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SENATE BILL NO. 588

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 12, 2008)

(Patron Prior to Substitute—Senator Puckett)

A *BILL to amend and reenact §§ 6.1-451, 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.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-451, 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:

§ 6.1-451. Licenses; places of business; changes.

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee. Each license shall be prominently posted in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Commission.

B. No licensee shall open an additional office or relocate any place of business without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. *The Except as provided in subsection E, the application shall be approved unless the Commission finds that the applicant does not have the required liquid assets or has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within thirty days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within ten days of the commencement of business at the additional location or relocated place of business.*

C. Every licensee shall within ten days notify the Commissioner, in writing, of the closing of any business location and of the name, address and position of each new senior officer, member, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked or suspended. The surrender, revocation or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

E. *Effective July 1, 2008, the Commission shall not issue a license that authorizes any person to open an office at, or relocate any office to, a location that is within one and one-half miles of a site where any person is authorized to conduct the business of making payday loans. This subsection shall not affect the authority of any licensee to continue operating an office at a location approved by the Commission prior to July 1, 2008.*

§ 6.1-453.1. Payday lending database.

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 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 making the loan is permissible under the provisions of this chapter. Prior to the 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 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*

60 *licensees' compliance with the provisions of this chapter.*

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

67 4. *If a licensee and borrower consummate a payday loan, then the licensee shall pay a fee, not to*
68 *exceed one dollar, to defray the costs of submitting the database inquiry. If a licensee submits a*
69 *database inquiry but does not consummate a payday loan with the applicant, then the licensee shall not*
70 *pay the database inquiry fee.*

71 5. *The Commission shall collect and turn in to the state treasury all database inquiry fees, and all*
72 *amounts so collected and the unexpended balances thereof may be used only for the payment of the*
73 *expenses of the administration of this chapter and of the performance of other functions of the Bureau*
74 *of Financial Institutions of the Commission. All salaries and expenses necessarily incurred in the*
75 *administration of this chapter shall be paid out of the annual and other fees collected and turned in to*
76 *the state treasury under the provisions of this chapter, upon the basis of duly verified itemized vouchers,*
77 *approved by the Commission. The Comptroller shall issue his warrant on the State Treasurer for, and*
78 *the State Treasurer shall pay, the salaries and expenses out of the proceeds in the state treasury from*
79 *these fees, in accordance with appropriations as from time to time are made.*

80 6. *If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if*
81 *a borrower defaults on a payday loan, then the licensee making the loan shall report such loan,*
82 *payment, satisfaction, or default to the database not later than the close of business on the date the loan*
83 *is made, paid, or satisfied or the default occurs.*

84 § 6.1-459. *Required and prohibited business methods.*

85 Each licensee shall comply with the following requirements:

86 1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the
87 borrower and a person authorized by the licensee to sign such agreements and dated the same day the
88 loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount
89 of the loan; (ii) the *interest and any fee* charged; (iii) the annual percentage rate, which shall be stated
90 using that term, applicable to the transaction calculated in accordance with Federal Reserve Board
91 Regulation Z; (iv) evidence of receipt from the borrower of *either (a) a check, dated the same date, as*
92 *security for the loan, stating the amount of the check, or (b) an authorization to electronically debit the*
93 *borrower's deposit account, as security for the loan, stating the amount of the authorization;* (v) an
94 agreement by the licensee not to *electronically debit the borrower's deposit account or present the*
95 *borrower's check for payment or deposit until a specified maturity date, which date shall be at least*
96 *seven days after the date the loan is made and after which date interest shall not accrue on the amount*
97 *advanced at a greater rate than six percent per year;* (vi) an agreement by the licensee that the borrower
98 shall have the right to cancel the loan transaction at any time before the close of business on the next
99 business day following the date of the transaction by paying to the licensee, in the form of cash,
100 *electronic debit, or other good funds instrument, the amount advanced to the borrower; and (vii) an*
101 *agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the*
102 *licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.*

103 2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of
104 the transaction.

105 3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
106 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee
107 or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii)
108 waiving any right the borrower has under this chapter.

109 4. A licensee shall not require, or accept, more than one check from ~~the~~ a borrower as security for in
110 connection with any loan at any one time. A licensee shall not require, or accept, from a borrower more
111 than one authorization to electronically debit the borrower's deposit account, or an authorization to
112 electronically debit more than one deposit account, in connection with any loan. A licensee shall not
113 require, or accept, from a borrower both a check and an electronic debit authorization in connection
114 with any loan.

115 5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time
116 in the principal amount of more than \$500.

