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SENATE BILL NO. 167

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact § 6.1-330.78 of the Code of Virginia, relating to open-end loan plans.

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 6.1-330.78 of the Code of Virginia is amended and reenacted as follows:**

§ 6.1-330.78. Open-end loan plans.

A. Notwithstanding any provision of this chapter other than § 6.1-330.71, and except as provided in subsection E, any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a finance charge is imposed upon the obligor, if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date), may impose finance charges and other charges and fees (i) that do not exceed an annual rate of 36 percent if the maximum amount that may be advanced under the plan does not exceed \$2,500 and (ii) at such rates and in such amounts and manner as may be agreed upon by the seller or lender and the obligor if the maximum amount that may be advanced under the plan exceeds \$2,500.

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

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

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

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

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

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

d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from 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.

E. Except as provided in subsection F, a licensee, as defined in § 6.1-444, shall not engage in the extension of credit under an open-end credit or similar plan described in this section, and a third party

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59 shall not engage in the extension of credit under an open-end credit or similar plan described in this
60 section at any office, suite, room, or place of business where a licensee conducts the business of making
61 payday loans. In addition to any other remedies or penalties provided for a violation of this section, any
62 such extension of credit made by a licensee or third party in violation of this subsection shall be
63 unenforceable against the borrower.

64 F. No prohibition in subsection E shall apply to an extension of credit under an open-end credit or
65 similar plan that is secured by a security interest in a motor vehicle, as such term is defined in
66 § 46.2-100.

67 G. If a licensee, as defined in § 6.1-444, surrenders its license under Chapter 18 (§ 6.1-444 et seq.)
68 of this title or has its license revoked, and if following such surrender or revocation of its license the
69 former licensee engages in the extension of credit under an open-end credit or similar plan as described
70 in this section, then the Commission shall not issue to such former licensee, or to any affiliate of the
71 former licensee, a license under Chapter 18 of this title for a period of 10 years from the date such
72 license is surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a
73 business entity that owns or controls, is owned or controlled by, or is under common ownership or
74 control with, the former licensee.

75 **2. That nothing contained in this act shall prohibit the collection of any outstanding loan or**
76 **extension of credit made under § 6.1-330.78 of the Code of Virginia in accordance with the terms**
77 **of a loan agreement made prior to the effective date of this act; however, no additional extensions**
78 **of credit or advances shall be made on or after the effective date of this act under such a loan**
79 **agreement that violates the provisions of this act.**