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SENATE BILL NO. 855

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 9, 2020)

(Patron Prior to Substitute—Senator Lewis)

A *BILL to amend and reenact §§ 6.2-303, 6.2-1501, 6.2-2202, 59.1-199, and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 22.1, consisting of sections numbered 6.2-2228 through 6.2-2253, relating to financial institutions; small loans; penalties.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-303, 6.2-1501, 6.2-2202, 59.1-199, 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 22.1, consisting of sections numbered 6.2-2228 through 6.2-2253, 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. Chapter 22.1 (§ 6.2-2228 et seq.), relating to small loan lenders;
6. § 36-55.31, relating to loans by the Virginia Housing Development Authority;
7. § 38.2-1806, relating to interest chargeable by insurance agents;
8. Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by premium finance companies;
9. § 54.1-4008, relating to interest chargeable by pawnbrokers; and
10. § 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.

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

A. No person shall engage in the business of making loans to individuals for personal, family, household, or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan interest, charges, compensation, consideration, or expense that in the aggregate is greater than the interest permitted by § 6.2-303, except as provided in and authorized by this chapter or Chapter 22 (§ 6.2-2200 et seq.) or 22.1 (§ 6.2-2228 et seq.) and without first having obtained a license from the Commission.

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

1. Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.);
2. Making a mortgage loan pursuant to §§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328 in any principal amount; or
3. Extending credit as described in § 6.2-312 in any amount.

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

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

§ 6.2-2202. Scope of chapter.

A. The provisions of this chapter shall not apply to any bank, savings institution, or credit union, or to a person licensed under Chapter 15 (§ 6.2-1500 et seq.) or 22.1 (§ 6.2-2228 et seq.), that does not elect to become licensed under this chapter. Electing to become licensed under this chapter, however, shall constitute a waiver of the benefit of any and all laws of the Commonwealth and other states, territories, possessions, and districts of the United States and federal laws preemptive of, or inconsistent with, the provisions of this chapter.

B. The provisions of this chapter shall not apply to extensions of credit for the sole purpose of financing the purchase of a motor vehicle, or of refinancing a purchase money loan, secured by a lien on the motor vehicle.

CHAPTER 22.1.
SMALL LOANS.

§ 6.2-2228. Definitions.

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

"Bond" includes any form of financial instrument that provides security equivalent to that provided by a bond, such as an irrevocable letter of credit, if its use in lieu of a bond is authorized pursuant to regulations adopted by the Commission.

"Brokering" means activity whereby any person negotiates the terms of a small loan on behalf of a consumer. "Brokering" does not include (i) marketing activities (ii) the provision of other services, including technology platforms, loan servicing, or collections, or (iii) the provision of third-party services to a federally insured financial institution.

"Check" means a draft drawn on the account of an individual at a depository institution whether electronically paid or debited or by a paper instrument.

"Default" means (i) the failure of a borrower to make a requirement payment pursuant to a periodic billing statement within a certain number of days after the due date, as agreed to by the licensee and the borrower in the small loan plan, provided that such period shall not exceed 120 days after the due date on the billing statement, or (ii) the borrower's failure to perform his obligations under the small loan plan.

"Depository institution" means a bank, savings institution, credit union, or other federally insured financial institution.

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

"Small loan" means a loan made or credit extended to a borrower for a personal, family, household, or other noncommercial purpose pursuant to a small loan plan.

"Small loan plan" means a written agreement subject to this chapter between a licensee and a borrower establishing a credit plan under which a licensee contemplates small loans to a borrower.

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

§ 6.2-2229. License required.

A. Unless exempted by § 6.2-2230, no person shall engage in the business of making small loans to any consumer residing in the Commonwealth, whether or not the person has an office or conducts business at a location in the Commonwealth, except in accordance with the provisions of this chapter and without having first obtained a license under this chapter from the Commission.

B. No person shall engage in the business of arranging or brokering small loans for any consumer residing in the Commonwealth without a registration under this chapter, whether or not the person has an office or conducts business at a location in the Commonwealth.

§ 6.2-2230. Applicability of chapter.

The provisions of this chapter shall not apply to any depository institution, or any subsidiary, affiliate, or third-party service provider thereof; to any financial institution subject to regulation under 12 U.S.C. § 2002; or to a person licensed under Chapter 15 (§ 6.2-1500 et seq.) or 22 (§ 6.2-2200 et seq.) that does not elect to become licensed under this chapter. Electing to become licensed under this chapter, however, shall constitute a waiver of the benefit of any and all laws of the Commonwealth and other states, territories, possessions, and districts of the United States and federal laws preemptive of, or inconsistent with, the provisions of this chapter.

