be outstanding and be repayable in substantially equal and consecutive monthly installments, according to a payment schedule as agreed by the licensee and the borrower, except that the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of finance charges applicable to the extra days.

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

"Payday loan" means a ~~small, short-maturity~~ loan on the security of (i) a check, or checks in the case of an installment payday loan; (ii) any form of assignment of an interest in the account of an individual at a depository institution; or (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds.

"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 a nonstock corporation or a limited liability company.

"Roll over a payday loan" means (i) to refinance or renew an existing payday loan in any manner whereby the proceeds of another payday loan made to the same borrower by a licensee are used to pay in full or in part the existing payday loan or (ii) to amend the terms of an existing payday loan agreement in order to extend the term of the existing payday loan beyond its original term.

"Single payment payday loan" means a payday loan that is to be repaid in a single payment.

§ 6.2-1810. Payday lending database.

A. The Commission shall certify and contract with one or more third parties to develop, implement, and maintain a real-time, Internet-accessible database that contains such payday loan information as the Commission may require from time to time by administrative rule or policy statement. The database shall be operational by January 1, 2009.

B. The following provisions shall apply to the database:

1. Before making a payday loan, a licensee shall query the database through a Commission-certified database provider and shall retain evidence of the query for the Commission's supervisory review. The database shall allow a licensee to make a payday loan only if making the loan is permissible under the provisions of this chapter. During any period that the database is unavailable due to technical problems beyond the licensee's control, a licensee may rely on the payday loan applicant's written representations, rather than the database's information, to verify that making the loan applied for is permissible under the provisions of this chapter. Because a licensee may rely on the accuracy of the applicant's representations and the database's information, a licensee is not subject to any administrative penalty or civil liability if that information is later determined to be inaccurate.

2. The database provider shall maintain the database, take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, be responsible for the confidentiality and security of such information, and own the information contained in the database. The Commission shall have access to and utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter.

59 3. Upon a licensee's query, the database shall advise the licensee whether the applicant is eligible for
 60 a new payday loan and, if the applicant is ineligible, the reason for such ineligibility. If the database
 61 advises the licensee that the applicant is ineligible for a payday loan, then the applicant shall direct any
 62 inquiry regarding the specific reason for such ineligibility to the database provider rather than to the
 63 licensee. The information contained in the payday loan database is confidential and exempt from the
 64 Freedom of Information Act (§ 2.2-3700 et seq.).

65 4. If a licensee and borrower consummate a payday loan, then the licensee shall pay a fee to defray
 66 the costs of submitting the database inquiry. The amount of the database inquiry fee shall be calculated
 67 in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship
 68 to actual cost of the operation of the database. If a licensee submits a database inquiry but does not
 69 consummate a payday loan with the applicant, then the licensee shall not pay the database inquiry fee.
 70 Each licensee shall remit all database inquiry fees directly to the database provider on a weekly basis.

71 5. If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if a
 72 borrower enters into an extended payment plan as provided in subdivision 26 of § 6.2-1816 ~~or an~~
 73 ~~extended term loan as provided in subdivision 27 of § 6.2-1816~~, then the licensee making the loan shall
 74 report such event or other information to the database not later than the close of business on the date of
 75 such event.

76 **§ 6.2-1815.1. Installment payday loans.**

77 A. *Each payday loan shall be structured, at the option of the borrower, to provide that it is either an*
 78 *installment payday loan or a single payment payday loan.*

79 B. *All applications for payday loans and all payday loan agreements shall clearly and conspicuously*
 80 *disclose that payday loans may be structured to be repaid in a single payment or in multiple*
 81 *installments.*

82 C. *If a payday loan is an installment payday loan, the lender may hold a single payment instrument*
 83 *or a payment instrument for each installment.*

84 **§ 6.2-1816. Required and prohibited business methods.**

85 Each licensee shall comply with the following requirements:

86 1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the
 87 borrower and a person authorized by the licensee to sign such agreements and dated the same day the
 88 loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount
 89 of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated
 90 using that term, applicable to the transaction calculated in accordance with Consumer Financial
 91 Protection Bureau Regulation Z (12 C.F.R. Part 1026); (iv) evidence of receipt from the borrower of a
 92 check, *or multiple checks if the loan is an installment payday loan*, dated as of the date that the loan is
 93 due, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to
 94 present ~~the any check provided pursuant to clause (iv)~~ for payment or deposit until the date the loan, *or*
 95 *the corresponding installment if the payday loan is structured as an installment payday loan*, is due,
 96 ~~which date shall produce a loan term of at least two times the borrower's pay cycle and after which date~~
 97 interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an
 98 agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any
 99 time before the close of business on the next business day following the date of the transaction by
 100 paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the
 101 borrower; ~~and~~ (vii) an agreement that the borrower shall have the right to prepay the loan prior to
 102 maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest,
 103 fees, and charges; *and (viii) a provision that the minimum loan term shall be six months following the*
 104 *date of the transaction. The maximum term of a payday loan shall be as agreed by the licensee and the*
 105 *borrower. A licensee may hold an instrument and delay completion of the transaction beyond the loan*
 106 *due date without any additional written agreement or new disclosure, but the licensee shall not charge*
 107 *any additional fees for holding the instrument or delaying the completion of the transaction.*

108 2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of
 109 the transaction.

