

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 849

An Act to amend and reenact §§ 6.1-459, 6.1-460, 6.1-461, 6.1-467, and 6.1-469 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.1-453.1 and 6.1-469.1, relating to the Payday Loan Act.

[H 12]

Approved April 23, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-459, 6.1-460, 6.1-461, 6.1-467, and 6.1-469 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.1-453.1 and 6.1-469.1 as follows:

§ 6.1-453.1. Payday lending database.

A. The Commission shall certify and contract with one or more third parties to develop, implement, and maintain a real-time, Internet-accessible database that contains such payday loan information as the Commission may require from time to time by administrative rule or policy statement. The database shall be operational by January 1, 2009.

B. The following provisions shall apply to the database:

1. Before making a payday loan, a licensee shall query the database through a Commission-certified database provider and shall retain evidence of the query for the Commission's supervisory review. The database will allow a licensee to make a payday loan only if making the loan is permissible under the provisions of this chapter. During any period that the database is unavailable due to technical problems beyond the licensee's control, a licensee may rely on the payday loan applicant's written representations, rather than the database's information, to verify that making the loan applied for is permissible under the provisions of this chapter. Because a licensee may rely on the accuracy of the applicant's representations and the database's information, a licensee is not subject to any administrative penalty or civil liability if that information is later determined to be inaccurate.

2. The database provider will maintain the database, will take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, will be responsible for the confidentiality and security of such information, and will own the information contained in the database. The Commission will have access to and utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter.

3. Upon a licensee's query, the database will advise the licensee whether the applicant is eligible for a new payday loan and, if the applicant is ineligible, the reason for such ineligibility. If the database advises the licensee that the applicant is ineligible for a payday loan, then the applicant shall direct any inquiry regarding the specific reason for such ineligibility to the database provider rather than to the licensee. The information contained in the payday loan database is confidential and exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

4. If a licensee and borrower consummate a payday loan, then the licensee shall pay a fee to defray the costs of submitting the database inquiry. The amount of the database inquiry fee shall be calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to actual cost of the operation of the database. If a licensee submits a database inquiry but does not consummate a payday loan with the applicant, then the licensee shall not pay the database inquiry fee. Each licensee shall remit all database inquiry fees directly to the database provider on a weekly basis.

5. If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if a borrower enters into an extended payment plan as provided in subdivision 26 of § 6.1-459 or an extended term loan as provided in subdivision 27 of § 6.1-459, then the licensee making the loan shall report such event or other information to the database not later than the close of business on the date of such event.

§ 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 *interest and any 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 *as of the same date that the loan is due*, 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~~ *the date the loan is due*, which

date shall be at least seven days after the date the loan is made produce a loan term of at least two times the borrower's pay cycle 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 *interest, fees, and charges*.

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~~ a 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 (i) refinance, renew or extend any *payday* loan; (ii) make a loan to a person if the loan would cause the person to have more than one *payday* loan from any licensee outstanding at the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous *payday* loan; (iv) make a *payday* loan to a person within 90 days following the date that the person has paid or otherwise satisfied in full a *payday* loan through an extended payment plan as provided in subdivision 26; (v) make a *payday* loan to a person within 45 days following the date that the person has paid or otherwise satisfied in full a fifth *payday* loan made within a period of 180 days as provided in subdivision 27 a; or (vi) make a *payday* loan to a person within the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

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.

8. A check accepted by a licensee as security for any loan shall not require or accept a post-dated check as security for, or in payment of, a be dated as of the date the loan is due.

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. *In addition to any other remedies available at law, a licensee that knowingly violates this prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of the dishonored check.*

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~~ *Title 6.1 of the Code of Virginia*, 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 with complaints.

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

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

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

19. Any advertising materials used to promote *payday* loans that includes the amount of any

payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall also include a statement of the *interest*, fees and charges, expressed as an annual percentage rate, payable using as an example a \$300 loan payable in 14 *and* 30 days.

