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SENATE BILL NO. 1032

Senate Amendments in [] — January 29, 1997

A BILL to amend and reenact §§ 6.1-330.63 and 6.1-330.78 of the Code of Virginia, relating to banking and finance; charges by banks or savings institutions; revolving credit; open-end sales and loan plans.

Patrons—Stosch, Benedetti, Edwards, Potts and Wampler; Delegates: Callahan, Cantor, Croshaw, Heilig and Parrish

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-330.63 and 6.1-330.78 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-330.63. Charges by banks or savings institutions; revolving credit.

A. Notwithstanding any other provision of this chapter, any bank or savings institution may impose finance charges and other charges and fees at such rates and in such amounts *and manner* as may be agreed by the borrower under a contract for revolving credit or any plan which permits an obligor to avail himself of the credit so established. Any finance charges computed by application of a rate to outstanding balances shall be computed at the option of the bank or savings institution on:

a. The average daily balance for the period ending on the billing date;

b. The balance existing on the billing date of the month; or

c. Any other balance which does not result in the lender charging or receiving any sum in excess of what would be charged or received under subdivision 1 a or 1 b of this subsection.

2. No finance charge shall be imposed unless the bill is mailed not later than eight days (excluding Saturdays, Sundays and holidays) after the billing date, except that such time limitation shall not apply in any case where the lender has been prevented, delayed, or hindered in mailing or delivering the bill within such time period because of an act of God, war, civil disorder, natural disaster, strike, or other excusable or justifiable cause.

3. [In the event of the extension of credit by a bank or savings institution hereunder to be effected by the use of a credit card for the purchase of merchandise or services, no finance charge shall be imposed upon the cardholder or borrower on such extension of credit if payment in full of the unpaid balance owing for all extensions of credit under the revolving credit contract or plan is received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date). In the event of the extension of credit by a bank or savings institution hereunder to be effected by the use of a credit card for the purchase of merchandise or services, no finance charge shall be imposed upon the cardholder or borrower on such extension of credit if payment in full of the unpaid balance owing for all extensions of credit under the revolving credit contract or plan is received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date).]

4. Any payment, in full or in part, received by the bank or savings institution shall be credited in the manner specified in the contract within two banking days of its receipt.

5. As used in this section "average daily balance" means, for any billing period, that amount which is the sum of the actual amounts outstanding each day during the billing period divided by the number of days in the billing period.

B. The higher rate in excess of that permitted prior to July 1, 1982, shall not take effect as to balances existing on or before April 1, 1983, unless:

1. Such creditor shall notify the borrower in writing of the proposed change, that the higher charge on existing balances and balances incurred prior to the effective date of the change is accepted by use of the revolving credit after giving of the notice, and such borrower is given at least nine months prior to the effective date of such change to pay off balances existing on the date of such notice;

2. Such borrower accepts the proposed change and modification of rate by using the revolving credit at any time thirty days or more after the giving by the creditor of the notice.

C. Beginning after January 1, 1988, in the case of any plan in which the charge authorized by this section is imposed on the average daily balance and such balance is calculated under the plan without excluding purchases incurred during the billing period, the issuer shall disclose to all new cardholders and thereafter on the upper one-half of the periodic statement, the following in letters at least equal in size to the letters used in the wording of the minimum payment terms:

To avoid additional finance charges being applied to your current purchases on next month's

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statement, pay the new balance on this statement in full by the due date.

DB. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is located in this Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by any of the following disclosures:

1. A disclosure of each of the following if applicable:

a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.

b. Any membership or participation fee that may be imposed for availability of a credit card account.

c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.

d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;

2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or

3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.

C. A contract for revolving credit between a bank or savings institution and an obligor, or any plan which permits an obligor to avail himself of the credit so established, shall be governed solely by federal law and the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.

§ 6.1-330.78. Open-end sales and loan plans.

A. 4. Notwithstanding any provision of this chapter other than § 6.1-330.71, any seller or lender engaged in the extension of credit under an open-end credit or similar plan [~~under which a finance charge is imposed upon the cardholder or consumer, 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 twenty-five days later than the prior billing date),~~ under which a finance charge is imposed upon the cardholder or consumer 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 twenty-five days later than the prior billing date),] may impose finance charges and other charges and fees at such rate rates and in such amounts and manner as may be agreed upon by the seller or lender and the cardholder or consumer. Such rate may be applied at the option of the seller or lender, to:

a. The average daily balance for the period ending on the billing date;

b. The balance existing on the billing date of the month; or

c. Any other balance which does not result in the seller or lender charging or receiving finance charges in excess of those which would be charged or received under subdivision a or b of this subsection.

2. No finance charge shall be imposed unless the bill is mailed not later than eight days (excluding Saturdays, Sundays and holidays) after the billing date, except that such time limitation shall not apply in any case where the seller or lender has been prevented, delayed, or hindered in mailing or delivering the bill within such time period because of an act of God; war; civil disorder; natural disaster; strike; or other excusable or justifiable cause.

3. Notwithstanding the provisions of this section, a seller or lender may charge and collect a minimum finance charge of one-half dollar per month; however, no finance charge shall be charged against a zero balance.

4. For the purposes of this section the average daily balance for any billing period shall be that amount which is the sum of the actual amounts outstanding each day during the period, divided by the number of days in the period obligor.

B. Notwithstanding the provisions of § 6.1-330.71 and subject to the provisions of § 8.9-204.1, 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. Unless the contract of indebtedness provides that the rate of finance charge shall vary in accordance with an exterior standard, no increase in finance charge rate shall take effect unless at least thirty days prior to the effective date of such increase a written notice of the increase has been mailed or otherwise delivered to the cardholder or consumer explaining that the making of additional charges under the plan on or after the effective date of the increase shall be deemed to constitute acceptance of such higher charge on existing balances and any subsequent extension of credit under the plan.

DC. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is located in this Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by any of the following disclosures:

1. A disclosure of each of the following if applicable:

a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.

b. Any membership or participation fee that may be imposed for availability of a credit card account.

c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.

d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;

2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or

3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.

E. Beginning after January 1, 1988, in the case of any plan in which the charge authorized by this section is imposed on the average daily balance and such balance is calculated under the plan without excluding purchases incurred during the billing period, the issuer shall disclose to all new cardholders and thereafter on the upper one-half of the periodic statement, the following in letters at least equal in size to the letters used in the wording of the minimum payment terms:

To avoid additional finance charges being applied to your current purchases on next month's statement, pay the new balance on this statement in full by the due date.

D. An open-end credit or similar plan between a seller or lender and an obligor shall be governed solely by federal law and the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.