§ 6.2-2231. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the Commission.

B. The application shall contain:

1. The name and address of the applicant and (i) if the applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and address of each trustee and beneficiary;

2. The addresses of the primary place of business and the website address where the business is to

be conducted; and

3. Such other information concerning the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, and principals as the Commission may require.

C. The application shall be accompanied by payment of an application fee of \$500, which shall be nonrefundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

§ 6.2-2232. Bond required.

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

§ 6.2-2233. Investigation of application; review period.

The Commissioner may make such investigation relative to the application as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations adopted thereunder.

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

§ 6.2-2234. Qualifications.

A. Upon the filing and investigation of an application for a license, the Commission shall issue and deliver to the applicant a license to make small loans in accordance with the provisions of this chapter if it finds:

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

2. That the applicant has available, for the operation of the business, unencumbered liquid assets of at least \$25,000; and

3. That the applicant has complied with all of the provisions of §§ 6.2-2231 and 6.2-2232.

B. If the Commission fails to make such findings, it shall deny the application for a license and shall notify the applicant of the denial and the reasons for such denial.

§ 6.2-2235. Licenses; place of business; changes.

A. Each license shall:

1. State the address that is the licensee's primary place of business, whether or not it is in the Commonwealth; and

2. State fully the name of the licensee as well as any name by which the licensee is operating its business.

B. The licensee shall post the license prominently in each approved place of business of the licensee, if any. The licensee shall prominently disclose on its website the license number assigned by the Commission to the licensee.

C. Licenses shall not be transferable or assignable, by operation of law or otherwise unless otherwise approved by the Commission.

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

E. Prior approval of the Commission shall not be required in the event that a licensee needs to temporarily open an office in the Commonwealth due to a natural disaster or act of God. However, the licensee shall notify the Commission within 10 days of opening the office.

F. A licensee shall notify the Commissioner, in writing and within 10 days, of (i) the closing of any business location in the Commonwealth and (ii) the name, address, and position of each new senior officer, member, partner, or director.

§ 6.2-2236. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person,

183 licensed to conduct business under this chapter unless such person first:

184 1. Files an application with the Commission in such form as the Commissioner may prescribe from
185 time to time;

186 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
187 the financial responsibility, background, experience, and activities of the applicant, its directors, senior
188 officers, principals, and members, and any proposed new directors, senior officers, principals, or
189 members of the licensee; and

190 3. Pays such application fee as the Commission may prescribe.

191 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
192 acquire the interest in the licensee if it finds that the applicant, its members, if applicable, its directors,
193 senior officers, and principals, and any proposed new directors, members, senior officers, and principals
194 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief
195 that the business will be operated efficiently and fairly, in the public interest, and in accordance with
196 law. The Commission shall grant or deny the application within 60 days from the date a completed
197 application accompanied by the required fee is filed unless the period is extended by order of the
198 Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall
199 notify the applicant of the denial and the reasons for the denial.

200 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
201 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed
202 by this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, including an
203 acquisition by merger or consolidation, by or with a person affiliated through common ownership with
204 the licensee; or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,
205 survivorship or operation of law. The person acquiring an interest in a licensee in a transaction that is
206 exempt from filing an application by this subsection shall send written notice to the Commissioner of
207 such acquisition within 30 days of its closing.

208 D. The provisions of this section shall not apply to the acquisition, sale, or transfer of shares in a
209 publicly traded company.

210 **§ 6.2-2237. Retention of books, accounts, and records.**

211 Each licensee shall maintain in its approved offices such books, accounts, and records as the
212 Commission may reasonably require to determine whether the licensee is complying with the provisions
213 of this chapter and with regulations adopted in furtherance thereof. Such records relating to small loans
214 shall be retained, at a location within or outside the Commonwealth, for at least three years after final
215 payment is made on any small loan. Such books, accounts, and records shall be maintained apart and
216 separate from any other business in which the licensee is involved.

217 **§ 6.2-2238. Annual reports.**

218 Each licensee shall annually, on or before March 25, file a report with the Commissioner containing
219 such information as the Commissioner may require concerning its business and operations during the
220 preceding calendar year as to each approved small loan company office. Reports shall be made under
221 oath and shall be in the form prescribed by the Commissioner.

