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HOUSE BILL NO. 1296

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact §§ 6.2-100, 6.2-312, 6.2-1520, 6.2-1816, 6.2-1817, 6.2-1818, 6.2-2216, 59.1-200, and 59.1-335.5 of the Code of Virginia, relating to charges on payday loans, title loans, open-end credit plans, and certain open-end credit plans.

Patron—Helmer

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-100, 6.2-312, 6.2-1520, 6.2-1816, 6.2-1817, 6.2-1818, 6.2-2216, 59.1-200, and 59.1-335.5 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-100. Definitions.

As used in this title, unless the context otherwise requires:

"Bureau" means the Bureau of Financial Institutions, a division of the Commission.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Commission's Rules" means the rules of practice and procedure prescribed by the Commission pursuant to § 12.1-25.

"Entity" means any corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or other legal or commercial entity.

"Federal funds rate" means the effective federal funds rate calculated by the Federal Reserve Bank of New York as the volume-weighted median of overnight federal funds transactions reported in the Federal Reserve 2420 Report of Selected Money Market Rates as published on the website of the Federal Reserve Bank of New York for the prior business day.

"Finance charge" has the meaning assigned to it in Consumer Financial Protection Bureau Regulation Z, 12 C.F.R. § 1026.4, as amended.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, or credit union.

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

§ 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 ~~subsections C and F~~, 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 interest~~ 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 interest~~ 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 Any person licensed under Chapter 18 (§ 6.2-1800; et seq.) or any person affiliated through common ownership with such licensed person, or any person licensed under Chapter 22 (§ 6.2-2200 et seq.) or any person affiliated through common ownership with such licensed person, shall not engage in the extension of credit under an open-end credit plan described in this section and;~~ ~~(ii) a.~~ A third party shall not engage in the extension of credit under an open-end credit plan described in this section at any office, suite, room, or place of business where a licensee conducts the business of making payday loans. In addition to any other remedies or penalties provided for a violation of this section, any such extension of credit made by a licensee or third party in violation of this subsection shall be unenforceable against the borrower. *In addition to any other remedies or penalties provided for a violation of this section, any such extension of credit made by a licensee or third party in violation of this subsection shall be unenforceable against the borrower.*

D. No person shall make a loan or otherwise extend credit under an open-end credit plan or any other lending arrangement that is secured by a non-purchase money security interest in a motor vehicle, as such term is defined in § 6.2-2200, unless such loan or extension of credit is made in accordance

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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 F. Any lender making a loan described in this section:

69 1. Shall not charge or receive (i) interest at a simple annual rate that is 25 percent higher than the
70 federal funds rate in effect on the date the loan was made and (ii) a participation fee that exceeds \$50
71 per year;

72 2. May charge and receive a processing fee, charged on the principal amount of the loan, for
73 processing the loan contract, provided that the processing fee shall be stated in a written loan contract
74 signed by the borrower and shall be deemed to constitute interest charged on the principal amount of
75 the loan for purposes of determining whether the interest charged on the loan exceeds the maximum
76 permitted rate described in subdivision 1;

77 3. Shall not charge a membership fee, participation fee, transaction fee, or additional charges or fees
78 in connection with any such extension of credit; and

79 4. May impose a late charge for failure to make timely payment of any amount due under the loan
80 agreement, provided that such late charge does not exceed the amount permitted by § 6.2-400.

81 G. The provisions of this section apply to any person that makes a loan or otherwise extends credit
82 under an open-end credit plan, whether or not the person making the loan or extending the credit
83 maintains a physical presence in the Commonwealth. However, the provisions of this section shall not
84 apply to any bank, savings institution, or credit union as such terms are defined in § 6.2-300.

85 H. A seller or lender engaged in extending credit under an open-end credit plan to a resident of the
86 Commonwealth or to any individual in the Commonwealth shall not charge, collect, or receive, directly
87 or indirectly, credit insurance premiums, charges for any ancillary product sold, charges for negotiating
88 forms of loan proceeds or refunds other than cash, or charges for brokering or obtaining an extension
89 of credit.

