

LD1103681

SENATE BILL NO. 212

Offered January 24, 1994

A BILL to amend and reenact §§ 6.1-249, 6.1-256.1, 6.1-278, 6.1-284.1, 6.1-285, 6.1-286, 6.1-288 and 6.1-291 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 6.1-272.1; and to repeal §§ 6.1-271, 6.1-271.1, 6.1-277 and 6.1-287, relating to consumer finance companies.

Patrons—Holland, R.J., Bell, Chichester, Cross, Goode, Hawkins, Holland, C.A., Holland, E.M., Lucas, Maxwell, Miller, K.G., Nolen, Norment, Potts, Reasor, Trumbo and Waddell; Delegates: Callahan, Copeland, Cranwell, Croshaw, Giesen, Hall, Hargrove, Keating, Murphy, Robinson, Tata, Watkins and Woodrum

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-249, 6.1-256.1, 6.1-278, 6.1-284.1, 6.1-285, 6.1-286, 6.1-288 and 6.1-291 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-272.1 as follows:

§ 6.1-249. Compliance with chapter; license required.

A. No person shall engage in the business of lending in principal amounts of the then established size of loan ceiling \$6,000 or less, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, compensation, consideration or expense which in the aggregate are greater than the rate interest otherwise permitted by law §6.1-330.55, except as provided in and authorized by this chapter and without first having obtained a license from the Commission.

B. However, subject to §§ 6.1-251 and 6.1-281 of this chapter, the foregoing prohibition in subsection A of this section shall not be construed to prevent any person, other than a licensee or other entity conducting business in a licensed consumer finance office, from making a mortgage loan pursuant to §§ 6.1-330.69 and 6.1-330.70 or §§ 6.1-330.71 and 6.1-330.72 in any principal amount or from extending credit as described in § 6.1-330.78 in any amount.

§ 6.1-256.1. Issuance of consumer finance license; purchase of loan contracts.

A. The Commission shall issue and deliver to the applicant a license to make loans in accordance with the provisions of this chapter at the location in this Commonwealth specified in the application if it finds:

1. That the financial responsibility, experience, character and general fitness of the applicant, or of the members if the applicant be a copartnership or association, or of the officers and directors if the applicant be a corporation, are such as calculated to command the confidence of the public and to warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within the purpose of this chapter;

2. That allowing the applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located;

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

4. That all of the prerequisites to obtaining the license prescribed by § 6.1-254 have been complied with, the foregoing facts being conditions precedent to the issuance of a license under this chapter.

If any licensee shall sell his outstanding loan contracts and surrender his license, the Commission shall issue a license to the purchaser of the contracts to make loans under this chapter in the same community without reference to whether the convenience and advantage of the community will be promoted thereby, if the purchaser shall qualify in all other respects for the issuance of the license.

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

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

2. That allowing the applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located; and

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32. That all of the prerequisites to obtaining the license prescribed by § 6.1-254 have been complied with, the foregoing facts being conditions precedent to the issuance of a license under this chapter.

C. If any licensee shall sell his *its* outstanding loan contracts and ~~surrender his license~~, the Commission shall issue a license to the purchaser of the contracts to make loans under this chapter in the same community without reference to whether the convenience and advantage of the community will be promoted thereby, if the purchaser shall qualify in all other respects for the issuance of the license, *the person purchasing such contracts shall, unless already licensed, obtain a license under this chapter.*

§ 6.1-272.1. *Rate of interest; maximum term of loan.*

A lender licensed under this chapter may charge and receive interest only at such single annual rate as shall be stated in the written loan contract signed by the borrower. 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 hereunder, a year may be any period of time consisting of 360 or 365 days. No licensee shall enter into any contract for a loan under this chapter which provides for installments extending more than sixty-one months from the date of the contract.

§ 6.1-278. Additional interest prohibited; exception.