222 **§ 6.2-2239. Other reporting requirements.**

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

225 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

226 2. The institution of administrative or regulatory proceedings against the licensee by any
227 governmental authority, except to the extent that such proceedings are deemed confidential by order of
228 the authority;

229 3. Any felony indictments of the licensee or any of its members, partners, directors, officers, or
230 principals;

231 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or
232 principals; and

233 5. Such other event as the Commission may prescribe by regulation.

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

236 **§ 6.2-2240. Investigations and examinations.**

237 The Commission may, by its designated officers and employees, as often as it deems necessary,
238 investigate and examine the affairs, business, premises, and records of any person licensed or required
239 to be licensed under this chapter insofar as they pertain to any business for which a license is required
240 by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In
241 the course of such investigations and examinations, the owners, members, officers, directors, partners,
242 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand
243 of the person making such investigation or examination, afford full access to all premises, books,
244 records, and information that the person making such investigation or examination deems necessary.

For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

In order to defray the costs of their examination, supervision, and regulation, every licensee under this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of such licensees, the actual costs of their examinations, and other factors relating to their supervision and regulation. All such fees shall be assessed on or before September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before October 15 following each assessment. Additionally, when it becomes necessary to examine or investigate the books and records of a licensee under this chapter at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

§ 6.2-2241. Regulations.

The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the rules of the Commission. A copy of each regulation and the order adopting it shall be sent to all licensees at least 30 days before the effective date thereof.

§ 6.2-2242. Small loan amount, interest, fees, and charges.

A. A licensee authorized to make small loans under this chapter may charge and collect interest, fees, and charges in a manner consistent with this section.

B. A licensee may charge and collect periodic interest at any rate, not to exceed 36 percent, agreed to by the parties.

C. In addition to the periodic interest authorized under subsection B, a licensee may also charge and collect a customary daily fee, not to exceed (i) 0.55 percent of the average daily principal balance in any billing cycle, if the maximum line of credit is \$1,500 or less, and (ii) 0.45 percent of the average daily principal balance in any billing cycle, if the maximum line of credit is more than \$1,500, to defray the ordinary costs of opening, administering, and terminating a small loan plan. The customary daily fee shall not be deemed interest for any purpose of law.

D. No small loan plan under this chapter shall have a maximum line of credit or outstanding principal balance in excess of \$3,000 at any time.

E. Any small loan plan under this chapter shall require payment on or before the due date of each billing cycle in an amount sufficient to reduce any original principal balance by at least five percent per calendar month.

F. If a check is returned to a licensee from a payer financial institution due to insufficient funds, no licensee shall have the authority to assess a handling charge against the maker or drawer of the returned check.

G. In the event that a borrower defaults under the terms of the small loan plan, the licensee may:

1. If the small loan plan so provides, refer the borrower's account to an attorney for collection and charge and collect from the borrower any court costs and attorney fees, including those incurred on appeal; or

2. Charge and collect interest and the customary daily fee following default of the borrower or judgment in favor of the licensee at the periodic rate permitted by this section.

H. A small loan shall be unsecured, without fixed maturity or limitation as to the length of the term, and shall be subject to prepayment in whole or in part at any time without penalty.

§ 6.2-2243. Required and prohibited business methods.

A licensee shall provide each prospective borrower, before consummation of a small loan plan, a written explanation, in clear, understandable language, of the interest, fees, and charges to be charged by the licensee. The style, content, and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the borrower may prepay the unpaid balance in whole or in part at any time without penalty. The Commissioner may promulgate rules establishing additional requirements in order to assure complete and accurate disclosure of the interest, fees, and charges to be charged by a licensee under a small loan plan.

B. The account-opening statement for any small loan plan shall include, along with other state or federal law requirements:

1. A two-business-day borrower right of rescission for any requested draw under the small loan plan; and

2. A notice informing the borrower that complaints may be made to the Commission, including the Commission's telephone number and address.

306 C. The account-opening statement for any small loan plan shall not require or provide the licensee
307 the authority to require the borrower to draw the full amount of credit available under a small loan
308 plan at any time.

309 D. A licensee shall provide borrowers with a periodic billing statement in compliance with federal
310 truth-in-lending laws.

311 E. If two or more borrowers having the same residence are each authorized to obtain extensions of
312 credit under the small loan plan, the statement of provisions of the plan shall be provided to one of the
313 borrowers as may be designated in the plan, and the billing statements required by law shall be
314 rendered to such borrower.

