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HOUSE BILL NO. 912

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 10, 2006)

(Patrons Prior to Substitute—Delegates Oder, Jones, D.C. [HB 225] and Johnson [HB 626])

A BILL to amend and reenact §§ 6.1-459, 6.1-467, and 6.1-469 of the Code of Virginia, relating to payday loans; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-459, 6.1-467, and 6.1-469 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-459. 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 fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z; (iv) evidence of receipt from the borrower of a check, dated the same date, 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 a specified maturity date, which date shall be at least seven days after the date the loan is made 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 fees.

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 the borrower as security for any loan at any one time.

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 refinance, renew or extend any payday loan. *The licensee shall obtain from the borrower a written affirmation on the loan application or otherwise that the funds will not be used to repay, in whole or in part, any other outstanding payday loan.*

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time ~~for the purpose of increasing charges payable by the borrower, regardless of the amount.~~

8. A licensee shall not require or accept a post-dated check as security for, or in payment of, a loan.

9. 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.

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

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

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

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

14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18 (§ 6.1-444 et seq.) of this title, and any holder of this check takes it subject to all claims and defenses of the maker."

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

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60 with complaints.

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

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

70 18. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest
71 charges, with examples using a \$300 loan payable in 14 days and 30 days.

72 19. Any advertising materials used to promote payday loans that includes the amount of any
73 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall
74 also include a statement of the fees and charges, expressed as an annual percentage rate, payable using
75 as an example a \$300 loan payable in 14 days.

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

84 21. If the borrower is a member of the military services of the United States or the spouse of a
85 member of the military services of the United States, the licensee:

86 a. Shall not garnish any military wages or salary;

87 b. Shall not conduct any collection activity against a borrower who is a member of the military
88 services of the United States or the spouse of such a member, when the member has been deployed to a
89 combat or combat support posting or is a member of the Reserves or National Guard and has been
90 called to active duty, for the duration of the deployment or active duty service;

91 c. Shall not contact the commanding officer of a borrower who is a member of the military services
92 of the United States or anyone in the borrower's chain of command in an effort to collect on a loan
93 made to the member or the member's spouse;

94 d. Shall be bound by the terms of any repayment agreement that the licensee negotiates with respect
95 to such borrower through military counselors or third-party credit counselors; and

96 e. Shall not make a loan to a member of the military services of the United States if a military base
97 commander has declared that a specific location of the licensee's business is off limits to military
98 personnel.

99 22. *No legal proceeding of any kind shall be filed or initiated by a lender against a borrower to
100 collect on a payday loan until 60 days after the date of default on the payday loan, during which period
101 the licensee and borrower may voluntarily enter into a repayment arrangement.*

102 23. *A licensee shall not engage in any unfair, misleading, deceptive, or fraudulent acts or practices
103 in the making or collecting of a payday loan.*

104 24. *In collecting or attempting to collect a payday loan when the check given as security for such
105 loan is dishonored, a licensee shall comply with the requirements and prohibitions applicable to debt
106 collectors under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.*

107 25. *A licensee or its affiliate shall not enter into a payday loan (i) with a person who has an
108 outstanding payday loan with that licensee or affiliate or (ii) with a borrower who had a previous
109 payday loan until the next business day following the date on which the previous payday loan was
110 terminated.*

111 26. *A licensee and borrower may agree to a payment plan for a payday loan at any time.*

112 a. *After four successive loans, any one of which having been made within three business days of
113 another loan from the same licensee, the licensee shall offer the borrower, in writing, the opportunity to
114 convert the payday loan to a payment plan. Each agreement for a loan payment plan shall be in writing
115 an acknowledged by both the borrower and the licensee. The licensee may not assess any additional
116 fee, interest charge, or other charge on the borrower as a result of converting the payday loan into a
117 payment plan. The payment plan shall provide for the payment of the total of payments due on the
118 payday loan over a period of not less than 60 days in three or more payments, unless the borrower and
119 the licensee agree to a shorter payment period. The borrower may pay the total of payments at any
120 time. The licensee may not charge any penalty, fee or charge to the borrower for prepayment of the
121 loan payment plan by the borrower. Each licensee shall conspicuously disclose to each borrower in the*

payday loan agreement that the borrower has access to such a payment plan after four successive loans. A licensee's violation of such a payment plan constitutes a violation of this chapter.

b. The licensee may take postdated checks at the initiation of the payment plan for the payments agreed to under the plan. If any check accepted by the licensee as payment under the payment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check.

c. If the borrower defaults on the payment plan, the licensee may initiate action to collect the total of payments under § 6.1-461.

d. If the licensee enters into a payment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that payment plan constitutes a violation of this chapter.

§ 6.1-467. Fines for violations.

In addition to the authority conferred under §§ 6.1-464 and 6.1-465, the Commission may impose a fine or penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission, has violated any of the provisions of this chapter or regulations promulgated by the Commission pursuant thereto, or violated any other law or regulation applicable to the conduct of the lender's business. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case of a violation of § 6.1-445, each loan made or arranged shall constitute a separate violation.

§ 6.1-469. Validity of noncompliant loan agreement; private right of action.

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

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