90 I. Any extension of credit made in violation of this subsection is void, and no person shall have the
91 right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the
92 extension of credit.

93 J. The provisions of this section shall apply to any person who seeks to evade its application by any
94 device, subterfuge, or pretense whatsoever, including:

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

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

100 3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or
101 activity of a third person, whether real or fictitious; and

102 4. An arrangement by which the entire circumstances of the transaction show that a purported agent
103 or service provider for an exempt entity is in fact the real party in interest, including where the
104 purported agent or service provider:

105 a. Holds, acquires, or maintains, directly or indirectly, more than half of, or the predominant share
106 of, the revenues generated by the loan, credit, or open-end credit plan;

107 b. Indemnifies, insures, or protects the exempt entity in whole or part for the risk of loss;

108 c. Predominantly designs, controls, or operates the loan or credit program or open-end credit plan;

109 or

110 d. Markets, arranges, or negotiates the loan, credit, or open-end credit plan and holds the right or
111 first right of refusal to purchase loans, credit, or receivables.

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

115 **§ 6.2-1520. Rate of interest; late charges; processing fees.**

116 A. A licensee may charge and receive interest on loans of:

117 1. ~~Not more than \$2,500, at a single annual rate not to exceed 36 percent; and~~

118 2. ~~More than \$2,500, at such single annual rate as shall be stated in the loan contract a rate that is~~
119 ~~25 percent higher than the federal funds rate in effect on the date the loan was made.~~

120 The annual rate of interest shall be charged only upon principal balances outstanding from time to

time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance. For the purpose of calculating interest under this section, a year may be any period of time consisting of 360 or 365 days.

B. A licensee may impose a late charge for failure to make timely payment of any installment due on a debt, which late charge shall not exceed five percent of the amount of such installment payment. The late charge shall be specified in the loan contract between the lender and the borrower. For purposes of this section, "timely payment" means a payment made by the date fixed for payment or within a period of seven calendar days after such fixed date.

C. A licensee may charge and receive a processing fee, charged on the principal amount of the loan, for processing the loan contract. The processing fee shall be stated in the loan contract. Such processing fee shall be deemed to constitute interest charged on the principal amount of the loan for purposes of determining whether the interest charged on a loan of not more than \$2,500 exceeds the 36 percent annual interest rate limitation imposed by subdivision subsection A 4.

§ 6.2-1816. Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026); (iv) evidence of receipt from the borrower of a check, dated as of the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until the date the loan is due, which date shall produce a loan term of at least two times the borrower's pay cycle and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.

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

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

4. A licensee shall not require or accept more than one check from a borrower as security for any loan.

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

6. A licensee shall not (i) refinance, renew or extend any payday loan; (ii) make a loan to a person if the loan would cause the person to have more than one payday loan from any licensee outstanding at the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following the date that the person has paid or otherwise satisfied in full a payday loan through an extended payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time.

8. A check accepted by a licensee as security for any loan shall be dated as of the date the loan is due.

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

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

182 security for a loan.

183 11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other
184 product or service sold at the licensee's office location.

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

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

188 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
189 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18
190 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to
191 all claims and defenses of the maker."

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

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

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

205 18. Each licensee shall conspicuously post in each approved office a schedule of fees and interest
206 charges, with examples using a \$300 loan payable in 14 days and 30 days.

207 19. Any advertising materials used to promote payday loans that ~~includes~~ include the amount of any
208 payment, *however* expressed ~~either as a percentage or dollar amount, or the amount of any finance~~
209 ~~charge~~, shall also include a statement of the interest, fees and charges, expressed as an annual
210 percentage rate, payable using as an example a \$300 loan payable in 14 and 30 days.

211 20. In any print media advertisement, including any web page, used to promote payday loans, the
212 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in
213 subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,
214 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to
215 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio
216 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure
217 statement shall last at least two seconds and the statement shall be spoken so that its contents may be
218 easily understood.