315 F. Assignment or order for the payment of future salary, wages, commissions, or other compensation
316 for services shall not be given as an enforceable security interest for a loan made by any licensee,
317 notwithstanding the provisions of any other law to the contrary. A licensee shall not take a lien upon
318 real estate or personal property as security for any loan made under the provisions of this chapter.

319 G. A licensee shall administer small loans in compliance with the Equal Credit Opportunity Act, 15
320 U.S.C. § 1691 et seq.; Truth in Lending Act, 15 U.S.C. § 1601 et seq.; Fair Credit Reporting Act, 15
321 U.S.C. § 1681 et seq.; Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.; Dodd-Frank Wall
322 Street Reform and Consumer Protection Act, P.L. 111-203; Electronic Fund Transfer Act, 15 U.S.C.
323 § 1693 et seq.; Fair Credit Billing Act, P.L. 93-495; Bankruptcy Abuse Prevention and Consumer
324 Protection Act, P.L. 109-8; Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq.; Internal Revenue
325 Service Form 8300; Bank Secrecy Act, P.L. 91-508; the U.S. Treasury Department, Office of Foreign
326 Assets Specially Designated Nationals List; USA Patriot Act, P.L. 107-56; the Federal Trade
327 Commission's Privacy Rule, Safeguards Rule, and Disposal of Consumer Report Information and
328 Records Rule; and all other applicable federal rules and regulations.

329 H. A licensee shall provide a clearly displayed notice to the borrower as part of the small loan
330 agreement that states:

331 "YOU MAY REPAY THIS LOAN, IN WHOLE OR IN PART, AT ANY TIME. PAYING MORE THAN
332 THE MINIMUM PAYMENT WILL REDUCE YOUR COST OF BORROWING."

333 I. A licensee shall provide in a small loan plan and prominently display, whether in a physical
334 location or on its website, a customer service phone number for borrowers.

335 J. No borrower may have more than one outstanding small loan under this chapter at any one time.
336 Each licensee shall inquire of any prospective borrower seeking a small loan under this chapter
337 regarding the borrower's outstanding small loans.

338 1. If the borrower represents in writing that the borrower has no outstanding small loans, a licensee
339 may offer the customer a small loan plan.

340 2. If the borrower represents in writing that the borrower has one or more outstanding small loans,
341 a licensee shall not offer a small loan plan to the borrower.

342 K. No small loan plan subject to this chapter shall incorporate provisions from the law of another
343 jurisdiction other than the Commonwealth, waive the requirements or provisions of this chapter, or
344 apply any provision that conflicts with those expressly set forth herein.

345 **§ 6.2-2244. Additional charges prohibited.**

346 No further interest, charges, or fees in addition to those permitted under § 6.2-2242 shall be directly
347 or indirectly charged, contracted for, collected, or received, including for insurance premiums,
348 recordation fees, or check handling fees.

349 **§ 6.2-2245. Noncompliant loan agreement.**

350 A. If any provision of a written small loan plan violates this chapter, such provision shall be
351 unenforceable against the borrower.

352 B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a
353 civil action to enforce such provision. Any person who is successful in such action shall recover
354 reasonable attorney fees, expert witness fees, and court costs incurred by bringing such action.

355 **§ 6.2-2246. Duty to refund unauthorized or excess charges; liability to borrower for penalty.**

356 A. If any amount not authorized by this chapter or in excess of the charges permitted by this chapter
357 is charged and received by a licensee, such unauthorized or excess charge actually received by a
358 licensee shall be refunded to the borrower or credited to the borrower's account.

359 B. Except for excess charges charged and received as the result of a bona fide error, the licensee
360 shall be liable to the borrower for a penalty of twice the amount of any unauthorized or excess charge
361 actually received by the licensee and for any court costs and reasonable attorney fees incurred by the
362 borrower.

363 **§ 6.2-2247. Other business.**

364 A. Except as permitted by Commission regulation or upon Commission approval of a written
365 application filed in accordance with this section, a licensee that conducts the business of making small
366 loans pursuant to this chapter solely over the internet shall not offer, sell, or make available any other
367 products or services to Virginia residents without a license to do so if one is required.

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

§ 6.2-2248. Suspension, revocation, or surrender of license.

