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HOUSE BILL NO. 2446

Offered January 20, 1997

A BILL to amend and reenact §§ 6.1-330.77, 6.1-330.84, 6.1-330.85, 6.1-330.86:1, 6.1-330.89, 38.2-3722, and 38.2-3729 of the Code of Virginia, relating to finance charges; prohibiting the use of the Rule of 78.

Patrons—Keating, Barlow, Deeds and Plum; Senators: Lucas, Miller, Y.B. and Saslaw

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-330.77, 6.1-330.84, 6.1-330.85, 6.1-330.86:1, 6.1-330.89, 38.2-3722, and 38.2-3729 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-330.77. Charges by sellers of goods or services; certain premiums not construed as additional charges; penalty for violations of section.

A. Any seller of goods or services who extends credit under a closed-end installment credit plan or arrangement may impose finance charges at such rate or rates as may be agreed upon by the seller and the purchaser. Deferrals and extensions of the time for payment, if allowed by the seller or his assignee, may be subject to a finance charge, if agreed to in the original contract or at the time of the renewal or extension. No additional finance charge shall be made for the extension of credit under such a plan or arrangement. If the total finance charge on the transaction is precomputed according to the actuarial method, the finance charge shall be calculated on the assumption that all scheduled payments will be made when due. The balance on which such finance charge may be imposed may include the deferred portion of the sales price and costs and charges incidental to the transaction, including any insurance premium financed in connection therewith. The debtor shall have the right to prepay in full on precomputed transactions and receive a rebate of unearned finance charge determined in accordance with the Rule of 78, as illustrated in § 6.1-330.86, or other any method elected by the seller under which the finance charge imposed does not exceed the amount that results from application of the Rule of 78 on extensions of credit with an initial maturity of sixty-one months or less. On extensions of credit with an initial maturity of more than sixty-one months, the debtor shall receive a rebate computed under a method at least as favorable to the debtor as the actuarial method. The seller may also condition such rebate upon receiving a minimum of twenty-five dollars in finance charges. This amount, to the extent not earned, may be withheld from the rebate required hereunder. A late charge pursuant to § 6.1-330.80 may be imposed.

B. Premiums for credit life insurance and credit accident and health insurance purchased by the debtor are not to be construed as an additional charge for the extension of credit if such insurance coverage is purchased voluntarily by the debtor. Premiums for property insurance on the goods purchased or leased are not to be construed as additional charges for extension of credit unless the seller requires the purchase of such insurance from or through the seller.

§ 6.1-330.84. Prepayment by borrower from industrial loan association; rebates for unearned interest; prepayment penalty.

Any natural person borrowing from an industrial loan association shall have the right to anticipate payment of his debt at any time. In cases where interest has been added to the face amount of the note, such person shall have the right to receive a rebate by way of credit for any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.86 or by using any other method that is at least as favorable to such borrower on loans (i) with an initial maturity and corresponding amortization period of sixty-one months or less and (ii) payable in equal periodic installments, and on other loans under a method at least as favorable to the borrower as the actuarial method. In addition, the industrial loan association may charge a prepayment penalty not to exceed two percent of the amount of the prepayment, provided such prepayment penalty, including the percent thereof, is set forth in the contract of indebtedness and is disclosed to the borrower pursuant to the federal interest disclosure laws.

§ 6.1-330.85. Prepayment of loan described in § 6.1-330.71; rebates for unearned interest.

A. Any borrower under any loan described in § 6.1-330.71 shall have the right to anticipate payment of his debt in whole or in part at any time without penalty. In cases where interest has been added to the face amount of a note payable in installments, the borrower shall have the right to a rebate of any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.86 on loans (i) with an initial maturity and corresponding amortization period of sixty-one months or less and (ii) payable in equal periodic installments. On loans with an initial maturity of more

60 than sixty-one months, the borrower shall receive a rebate computed under a method at least as
61 favorable to the borrower as the actuarial method.

62 B. The provisions of this section shall not apply to any loan made by any lender enumerated in
63 § 6.1-330.73.

64 § 6.1-330.86:1. Use of Rule of 78 prohibited.

65 A. On any loan of money made with an initial maturity of greater than sixty-one months or on any
66 sales contract which necessitates such a loan, which is made after January 1, 1991, the Rule of 78 shall
67 not be used to determine the amount of the rebate of unearned interest where payment of the debt is
68 anticipated on such loan or contract.

69 B. *After January 1, 1998* On any loan of money made with an initial maturity and corresponding
70 amortization period of sixty-one months or less, payable in equal periodic installments, the Rule of 78
71 may not be used to determine the amount of rebate of unearned interest where payment of the debt is
72 anticipated on such loan or contract.

73 § 6.1-330.89. Acceleration clause in note evidencing installment loan; effect of acceleration.