110 3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
 111 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee
 112 or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii)
 113 waiving any right the borrower has under this chapter.

114 4. A licensee shall not require or accept more than one check from a borrower as security for any
 115 *single payment payday loan.*

116 5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time
 117 in the principal amount of more than \$500.

118 6. A licensee shall not (i) ~~refinance, renew or extend any roll over a~~ payday loan *more than once*;
 119 (ii) make a *payday loan* to a person if the *payday loan* would cause the person to have ~~more than one~~
 120 *or more payday loan from any licensee loans* outstanding at the same time *with an aggregate principal*

121 amount of more than \$500; (iii) make a loan to a borrower on the same day that a borrower paid or
 122 otherwise satisfied in full a previous payday loan made by the licensee or another payday lender; or (iv)
 123 make a payday loan to a person within 90 days following the date that the person has paid or otherwise
 124 satisfied in full a single payment payday loan through an extended payment plan as provided in
 125 subdivision 26; (v) make a payday loan to a person within 45 days following the date that the person
 126 has paid or otherwise satisfied in full a fifth payday loan made within a period of 180 days as provided
 127 in subdivision 27 a; or (vi) make a payday loan to a person within the longer of (a) 90 days following
 128 the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days
 129 following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

130 7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time
 131 Nothing in this chapter shall preclude a licensee from making more than one payday loan to a borrower
 132 so long as the total amount financed does not exceed \$500 at any one time and there is at least a
 133 30-day period between the dates each payday loan is made.

134 8. A check accepted by a licensee as security for any payday loan payable in a single payment shall
 135 be dated as of the date the loan is due, and if the licensee requires multiple checks with respect to an
 136 installment payday loan, each check accepted by a licensee as security for installments under an
 137 installment payday loan shall be dated as of the date the corresponding installment is due.

138 9. Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or
 139 cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is
 140 dishonored. In addition to any other remedies available at law, a licensee that knowingly violates this
 141 prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of
 142 the dishonored check.

143 10. A licensee shall not take an interest in any property other than a check payable to the licensee as
 144 security for a loan.

145 11. A licensee shall not make a loan to a borrower to enable the borrower to (i) pay for any other
 146 product or service sold at the licensee's office location or (ii) pay off a payday loan made to the
 147 borrower by the licensee or another payday lender.

148 12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be
 149 charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

150 13. A check given as security for a loan shall not be negotiated to a third party.

151 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
 152 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
 153 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to
 154 all claims and defenses of the maker."

155 15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in
 156 form consistent with regulations adopted by the Commission, explaining in plain language the rights and
 157 responsibilities of the borrower and providing a toll-free number at the Commission for assistance with
 158 complaints.

159 16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and
 160 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet
 161 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash
 162 needs.

163 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on
 164 the any payday loan at any time prior to maturity, without charge. The licensee shall give the borrower
 165 signed, dated receipts for each payment made, which shall state the balance due on the payday loan.
 166 Upon repayment of the payday loan in full, the licensee shall mark the original loan agreement with the
 167 word "paid" or "canceled," return it to the borrower, and retain a copy in its records.

168 18. Each licensee shall conspicuously post in each approved office a schedule of fees and interest
 169 charges, with examples for both single payment payday loans and installment payday loans using a \$300
 170 loan payable in 14 days and 30 days six months based on the assumption that the loan will be paid as
 171 scheduled. The schedule of fees for an installment payday loan shall provide an estimate of the monthly
 172 installment amounts for such a payday loan.

173 19. Any advertising materials used to promote payday loans that includes shall include the amount of
 174 any single payment, expressed either as a percentage or dollar amount or installment payments, or the
 175 amount of any finance charge, shall also include and a statement of the interest, fees, and charges,
 176 expressed as an annual percentage rate, payable using as an example a \$300 loan payable in 14 and 30
 177 days six months.

178 20. In any print media advertisement, including any web page, used to promote payday loans, the
 179 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in
 180 subdivision (a)(14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,
 181 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to

182 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio
183 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure
184 statement shall last at least two seconds and the statement shall be spoken so that its contents may be
185 easily understood.

186 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of
187 the military services of the United States or the spouse or other dependent of a member of the military
188 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of
189 every prospective borrower if he is a member of the military services of the United States or the spouse
190 or other dependent of a member of the military services of the United States. The loan documents shall
191 include verification that the borrower is not a member of the military services of the United States or
192 the spouse or other dependent of a member of the military services of the United States.

193 22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions
194 and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15
195 U.S.C. § 1692 et seq.) regarding harassment or abuse, false or misleading misrepresentations, and unfair
196 practices in collections.