219 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of
220 the military services of the United States or the spouse or other dependent of a member of the military
221 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of
222 every prospective borrower if he is a member of the military services of the United States or the spouse
223 or other dependent of a member of the military services of the United States. The loan documents shall
224 include verification that the borrower is not a member of the military services of the United States or
225 the spouse or other dependent of a member of the military services of the United States.

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

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

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

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

237 26. A borrower may pay any outstanding payday loan from any licensee by means of an extended
238 payment plan as follows:

239 a. A borrower shall not be eligible to enter into more than one extended payment plan in any
240 12-month period.

241 b. To enter into an extended payment plan with respect to a payday loan, the borrower shall agree in
242 a written and signed document to repay the amount owed in at least four equal installments over an
243 aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the

extended payment plan. The borrower may prepay an extended payment plan in full at any time without penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then the licensee may immediately accelerate the unpaid loan balance.

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

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

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

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

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

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

Any loan made in violation of this section is void, and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the loan.

§ 6.2-1817. Rate of interest.

A. A licensee may charge and receive on each loan interest at a simple annual rate not to exceed 36 percent ~~a rate that is 25 percent higher than the federal funds rate in effect on the date the loan was made.~~ A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.

B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the amount of the loan proceeds advanced to the borrower.

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

§ 6.2-1818. Additional charges.

In addition to the loan principal, ~~and interest, and fees permitted under § 6.2-1817,~~ no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received, or recovered ~~in connection with a payday loan~~ except (i) any deposit item return fee incurred by the licensee, not to exceed \$25, if the check given by the borrower as security is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if judgment is obtained against the borrower, court costs and reasonable attorney fees if awarded by the court, incurred as a result of the returned check in an amount not to exceed \$250. A licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to § 6.2-302, 8.01-27.2, or 8.01-382.

§ 6.2-2216. Interest and other charges; term; monthly payments.

A. A licensee ~~may shall not charge and or collect interest on a motor vehicle title loan at rates not to exceed the following:~~

1. ~~Twenty-two percent per month on the portion of the principal that does not exceed \$700;~~
2. ~~Eighteen percent per month on the portion of the principal that exceeds \$700 but does not exceed \$1,400; and~~
3. ~~Fifteen percent per month on the portion of the principal that exceeds \$1,400 a rate that exceeds an annual rate that is 25 percent higher than the federal funds rate in effect on the date the loan was made.~~

B. The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted,

305 or received in advance. ~~On motor vehicle title loans in excess of \$700, a licensee may accrue interest~~
306 ~~utilizing a single blended interest rate provided the maximum charge allowed pursuant to subsection A~~
307 ~~is not exceeded.~~

308 C. Notwithstanding anything set forth in subsection A, other provisions of this chapter, or in a motor
309 vehicle title loan agreement, interest shall not accrue on the principal balance of a motor vehicle title
310 loan from and after:

311 1. The date that the motor vehicle securing the title loan is repossessed by the licensee making the
312 loan; or

313 2. Sixty days after the borrower has failed to make a monthly payment on a motor vehicle title loan
314 as required by the loan agreement unless the borrower has not surrendered the motor vehicle and the
315 borrower is concealing the motor vehicle.

316 D. In addition to the loan principal and interest permitted under subsection A, a licensee shall not
317 directly or indirectly charge, contract for, collect, receive, recover, or require a borrower to pay any
318 further or other fee, charge, or amount whatsoever except for (i) a licensee's actual cost of perfecting its
319 security interest in a motor vehicle securing the borrower's obligations under a loan agreement and (ii)
320 reasonable costs of repossession and sale of the motor vehicle in accordance with § 6.2-2217; *however,*
321 *the total amount of such costs of repossession and sale that a licensee or any person working on its*
322 *behalf may charge or receive from the borrower shall be limited to an amount equal to five percent of*
323 *the originally contracted loan amount.* A licensee shall not be entitled to collect or recover from a
324 borrower any sum otherwise permitted pursuant to § 6.2-302, 8.01-27.2, or 8.01-382. In no event shall
325 the borrower be liable for fees incurred in connection with the storage of a motor vehicle securing a title
326 loan following the motor vehicle's repossession by the licensee or its agent, or the voluntary surrender of
327 possession of the motor vehicle by the borrower to the licensee.

