

081051776

HOUSE BILL NO. 176

Offered January 9, 2008

Prefiled December 26, 2007

A BILL to amend and reenact §§ 6.1-453 of the Code of Virginia, relating to payday loans.

Patron—Ware, O.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 6.1-453 of the Code of Virginia is amended and reenacted as follows:**

§ 6.1-453. Retention of books, accounts, and records; database.

A. Every licensee shall maintain in its licensed offices such books, accounts and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and rules and regulations adopted in furtherance thereof. Such books, accounts and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to loans, including copies of checks given to a licensee as security for such loans, shall be retained for at least three years after final payment is made on any loan.

B. On or before January 1, 2009, 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 provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Commission's certification of a database provider. The following 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 the loan complies with the provisions of this chapter. Prior to the Commission's implementation of the database, and 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 the loan applied for will comply with 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 Commission will control the content and functional specifications of the database, will own the information contained in the database, will take all actions necessary to protect the confidentiality and security of the information contained in the database, and will 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 \$0.50 fee to defray the costs of submitting the database inquiry. 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 query fee.

5. The Commission shall collect and turn in to the state treasury all database inquiry fees and all amounts so collected and the unexpended balances thereof may be used only for the payment of the expenses of the administration of this chapter and of the performance of other functions of the Bureau of Financial Institutions of the Commission. The Commission may employ such examiners or clerks to assist it and the Commissioner as it from time to time deems necessary and may fix their compensation. All salaries and expenses necessarily incurred in the administration of this chapter shall be paid out of the license and other fees collected and turned in to the state treasury under the provisions of this chapter, upon the basis of duly verified itemized vouchers, approved by the Commission. The Comptroller shall issue his warrant on the State Treasurer for, and the State Treasurer shall pay the salaries and expenses out of the proceeds in the state treasury from these fees, in accordance with appropriations as from time to time are made.

6. If a borrower pays or otherwise satisfies a payday loan in full, then the licensee making the loan shall report such payment to the database not later than the close-of-business on the loan payment date.

INTRODUCED

HB176