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SENATE BILL NO. 588

Offered January 9, 2008

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A *BILL to amend and reenact §§ 6.1-453, 6.1-459, 6.1-467, and 6.1-469 of the Code of Virginia, relating to payday loans; penalties.*

Patron—Puckett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-453, 6.1-459, 6.1-467, and 6.1-469 of the Code of Virginia are 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 July 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 regulation. 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 and its use:*

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 and the response in accordance with subsection A. 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 loan 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 determine the content and functional specifications of the database, will own the information contained in the database, will direct the database provider to take all actions the Commission deems 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 licensee shall inform the loan applicant of the advice received from the database. The information contained in the payday loan database is exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).*

4. *If a licensee and borrower consummate a payday loan, then the licensee may charge the borrower, in addition to the charges permitted by §§ 6.1-460 and 6.1-461, a \$0.50 fee to defray the costs of operating the database. If a licensee submits a database inquiry but does not consummate a payday loan with the applicant, then the licensee may not charge the applicant the \$0.50 database fee.*

5. *If a borrower pays or otherwise satisfies a payday loan in full or enters into an extended payment plan (EPP) pursuant to subdivision A 26 of § 6.1-459, then the licensee making the loan shall report such payment satisfaction or entering into an EPP to the database not later than the close-of-business on the date of such event.*

§ 6.1-459. Required and prohibited business methods; application to Internet loans.

A. 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

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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; *and (viii) a disclosure in at least 10-point boldface type on the first page of the loan agreement of the borrower's rights to an extended payment plan under subdivision 26.*

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. *No licensee shall make a payday loan to any borrower if the loan would cause the borrower to have more than three payday loans outstanding at the same time.*

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 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 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 fees and charges, expressed as an annual percentage rate, payable using as an example a \$300 loan payable in 14 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. Because a licensee may rely on the accuracy of a loan applicant's representation regarding whether the loan applicant 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, a licensee is not subject to any administrative penalty or civil liability if that information is later determined to be inaccurate.

22. 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.

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

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

25. A licensee may not make a payday loan to a borrower on the same day that the borrower pays or otherwise satisfies a previous payday loan.

26. If a borrower obtains three or more consecutive payday loans, then the borrower may pay the outstanding payday loan by means of an extended payment plan (EPP). For the purpose of the preceding sentence, a "consecutive payday loan" means any payday loan that a borrower obtains within five calendar days following the date that the borrower pays or otherwise satisfies a previous payday loan made by any licensee. If a borrower is eligible for an extended payment plan, then the following provisions apply:

a. A licensee must enter into a written EPP agreement with the borrower if the borrower, on or before the payday loan's due date, pays all accrued interest or other finance charges, and signs an amendment to the parties' written agreement that memorializes the EPP terms.

b. The EPP terms must allow the borrower, at no additional cost, to repay the principal owed in at least two equal installments over an aggregate term of at least 60 days. The licensee may secure each EPP installment with a check written by the borrower. The borrower may prepay an EPP in full at any time without penalty. If the borrower fails to pay the EPP when due, then the licensee may immediately accelerate the unpaid loan balance.

c. A licensee must notify a borrower of the borrower's EPP rights by displaying the following statement, in at least 10-point bold type, on the first page of the parties' written agreement: "If you have obtained three or more consecutive payday loans, then you may repay this loan by means of an extended payment plan (EPP). A "consecutive payday loan" means any payday loan that you obtain within five calendar days following the date that you terminated a previous payday loan made by any lender. If you elect to exercise your EPP rights, then you must, on or before this loan's due date, pay all accrued interest or other finance charges and sign an amendment to this agreement that memorializes the EPP terms. The EPP terms will allow you, at no additional cost, to repay this loan in at least two equal installments over an aggregate term of at least 60 days. The lender may secure each EPP installment with checks written by you. You may prepay an EPP in full at any time without penalty. If you fail to pay the EPP when due, then the lender may immediately accelerate the unpaid loan balance."

d. A licensee may not make a payday loan to a borrower once an EPP has been entered into and

182 before the loan balance covered by the EPP has been paid in full.

183 27. On the date a borrower applies for a payday loan from a licensee, the licensee shall submit an
184 inquiry to the Commission-certified database to determine how many times the borrower entered into an
185 extended payment plan (EPP) with any licensee during the 12-month period preceding the loan
186 application date (the "look-back period"). If a licensee makes a payday loan to a borrower who entered
187 into two or more EPPs with any licensee during the look-back period, then the borrower is eligible for
188 an EPP to pay that loan. If a licensee makes a payday loan to a borrower who entered into fewer than
189 two EPPs during the look-back period, then the borrower is eligible for an EPP to pay that loan only if
190 such loan represents the borrower's third consecutive loan.

191 28. A licensee may secure a payday loan with the borrower's electronic debit authorization in
192 addition to, or in lieu of, the borrower's check, provided that the borrower may terminate the electronic
193 debit authorization at any time without such termination being considered a default under the parties'
194 written agreement.

195 B. The provisions of this chapter shall apply to persons making payday loans over the Internet to
196 Virginia residents, whether or not the person making the loan maintains a physical presence in the
197 Commonwealth.

198 § 6.1-467. Fines for violations.

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

206 § 6.1-469. Validity of noncompliant loan agreement; private right of action.

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

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