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## SENATE BILL NO. 375

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 6.1-249, 6.1-330.55, and 6.1-330.78 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 21, consisting of sections numbered 6.1-480 through 6.1-508, relating to certain loans secured by a lien on a motor vehicle's certificate of title; penalties.*

Patron—Puckett

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.1-249, 6.1-330.55, and 6.1-330.78 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 21, consisting of sections numbered 6.1-480 through 6.1-508, 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.) or 21 (§ 6.1-480 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 § 6.1-330.78 in any amount.

§ 6.1-330.55. Contracts for more than legal rate of interest.

Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan greater than twelve percent per year.

For statutes which permit payment of interest greater than twelve percent per year, reference is hereby made to Article 6 (§ 6.1-330.60 et seq.), Article 7 (§ 6.1-330.64), Article 8 (§ 6.1-330.65 et seq.), Article 9 (§ 6.1-330.69 et seq.), Article 10 (§ 6.1-330.75 et seq.) and Article 11 (§ 6.1-330.77 et seq.) of this chapter. Further reference is hereby made to Chapter 6 (§ 6.1-244 et seq.) of this title, relating to powers of consumer finance companies; to Chapter 18 (§ 6.1-444 et seq.) of this title, relating to payday lenders loans; to Chapter 21 (§ 6.1-480 et seq.), relating to title loans; to § 38.2-1806, relating to interest chargeable by insurance agents; to §§ 38.2-4700 through 38.2-4712, relating to interest chargeable by premium finance companies; and to § 58.1-3018, relating to interest and origination fees payable under third-party taxpayer agreements.

In the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.

Those provisions of this chapter providing that a loan or extension of credit may be enforced as agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of other loan fees and charges permitted by law, in addition to the stated interest rate, and such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

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

A. Notwithstanding any provision of this chapter other than § 6.1-330.71, and except as provided in ~~subsection~~ *subsections E and F*, 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 at such rates and in such amounts and manner as may be agreed upon by the seller or lender and the obligor.

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

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59 consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is  
60 located in this Commonwealth, other than an application form or solicitation included in a magazine,  
61 newspaper, or other publication distributed by someone other than the creditor, shall contain or be  
62 accompanied by any of the following disclosures:

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

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

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

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

71 d. Any grace period or free period during which the consumer may repay the full balance reflected  
72 on a billing statement which is attributable to purchases of goods or services from the creditor or from  
73 merchants participating in the credit card plan, without the imposition of additional finance charges. The  
74 creditor shall either disclose the number of days of that period, calculated from the closing date of the  
75 prior billing cycle to the date designated in the billing statement sent to the consumer as the date by  
76 which that payment must be received to avoid additional finance charges, or describe the manner in  
77 which the period is calculated. If the creditor does not provide such a period for purchases, the  
78 disclosure shall so indicate;

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

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

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

89 E. ~~Except as provided in subsection F,~~ a A licensee, as defined in § 6.1-444, shall not engage in the  
90 extension of credit under an open-end credit or similar plan described in this section, and a third party  
91 shall not engage in the extension of credit under an open-end credit or similar plan described in this  
92 section at any office, suite, room, or place of business where a licensee conducts the business of making  
93 payday loans. In addition to any other remedies or penalties provided for a violation of this section, any  
94 such extension of credit made by a licensee or third party in violation of this subsection shall be  
95 unenforceable against the borrower.

96 F. ~~No prohibition in subsection E shall apply to an extension of person shall make a loan or~~  
97 ~~otherwise extend credit to an individual for a personal, family, household, or other nonbusiness purpose,~~  
98 ~~under an open-end credit or similar plan or any other arrangement,~~ that is secured by a security interest  
99 in a motor vehicle, as such term is defined in § 46.2-100, ~~unless such loan or extension of credit is~~  
100 ~~made in accordance with, or is exempt from, the provisions of Chapter 21 (§ 6.1-480 et seq.).~~

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

## 109 CHAPTER 21. 110 TITLE LENDERS.

### 111 § 6.1-480. Definitions.

112 *As used in this chapter, unless the context requires a different meaning:*

113 *"Borrower" means an individual obligated to repay a title loan.*

114 *"Collateral" means the motor vehicle in which its owner has given a title lender a security interest*  
115 *pursuant to a title loan agreement executed in the course of the title lender's business. The term*  
116 *includes the certificate of title to the motor vehicle.*

117 *"Commissioner" means the Commissioner of Financial Institutions.*

118 *"Commission's Rules" means the rules of practice and procedure prescribed by the Commission*  
119 *pursuant to § 12.1-25.*

120 *"Depository institution" means a bank, savings institution, or credit union.*

"Licensee" means a person to whom a license has been issued under this chapter.