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

- 1. Failure to pay any fee, assessment, or expense imposed by this chapter;*
- 2. Failure to comply with any order of the Commission;*
- 3. Violation of any provision of this chapter or any regulation adopted by the Commission pursuant thereto or violation of any other law or regulation applicable to the conduct of the licensee's business;*
- 4. A course of conduct consisting of the failure to perform written agreements with borrowers;*
- 5. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;*
- 6. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;*
- 7. Entry of a final federal or state administrative order against the licensee for willful violation of any law or any regulation applicable to the conduct of its business;*
- 8. Refusal to permit an investigation or examination by the Commission; or*
- 9. Any ground for denial of a license under this chapter.*

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

C. Any licensee may surrender any license by delivering it to the Commission with written notice of its surrender. The surrender shall not affect the licensee's civil or criminal liability for acts previously committed.

D. The revocation, suspension, or surrender of any license shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

§ 6.2-2249. Cease and desist orders.

If the Commission determines that any person has violated any provision of this chapter or any regulation adopted by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of a licensee's business, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the Clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the rules of the Commission. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

§ 6.2-2250. Procedure for revocation or suspension of license; notice of proposed revocation or suspension.

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § 6.2-2248 until it has given the licensee 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except on the basis of findings made at such hearing. The hearing shall be conducted in accordance with the rules of the Commission.

§ 6.2-2251. 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, for violations found by the court to be willful and knowing. 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.

§ 6.5-2252. Penalties.

429 Any person, including the members, officers, directors, agents, and employees of an entity, that
430 violates or participates in the violation of any provision of § 6.2-2229 is guilty of a Class 2
431 misdemeanor.

432 The Commission may impose a civil penalty not exceeding \$10,000 upon any person who it
433 determines, in proceedings conducted in accordance with the rules of the Commission, has violated any
434 provision of this chapter or of any regulation or order of the Commission, either knowingly or without
435 the exercise of due care to prevent the violation. In any proceeding under this section, a licensee shall
436 not be penalized for any act or omission done in reasonable reliance on any regulation, order, letter, or
437 other written directive or request of the Commission.

438 **§ 6.2-2253. Registration of brokers.**

439 Every person engaging in brokering under this chapter shall register with the Commission. The
440 registration shall be ministerial in nature and subject to such registration and renewal requirements as
441 may be established by the Commissioner. In adopting rules and regulations, the Commission shall
442 include any terms, conditions, or requirements applicable to such registration and renewal.

443 The Commission shall maintain a list of those persons engaged in brokering and shall make such list
444 available on its website.

445 **§ 59.1-199. Exclusions.**

446 Nothing in this chapter shall apply to:

447 A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this
448 Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official
449 of this Commonwealth or the United States.

450 B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or
451 television station, or other advertising media such as outdoor advertising and advertising agencies, in the
452 publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such
453 person knew that the advertisement was of a character prohibited by § 59.1-200.

454 C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit
455 Protection Act, 15 U.S.C. § 1601 et seq.

456 D. Banks, savings institutions, credit unions, small loan companies, public service corporations,
457 mortgage lenders as defined in § 6.2-1600, broker-dealers as defined in § 13.1-501, gas suppliers as
458 defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State
459 Corporation Commission or a comparable federal regulating body. *For the purposes of this subsection,*
460 *"small loan companies" does not include a person licensed under Chapter 22.1 (§ 6.2-2228 et seq.) of*
461 *Title 6.2.*

462 E. Any aspect of a consumer transaction which is subject to the Virginia Residential Landlord and
463 Tenant Act (§ 55.1-1200 et seq.) or Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, unless the act or
464 practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.

465 F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

466 **§ 59.1-200. Prohibited practices.**

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

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

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

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

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

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

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

477 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
478 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfections, or "not first
479 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
480 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
481 irregulars, imperfections or "not first class";

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

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

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

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts 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.);

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 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

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

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

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.);

51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

52. Violating any provision of § 8.2-317.1;

53. Violating subsection A of § 9.1-149.1;

54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;

55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

59. Violating any provision of subsection E of § 32.1-126; and

60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; and

61. Violating any provision of Chapter 22.1 (§ 6.2-2228 et seq.) of Title 6.2.

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable

614 such contract or lease.

615 2. That any person who upon the effective date of the first enactment of this act will be required
616 to be licensed by the provisions of Chapter 22.1 of Title 6.2 of the Code of Virginia, as created by
617 this act, shall apply for license in accordance with such provisions by October 1, 2020.

618 3. No person who is licensed under the provisions of Chapter 22.1 of Title 6.2 of the Code of
619 Virginia, as created by this act, shall make any loan or otherwise extend credit under an open-end
620 credit plan pursuant to § 6.2-312 of the Code of Virginia.