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HOUSE BILL NO. 1809

Offered January 14, 2009

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A BILL to amend and reenact §§ 6.1-249, 6.1-272.1, 6.1-278, 6.1-285, and 6.1-330.78 of the Code of Virginia, relating to the Consumer Finance Act; open-end loan plans secured by motor vehicle titles.

Patrons—Morrissey, Ebbin, BaCote, Bouchard, Mathieson and Ward

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-249, 6.1-272.1, 6.1-278, 6.1-285, and 6.1-330.78 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-249. Compliance with chapter; license required.

A. No person shall engage in the business of lending any principal amounts to individuals for personal, family, household or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, compensation, consideration or expense which in the aggregate is greater than the interest permitted by § 6.1-330.55, except as provided in and authorized by this chapter or Chapter 18 (§ 6.1-444 et seq.) of this title and without first having obtained a license from the Commission.

B. However, subject to §§ 6.1-251 and 6.1-281 of this chapter, the prohibition in subsection A of this section shall not be construed to prevent any person, other than a licensee, from making a mortgage loan pursuant to §§ 6.1-330.69 and 6.1-330.70 or §§ 6.1-330.71 and 6.1-330.72 in any principal amount or from extending credit as described in to the extent authorized by § 6.1-330.78 in any amount.

§ 6.1-272.1. Rate of interest; late charges; processing fees.

A. For loans up to \$2,500, and for loans described in subsection D regardless of amount, a lender licensed under this chapter may charge and receive interest at a single annual rate not to exceed 36 percent. For loans of more than \$2,500, other than loans described in subsection D, such lender may charge and receive interest only at such single annual rate as shall be stated in the written loan contract signed by the borrower. The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance. For the purpose of calculating interest hereunder, a year may be any period of time consisting of 360 or 365 days.

B. Any lender licensed under this chapter may impose a late charge for failure to make timely payment of any installment due on a debt, provided that such late charge does not exceed five percent of the amount of such installment payment and that the charge is specified in the contract between such lender and the borrower. For purposes of this section, "timely payment" means a payment made by the date fixed for payment or within a period of seven calendar days after such fixed date.

C. Any lender licensed under this chapter may charge and receive a processing fee, charged on the principal amount of the loan, for processing the loan contract. The processing fee shall be stated in the written loan contract signed by the borrower. Such processing fee shall be deemed to constitute interest charged on the principal amount of the loan for purposes of determining whether the interest charged on a loan up to \$2,500 exceeds the ~~thirty-six~~ 36 percent annual rate limitation imposed by subsection A of this section.

D. Any lender licensed under this chapter may charge and receive on any extension of credit under an open-end credit or similar plan that is secured by a security interest, other than a purchase-money security interest, in a motor vehicle, as such term is defined in § 46.2-100, interest on the outstanding balance at an annual rate not to exceed 36 percent if payment in full of the unpaid balance is not received at the place designated by the licensee prior to the next billing date, which shall be at least 25 days later than the prior billing date. Prior to making such an extension of credit, the licensee shall make all of the applicable disclosures described in subdivisions C 1 a, C 1 d, and C 2 of § 6.1-330.78. A licensee shall not charge any membership fee, participation fee, or transaction fee in connection with any such extension of credit.

§ 6.1-278. Additional charges prohibited; exception.

In addition to the interest, late charges, and processing fee permitted under § 6.1-272.1, no further or other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, or other thing or otherwise shall be directly or indirectly charged, contracted for, collected, or received, except: (i) insurance premiums actually paid out by the licensee to any insurance company or agent duly authorized to do business in this Commonwealth for insurance for the protection and benefit of the

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59 borrower written in connection with any loan, ~~and~~ (ii) the actual cost of recordation fees or on loans
60 over \$100 the amount of the lawful premiums, no greater than such fees, actually paid for insurance
61 against the risk of not recording any instrument securing the loan and may charge a handling fee not to
62 exceed \$15 for each check returned to the licensee because the drawer had no account or insufficient
63 funds in the payor bank, *and (iii) if the loan is of the type described in subsection D of § 6.1-272.1, the*
64 *actual cost of recording a lien upon the title of the motor vehicle with the Department of Motor*
65 *Vehicles.*

66 § 6.1-285. Installment payments.