In addition to the ~~charges interest~~ permitted under other sections of this chapter, no further or other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, or other thing or otherwise shall be directly or indirectly charged, contracted for, collected, or received, except: (i) insurance premiums actually paid out by the licensee to any insurance company or agent duly authorized to do business in this Commonwealth for insurance for the protection and benefit of the borrower written in connection with any loan, and (ii) the actual cost of recordation fees or on loans over \$100 the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of not recording any instrument securing the loan and may charge a handling fee not to exceed \$15 for each check returned to the licensee because the drawer had no account or insufficient funds in the payor bank.

6.1-284.1. What note or other instrument shall show.

No licensee shall take any note, promise to pay, or instrument of security in which blanks are left to be filled in after execution, or that does not give the amount of the loan, a clear description of the installment payments required, and the *annual percentage rate of interest charged*. A disclosure pursuant to Federal Regulation Z (12 CFR Part 226) shall constitute compliance with the disclosure requirements of this chapter. A licensee may also include the disclosures required by Federal Reserve Board Regulation Z, 12 CFR Part 226, in the note, promise to pay, or instrument of security.

§ 6.1-285. Installment payments.

No licensee shall enter into any contract of loan under this chapter providing for installment payments extending more than the number of calendar months from the scheduled date of making the contract pursuant to the provisions of ~~§ 6.1-271.1 (b)~~ 6.1-272.1. Every contract shall provide for repayment of the amount loaned in substantially equal *monthly* installments, ~~either of principal and interest or of principal and charges in the aggregate, at approximately equal periodic intervals of time~~. But nothing contained in this chapter shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract, *or prevent a licensee from entering into a loan contract providing for an odd first payment period of up to 45 days and an odd first payment greater than other monthly payments because of such odd first payment period.*

§ 6.1-286. Limitation on borrower's or surety's indebtedness.

A. No licensee shall permit any person, as borrower, or as endorser, guarantor or surety for any borrower, or otherwise, ~~or any husband and wife, jointly or severally~~, to become obligated, directly or contingently, or both, (a) to the licensee at any time in a sum of more than the ~~then established size of loan ceiling \$6,000 in principal, nor (b) under more than one contract of loan at the same time for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this chapter; provided,~~ however, if a licensee purchases all, or substantially all, the loan contracts of another licensee and has at the time of the purchase loan contracts with one or more of the borrowers whose loans are purchased, the purchaser shall be entitled to collect the principal and ~~charges interest~~ according to the terms of each loan contract, but the purchaser shall not refinance or make a new loan to any such borrower except in accordance with the provisions of this chapter.

B. If two or more licensees are under the same ownership, or under common control, then such of their offices as are located in the same political subdivision of the Commonwealth, or within five miles of each other, shall be treated as one licensee for the purpose of this section.

§ 6.1-288. Wage purchases.

The payment of ~~the then established size of loan ceiling, \$6,000~~ or less in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan of money secured by the sale, assignment or order, ~~and the~~

122 *The amount by which the compensation so sold, assigned or ordered paid exceeds the amount of*
123 *consideration actually paid shall for the purpose of this chapter be deemed interest or charges upon the*
124 *loan from the date of the payment to the date the compensation is payable, which amount shall not, in*
125 *any case, be more than is sufficient to yield, to the licensee making the loan, interest on his investment*
126 *at the annual rate of ten per centum per annum percent. Such transaction shall in all other respects be*
127 *governed by and subject to the provisions of this chapter.*

128 § 6.1-291. Collection of loans made outside Commonwealth.

129 No loan made outside this Commonwealth in the amount of ~~the then established size of loan ceiling~~
130 *\$6,000 or less for which the greater rates of interest, consideration or charges, than is permitted by the*
131 *law applicable to such loan in the state in which the loan was made, has been charged, contracted for,*
132 *or received shall be collected in this Commonwealth and every. Every person in anywise participating*
133 *in an effort to enforce the collection of such loan in this Commonwealth shall be subject to the*
134 *provisions of this chapter.*

135 **2. That §§ 6.1-271, 6.1-271.1, 6.1-277 and 6.1-287 of the Code of Virginia are repealed.**