74 Any note or other contract evidencing an installment loan or other installment sales obligation with
75 add-on interest may provide that the entire unpaid loan balance, at the option of the holder, shall
76 become due and payable upon default in payment of any installment without impairing the negotiability
77 of the note, if otherwise negotiable. Upon such acceleration, the holder of the contract of indebtedness
78 shall not be entitled to judgment for unearned interest, but the balance owing shall be computed as if
79 the borrower had made a voluntary prepayment and obtained as of the date of acceleration an interest
80 credit based the upon the Rule of 78 as defined in ~~§ 6.1-330.86~~ on a loan with an initial maturity and
81 corresponding amortization period of sixty-one months or less payable in equal periodic installments,
82 and on other loans under a method at least as favorable to the borrower as actuarial method. Such
83 accelerated balance shall bear interest at the rate shown, or which should have been shown if a
84 consumer credit transaction were involved, as the annual percentage rate under a truth-in-lending
85 disclosure pursuant to federal law.

86 § 38.2-3722. Variable interest rate indebtedness; amount; disclosure; refunds.

87 A. Notwithstanding the terms of § 38.2-3720, if the credit transaction provides for a variable interest
88 rate and the insurance premiums are calculated and charged on a single premium basis, the initial
89 amount of insurance coverage shall not exceed the scheduled amounts of unpaid indebtedness based
90 upon the initial contract interest rate; and the death benefit shall be equal to the scheduled amount of
91 insurance at the date of death or the amount required to liquidate the indebtedness in accordance with
92 the terms of the contract of indebtedness, whichever is greater. If the actual interest rate charged at any
93 time exceeds the original contract interest rate, the term of the insurance shall continue without
94 additional charge for a period not to exceed three months. No additional premiums shall be charged for
95 any additional coverage provided beyond that included in the single premium charge.

96 B. Each individual policy or group certificate of credit insurance issued in connection with credit
97 transactions involving variable interest rates shall include a disclosure (i) that the death benefit shall in
98 no case be less than the insured scheduled amount of coverage or the amount required to liquidate the
99 insured indebtedness in accordance with the terms of the contract of indebtedness, whichever is greater;
100 and (ii) that the term of insurance shall continue for a period not to exceed three months if the actual
101 interest rate charge at any time exceeds the original contract interest rate.

102 C. Each individual policy or group certificate of credit insurance issued in connection with credit
103 transactions involving variable interest rates shall provide that in the event of termination of the
104 insurance prior to the original scheduled maturity date of the indebtedness, a refund of any amount paid
105 by the debtor for such insurance shall be made in accordance with § 38.2-3729. Such refund shall be
106 based on the terms of the original loan and the actual elapsed time.

107 For a loan with a term of more than sixty-one months, computation of such refund using the
108 actuarial method shall be deemed to comply with the requirements hereof. For a loan with a term of
109 sixty-one months or less, computation of such refund using the Rule of 78 shall be deemed to comply
110 with the requirement hereof. *For loans made after January 1, 1998, computation of such refund using*
111 *the Rule of 78 shall not be deemed to comply with the requirements of this section.*

112 § 38.2-3729. Refunds.

113 A. Each individual policy or group certificate shall provide that, in the event of termination of the
114 insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the
115 debtor for insurance shall be paid or credited promptly to the person entitled thereto.

116 B. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and
117 sickness insurance and an individual policy or group certificate of insurance is not issued, the creditor
118 shall immediately give written notice to such debtor and shall promptly make an appropriate credit to
119 the account.

120 C. Refund formulas which any insurer desires to use for decreasing term credit life insurance and
121 credit accident and sickness insurance with terms of more than sixty-one months must develop refunds

which are at least as favorable to the debtor as refunds based on the actuarial method. Refund formulas for decreasing term credit life insurance and credit accident and sickness insurance with terms of sixty-one months or less must develop refunds which are at least as favorable to the debtor as refunds based on the Rule of 78 or the actuarial method, ~~whichever method is consistent with the original method of premium calculation.~~ The actuarial method will result in refunds equal to the premium cost of scheduled benefits subsequent to the date of cancellation or termination, computed at the schedule of premium rates in effect on the date of issue. The refund of premiums for level term credit life insurance shall be no less than the pro rata unearned gross premium. Refund formulas must be filed with and approved by the Commission prior to use.

D. The requirements of subsection C of this section that refund formulas be filed with the Commission shall be considered fulfilled if the refund formulas are set forth in the individual policy or group certificate filed with the Commission.

E. Refunds may be computed:

1. On a daily basis; or
2. From the end of the loan month if sixteen days or more of a loan month have been earned, provided that, if fifteen days or less of a loan month have been earned, the refund is computed from the beginning of the loan month.

F. No refund of one dollar or less need be made.

G. Refunds shall be made in accordance with this chapter without regard as to whether or not the refund has been requested by the debtor.

H. Voluntary prepayment of indebtedness. If a debtor prepays the indebtedness other than as a result of death:

1. Any credit life insurance covering such indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be paid to the debtor in accordance with this section; and

2. Any credit accident and sickness insurance covering such indebtedness shall be terminated and an appropriate refund of the credit accident and sickness insurance premium shall be paid to the debtor in accordance with this section. If a claim under such coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit accident and sickness benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

I. Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor, if living, or the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

1. An appropriate refund of the credit accident and sickness insurance premium in accordance with this section; and

2. The amount of benefits in excess of the amount required to repay the indebtedness after crediting any unearned interest or finance charges.