328 E. Every title loan shall be a term loan providing for repayment of the principal and interest in
329 substantially equal monthly installments of principal and interest; however, nothing in this chapter shall
330 prohibit a loan agreement from providing for an odd first payment period and an odd first payment
331 greater than other monthly payments because of such odd first payment period.

332 F. A title loan agreement may not be extended, renewed, or refinanced.

333 G. A licensee may impose a late charge for failure to make timely payment of any amount due under
334 the loan agreement provided that such late charge does not exceed the amount permitted by § 6.2-400.

335 H. Payments shall be credited by the licensee on the date received.

336 *I. Any loan made in violation of this section is void, and no person shall have the right to collect,*
337 *receive, or retain any principal, interest, fees, or other charges in connection with the loan.*

338 **§ 59.1-200. Prohibited practices.**

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

341 1. Misrepresenting goods or services as those of another;

342 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

343 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
344 services, with another;

345 4. Misrepresenting geographic origin in connection with goods or services;

346 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
347 benefits;

348 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

349 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
350 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfections, or "not first
351 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
352 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
353 irregulars, imperfections or "not first class";

354 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
355 at the price or upon the terms advertised.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.);

428 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
429 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
430 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
431 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
432 seq.);
433 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
434 seq.);
435 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
436 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
437 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
438 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
439 35. Using the consumer's social security number as the consumer's account number with the supplier,
440 if the consumer has requested in writing that the supplier use an alternate number not associated with
441 the consumer's social security number;
442 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
443 37. Violating any provision of § 8.01-40.2;
444 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
445 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
446 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
447 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
448 (§ 59.1-525 et seq.);
449 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
450 43. Violating any provision of § 59.1-443.2;
451 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
452 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
453 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
454 47. Violating any provision of § 18.2-239;
455 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
456 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
457 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
458 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
459 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
460 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
461 children's products that are used, secondhand or "seconds";
462 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
463 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
464 52. Violating any provision of § 8.2-317.1;
465 53. Violating subsection A of § 9.1-149.1;
466 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
467 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
468 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
469 which defective drywall has been permanently installed or affixed;
470 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
471 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
472 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
473 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
474 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
475 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
476 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
477 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
478 59. Violating any provision of subsection E of § 32.1-126; ~~and~~
479 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
480 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; *and*
481 61. *Violating any provision of § 6.2-312.*
482 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
483 lease solely by reason of the failure of such contract or lease to comply with any other law of the
484 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
485 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
486 such contract or lease.
487 **§ 59.1-335.5. Prohibited practices.**
488 A credit services business, and its salespersons, agents and representatives, and independent
489 contractors who sell or attempt to sell the services of a credit services business, shall not do any of the

following:

1. Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, unless the consumer has agreed to pay for such services during the term of a written subscription agreement that provides for the consumer to make periodic payments during the agreement's term in consideration for the credit services business's ongoing performance of services for or on behalf of the consumer, provided that such subscription agreement may be cancelled at any time by the consumer;

2. Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

3. Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

4. Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business; or

5. *Advertise, offer, sell, provide, or perform any of the services of a credit services business in connection with an extension of credit that meets any of the following conditions:*

a. The amount of credit is less than \$5,000;

b. The repayment term is one year or less;

c. The credit is provided under an open-end credit plan; or

d. The annual percentage rate exceeds 36 percent. For purposes of this subdivision, "annual percentage rate" has the same meaning as in the federal Truth in Lending Act, 15 U.S.C. § 1601 et seq., and its implementing regulations, as they may be amended from time to time.

2. That nothing contained in this act shall prohibit the collection of any outstanding loan or extension of credit made under former § 6.2-312, 6.2-1520, 6.2-1816, 6.2-1817, 6.2-1818, or 6.2-2216 of the Code of Virginia in accordance with the terms of a loan agreement made prior to the effective date of this act; however, no additional extensions of credit or advances that violate the provisions of this act shall be made on or after the effective date of this act under such a loan agreement.