197 23. A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60
198 days after the date of default on a payday loan, during which period the licensee and borrower may
199 voluntarily enter into a repayment arrangement.

200 24. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in
201 connection with any payday loan.

202 25. A licensee may not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in
203 the conduct of its business.

204 26. A borrower may pay any outstanding *single payment* payday loan from any licensee by means of
205 an extended payment plan as follows:

206 a. A borrower shall not be eligible to enter into more than one extended payment plan in any
207 12-month period.

208 b. To enter into an extended payment plan with respect to a *single payment* payday loan, the
209 borrower shall agree in a written and signed document to repay the amount owed in at least four equal
210 installments over an aggregate term of at least 60 days. Interest shall not accrue on the indebtedness
211 during the term of the extended payment plan. The borrower may prepay an extended payment plan in
212 full at any time without penalty. If the borrower fails to pay the amount owed under the extended
213 payment plan when due, then the licensee may immediately accelerate the unpaid loan balance.

214 c. If the borrower enters into an extended payment plan, then no licensee may make a payday loan
215 to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower
216 pays or satisfies in full the balance of the loan under the terms of the extended payment plan.

217 d. At each approved office, the licensee shall post a notice in at least 24-point bold type, in a form
218 established or approved by the Commission, informing persons that they may be eligible to enter into an
219 extended payment plan *for a single payment payday loan*.

220 e. The licensee shall provide oral notice to any borrower who is eligible to enter into an extended
221 payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability
222 to pay the *single payment* payday loan by means of an extended payment plan. The information
223 contained in the notice shall be in a form provided by the Bureau.

224 27. In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to
225 any person within a period of 180 days shall be made only in compliance with, at the option of the
226 borrower, either of the following:

227 a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday
228 loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such
229 borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise
230 satisfied in full and (ii) the borrower may elect, at any time on or before its due date, to repay such fifth
231 payday loan by means of an extended payment plan as provided in subdivision 26 b; or

232 b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a
233 loan that complies with the terms and conditions otherwise applicable to payday loans under the terms
234 of this chapter except that (i) the principal amount of the loan, and any interest and fees permitted by
235 § 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the
236 date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer
237 of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150
238 days following the date the extended term loan is made.

239 **§ 6.2-1816.1. Prepayments and refunds.**

240 A. A licensee shall accept prepayment from a borrower prior to the loan due date and shall not
241 charge the borrower a penalty if the borrower opts to prepay the loan. If a payday loan, whether a
242 single payment payday loan or an installment payday loan, is prepaid in full prior to the maturity of the
243 loan term, the licensee shall refund to the borrower the unearned portion of the interest and loan fee.

244 *The unearned interest that is to be refunded shall be calculated on the basis of the ratio of time left*
245 *before maturity to the loan term, using a method that is at least as favorable to the consumer as the*
246 *actuarial method, as defined by the federal Truth in Lending Act. The sum of the digits or rule of 78*
247 *method of calculating prepaid interest refunds is prohibited. The refund shall not be required to include*
248 *a portion of the verification fee charged pursuant to subsection C of § 6.2-1817.*

249 *B. Refunds required pursuant to subsection A may be paid to the borrower by cash, check, or similar*
250 *method, but may not be applied as a credit to another open account or for a future loan with that*
251 *licensee or any other licensee. If a licensee makes a cash refund, it shall provide the borrower with a*
252 *cash receipt.*

253 **§ 6.2-1817. Rate of interest, loan fee, and verification fee.**

254 *A. A licensee may charge and receive on each payday loan interest at a simple annual rate not to*
255 *exceed 36 percent. If the loan is prepaid prior to the maturity of the loan term, the licensee shall refund*
256 *to the borrower a prorated portion of the interest based upon the ratio of time left before maturity to*
257 *the loan term. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a*
258 *verification fee as provided in subsection C.*

259 *B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the*
260 *amount first \$300 of the loan proceeds advanced to the borrower plus 7.5 percent of any amount loaned*
261 *in excess of \$300.*

262 *C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan*
263 *made under this chapter. The verification fee shall be used in part to defray the costs of submitting a*
264 *database inquiry as provided in subdivision B 4 of § 6.2-1810.*

265 *D. The interest authorized under subsection A shall not be assessed on any loan fee charged under*
266 *subsection B or verification fee charged under subsection C.*

267 *E. Upon rolling over a payday loan, the licensee shall not charge a loan fee under subsection B or*
268 *verification fee under subsection C. If the payday loan is rolled over prior to the maturity date, the*
269 *licensee shall refund to the borrower a prorated portion of the finance charge based upon the ratio of*
270 *time left before maturity to the loan term.*

271 **2. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
272 **extension of credit made in accordance with the terms of a loan agreement made prior to the**
273 **effective date of this act; however, no additional extensions of credit or advances that violate the**
274 **provisions of this act shall be made on or after the effective date of this act under such a loan**
275 **agreement.**