117 6. A licensee shall not (i) refinance, renew or extend any loan, (ii) make a loan to a borrower if the
118 loan would cause the borrower to have more than one loan from any licensee outstanding at the same
119 time, (iii) make a loan to a borrower on the same day that a borrower pays or otherwise satisfies a
120 previous payday loan, (iv) make a payday loan to a person within the 90 days following the date that
121 the person has paid an extended payment plan in full, or (v) make a payday loan to a person within the

90 days following the date the person has paid or satisfied a payday loan, not through an extended payment plan, if the person was in default on that payday loan for a period exceeding 60 days.

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~~ If a licensee shall not require or accept a post-dated check as security for, or in payment of, a loan accepts a check as security for, or in payment of, a payday loan, then the check shall 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, or if an electronic debit authorization is rejected. 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. Any borrower who is paid such a penalty shall be barred from exercising any other remedy for such licensee's conduct.

10. ~~A~~ Other than a check payable to the licensee or an authorization to electronically debit a borrower's deposit account, a licensee shall not take an interest in any other 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 or on a website owned or controlled by the licensee.

12. Loan proceeds shall be disbursed in cash or, by the licensee's business check, or by electronic funds transfer directly into a borrower's deposit account. No fee shall be charged by the licensee or an affiliated check casher for cashing a loan proceeds check. If a licensee disburses loan proceeds by electronic means, a borrower shall not be charged or required to pay any additional fees as a result of receiving the proceeds in this manner.

13. A check or electronic debit authorization given as security for a loan shall not be negotiated or assigned 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. If a borrower applies for a payday loan via the Internet, the pamphlet shall be provided electronically.

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. If a borrower applies for a payday loan via the Internet, the notice shall be provided electronically.

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. If a payday loan transaction is conducted via the Internet, the licensee shall mark the electronic loan agreement with the words "duplicate original" and "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. If payday loans are solicited or made by a licensee via the Internet, the schedule shall be conspicuously posted on the licensee's website.

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

183 easily understood.

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

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

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

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

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

197 e. Shall not make a loan to a member of the military services of the United States if a military base
198 commander has declared that a specific location of the licensee's business is off limits to military
199 personnel. Because a licensee may rely on the accuracy of a loan applicant's representation regarding
200 whether the loan applicant is a member of the military services of the United States or the spouse or
201 other dependent of a member of the military services of the United States, a licensee is not subject to
202 any administrative penalty or civil liability if that information is later determined to be inaccurate.

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

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

210 24. If a licensee obtains an authorization to electronically debit a borrower's deposit account, the
211 licensee shall not collect or receive, pursuant to the authorization, any amount other than the principal
212 amount of the loan and the fee permitted under § 6.1-460.

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

215 26. a. A borrower who obtains and pays a payday loan from any licensee acquires the right to pay
216 the principal amount of the payday loan by means of an extended payment plan. If the borrower enters
217 into an extended payment plan and pays that plan in full, then: (i) a waiting period of 90 days must
218 elapse between the date that the borrower pays the extended payment plan in full and the date that any
219 licensee may make a new payday loan to the borrower; and (ii) the borrower may not enter into
220 another extended payment plan until 12 months shall have elapsed from the date the borrower entered
221 into the extended payment plan.

222 b. To enter into an extended payment plan with respect to a loan, the borrower shall have paid all
223 interest and fees on the loan and agree in a written and signed document to repay the principal owed in
224 at least four equal installments over an aggregate term of at least 60 days. Interest shall not accrue on
225 the indebtedness during the term of the extended payment plan. The borrower may prepay an extended
226 payment plan in full at any time without penalty. If the borrower fails to pay the extended payment plan
227 when due, then the licensee may immediately accelerate the unpaid loan balance.

228 c. At each licensed location, the licensee shall post a notice in at least 12-point bold type, in a form
229 established or approved by the Commission, informing persons that they may be eligible to enter into an
230 extended payment plan.

231 § 6.1-460. Rate of interest, processing fee, and verification fee.

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

236 B. A licensee may charge and receive a loan fee in an amount not to exceed 10 percent of the
237 amount of the loan proceeds advanced to the borrower.

238 C. A licensee may charge and receive a verification fee in an amount not to exceed \$10 for a loan
239 made under this chapter. The verification fee shall be used in part to defray the costs of submitting a
240 database inquiry as provided in subdivision 4 of § 6.1-453.1 and complying with the other provisions of
241 this chapter.

242 § 6.1-461. Additional charges.

243 In addition to the loan principal, interest, and the fee fees permitted under § 6.1-460, no further or
244 other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or

recovered except (i) any ~~deposit item return fee incurred by~~ charged to the licensee by its depository institution, not to exceed \$25, if the check or electronic debit authorization given by the borrower as security is returned or rejected because the borrower's deposit account ~~on which it was drawn~~ was closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check or instructed his depository institution not to honor the electronic debit authorization, 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 or electronic 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 requirement 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.