67 ~~Every~~ A. *Except as provided in subsection B, every contract shall provide for repayment of the*
68 *amount loaned in substantially equal monthly installments of principal and interest. But nothing* Nothing
69 *contained in this chapter shall prevent a loan being considered a new loan because the proceeds of the*
70 *loan are used to pay an existing contract, or prevent a licensee from entering into a loan contract*
71 *providing for an odd first payment period of up to ~~forty-five~~ 45 days and an odd first payment greater*
72 *than other monthly payments because of such odd first payment period.*

73 B. *The requirements of subsection A shall not apply with respect to an extension of credit under an*
74 *open-end credit or similar plan that is secured by a security interest, other than a purchase-money*
75 *security interest, in a motor vehicle, as such term is defined in § 46.2-100, under which a finance*
76 *charge is imposed upon the obligor if payment in full of the unpaid balance is not received at the place*
77 *designated by the licensee prior to the next billing date, which shall be at least 25 days later than the*
78 *prior billing date.*

79 § 6.1-330.78. Open-end sales and loan plans.

80 A. Notwithstanding any provision of this chapter other than § 6.1-330.71, any seller or lender
81 engaged in the extension of credit under an open-end credit or similar plan under which a finance
82 charge is imposed upon the obligor, if payment in full of the unpaid balance is not received at the place
83 designated by the creditor prior to the next billing date (which shall be at least ~~twenty-five~~ 25 days later
84 than the prior billing date), may impose finance charges and other charges and fees at such rates and in
85 such amounts and manner as may be agreed upon by the seller or lender and the obligor *if the credit is*
86 *extended:*

87 1. *By the seller of goods or services for the purpose of financing the purchase thereof; or*

88 2. *By a person subject to the general supervision of or subject to examination by the Commissioner*
89 *pursuant to Chapter 2 (§ 6.1-3 et seq.), Chapter 3.01 (§ 6.1-194.1 et seq.), Chapter 4.01 (§ 6.1-225.1 et*
90 *seq.), Chapter 5 (§ 6.1-227 et seq.), Chapter 6 (§ 6.1-244 et seq.), or Chapter 13 (§ 6.1-381 et seq.), or*
91 *authorized to engage in business as a bank, savings institution, or credit union under the laws of the*
92 *United States, any state or territory of the United States, or the District of Columbia, and subsidiaries*
93 *and affiliates of such entities which lender, subsidiary, or affiliate is subject to the general supervision*
94 *or regulation of or subject to audit or examination by a regulatory body or agency of the United States,*
95 *any state or territory of the United States, or the District of Columbia.*

96 *In addition, if the extension of credit is to an individual for personal, family, or household purposes*
97 *and is secured by a security interest, other than a purchase-money security interest, in a motor vehicle*
98 *as such term is defined in § 46.2-100, the extension of credit shall be subject to the provisions of*
99 *Chapter 6 (§ 6.1-244 et seq.).*

100 B. Notwithstanding the provisions of § 6.1-330.71 and subject to the provisions of § 8.9A-204.1, any
101 loan made under this section may be secured in whole or in part by a subordinate mortgage or deed of
102 trust on residential real estate improved by the construction thereon of housing consisting of one to four
103 family dwelling units.

104 C. Any application form or preapproved written solicitation for an open-end credit card account to be
105 used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a
106 consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is
107 located in this Commonwealth, other than an application form or solicitation included in a magazine,
108 newspaper, or other publication distributed by someone other than the creditor, shall contain or be
109 accompanied by any of the following disclosures:

110 1. A disclosure of each of the following if applicable:

111 a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage
112 rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a
113 specific date and indicate that the rate may vary, or identify the index and any amount or percentage
114 added to, or subtracted from, that index and used to determine the rate.

115 b. Any membership or participation fee that may be imposed for availability of a credit card account.

116 c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be
117 imposed, expressed as an amount or as a percentage of the transaction, as applicable.

118 d. Any grace period or free period during which the consumer may repay the full balance reflected
119 on a billing statement which is attributable to purchases of goods or services from the creditor or from
120 merchants participating in the credit card plan, without the imposition of additional finance charges. The

creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;

2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or

3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.

D. An open-end credit or similar plan between a seller or lender and an obligor shall be governed solely by federal law, and by the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.