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

21. ~~If the borrower is~~ *A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States; the licensee:*

- a. ~~Shall not garnish any military wages or salary;~~
- b. ~~Shall not conduct any collection activity against a borrower who is a member of the military services of the United States or the spouse of such a member, when the member has been deployed to a combat or combat support posting or is a member of the Reserves or National Guard and has been called to active duty, for the duration of the deployment or active duty service;~~
- c. ~~Shall not contact the commanding officer of a borrower who is a member of the military services of the United States or anyone in the borrower's chain of command in an effort to collect on a loan made to the member or the member's spouse;~~
- d. ~~Shall be bound by the terms of any repayment agreement that the licensee negotiates with respect to such borrower through military counselors or third-party credit counselors; and~~
- e. ~~Shall not make a loan to a member of the military services of the United States if a military base commander has declared that a specific location of the licensee's business is off limits to military personnel. Prior to making a payday loan, every licensee or affiliate shall inquire of every prospective borrower if he or she is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States. The loan documents shall include verification that the borrower is not a member of the military services of the United States or the spouse of a member of the military services of the United States.~~

22. *In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) regarding harassment or abuse, false or misleading misrepresentations, and unfair practices in collections.*

23. *A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60 days after the date of default on a payday loan, during which period the licensee and borrower may voluntarily enter into a repayment arrangement.*

24. *A licensee shall not obtain authorization to electronically debit a borrower's deposit account in connection with any payday loan.*

25. *A licensee may not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in the conduct of its business.*

26. *A borrower may pay any outstanding payday loan from any licensee by means of an extended payment plan as follows:*

a. *A borrower shall not be eligible to enter into more than one extended payment plan in any 12-month period.*

b. *To enter into an extended payment plan with respect to a payday loan, the borrower shall agree in a written and signed document to repay the amount owed in at least four equal installments over an aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the extended payment plan. The borrower may prepay an extended payment plan in full at any time without penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then the licensee may immediately accelerate the unpaid loan balance.*

c. *If the borrower enters into an extended payment plan, then no licensee may make a payday loan to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower pays or satisfies in full the balance of the loan under the terms of the extended payment plan.*

d. *At each licensed location, the licensee shall post a notice in at least 24-point bold type, in a form established or approved by the Commission, informing persons that they may be eligible to enter into an extended payment plan.*

e. *The licensee shall provide oral notice to any borrower who is eligible to enter into an extended payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability to pay the payday loan by means of an extended payment plan. The information contained in the notice shall be in a form provided by the Bureau of Financial Institutions.*

27. *In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to any person within a period of 180 days shall be made only in compliance with, at the option of the*

borrower, either of the following:

a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise satisfied in full and (ii) the borrower may elect, at any time on or before its due date, to repay such fifth payday loan by means of an extended payment plan as provided in subdivision 26 b; or

b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a loan that complies with the terms and conditions otherwise applicable to payday loans under the terms of this chapter except that (i) the principal amount of the loan amount, and any interest and fees permitted by § 6.1-460, shall be payable in four equal installments over a payment period of 60 days following the date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150 days following the date the extended term loan is made.

§ 6.1-460. Rate of interest, loan fee, and verification fee.

A. A licensee may charge, as a fee for and receive on each loan, an amount interest at a simple annual rate not to exceed fifteen 36 percent of the amount of the loan proceeds advanced to the borrower. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.

B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the amount of the loan proceeds advanced to the borrower.

C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan made under this chapter. The verification fee shall be used in part to defray the costs of submitting a database inquiry as provided in subdivision B 4 of § 6.1-453.1.

§ 6.1-461. Additional charges.

In addition to the loan principal, interest, and the fee fees permitted under § 6.1-460, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or recovered except (i) any deposit item return fee incurred by the licensee, not to exceed \$25, if the check given by the borrower as security is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if judgment is obtained against the borrower, court costs and reasonable attorneys' fees if awarded by the court, incurred as a result of the returned check in an amount not to exceed \$250. A licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to §§ 6.1-330.54, 8.01-27.2, or § 8.01-382.

§ 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, the regulations promulgated by the Commission pursuant thereto, or 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.

§ 6.1-469.1. Application of chapter to Internet loans.

The provisions of this chapter, including specifically the licensure requirements of § 6.1-445, shall apply to persons making payday loans over the Internet to Virginia residents, whether or not the person making the loan maintains a physical presence in the Commonwealth.

2. That the Bureau of Financial Institutions of the Virginia State Corporation Commission shall report to the Chairmen of the House and Senate Commerce and Labor Committees regarding the utilization of payday loans, including: patterns of repeat and consecutive borrowing, use of extended payment plans, compliance with restrictions on lending by licensees, and effectiveness of the prohibitions on military lending, as soon as possible after the Bureau has received 12 months of data from the database provider.

3. That the provisions of subsection A of § 6.1-453.1 of the Code of Virginia shall become effective July 1, 2008, and that all other provisions of this act shall become effective on January 1, 2009.