"Month" means a period of one calendar month.

"Motor vehicle" has the meaning assigned to it in § 46.2-100.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, or other legal or commercial entity.

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a nonstock corporation, partnership, association, cooperative, limited liability company, trust, joint venture, or other legal or commercial entity.

"Title lender" means a person engaged in making title loans.

"Title loan" means a loan that is secured by a first priority non-purchase money security interest in a motor vehicle owned by the borrower.

"Title loan agreement" means a written document that sets out the terms and conditions under which a title lender agrees to extend credit or lend money to a borrower, and the borrower agrees to give to the lender a security interest in a motor vehicle owned by the borrower to secure the repayment of the loan and performance of the other obligations under the agreement, and which complies with the requirements of this chapter.

§ 6.1-481. License required.

A. No person shall engage in the business of making title loans to any individual residing in the Commonwealth, whether or not the person has an office or conducts business at a location in the Commonwealth, except in accordance with the provisions of this chapter and without having first obtained a license under this chapter from the Commission.

B. No person shall engage in the business of arranging or brokering title loans for any individual residing in the Commonwealth, whether or not the person has an office or conducts business at a location in the Commonwealth.

C. Any title loan made by an unlicensed title lender is void. With respect to such a loan by an unlicensed title lender:

1. The title lender forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the borrower in connection with the title loan agreement;

2. The title lender shall return to the borrower the certificate of title to the collateral or, if the title lender has disposed of the collateral, the fair market value of the collateral, and all principal, interest, and any other fees paid by the borrower; and

3. The borrower is entitled to receive reasonable attorney fees and costs in any action brought to recover from the title lender the certificate of title to the collateral, and the principal, interest and any fees paid by the borrower.

§ 6.1-482. Applicability.

A. The provisions of this chapter shall not apply to any depository institution that does not elect to become licensed under this chapter. Electing to become licensed under this chapter shall constitute a waiver of the benefit of any and all laws of the Commonwealth and other states and federal laws preemptive of, or inconsistent with, the provisions of this chapter.

B. The provisions of this chapter shall not apply to extensions of credit secured by purchase-money security interests.

§ 6.1-483. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath and on a form provided by the Commissioner.

B. The application shall set forth:

1. The name and address of the applicant;

2. If the applicant is a firm or partnership, the name and address of each member of the firm or partnership;

3. If the applicant is a corporation or a limited liability company, the name and address of each officer, director, registered agent and each principal;

4. The addresses of the locations of the offices to be approved;

5. Such other information concerning the financial responsibility, background, experience and activities of the applicant and its members, officers, directors and principals as the Commissioner may require; and

6. A balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm not affiliated with the applicant. For a newly created entity, the Commissioner may accept only a balance sheet prepared by a certified public accountant or public accounting firm not affiliated with the applicant, accompanied by a projected income statement demonstrating that the title lender will have adequate capital after payment of start-up costs.

C. The application shall be accompanied by payment of an application fee of \$500.

D. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension or revocation of the license.

§ 6.1-484. Bond required.

The application for a license shall be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute such bond in the Commonwealth, in the sum of \$50,000 per office, not to exceed a total of \$500,000 per title lender. The form of such bond shall be approved by the Commission. The bond shall be continuously maintained thereafter in full force. The bond shall be conditioned upon the applicant or licensee performing all written agreements with borrowers or prospective borrowers, correctly and accurately accounting for all funds received by the applicant or licensee in its licensed business, and conducting its licensed business in conformity with this chapter and all other applicable law. Any person who may be damaged by noncompliance of the licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

§ 6.1-485. Investigation of applications.

The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations adopted thereunder.

§ 6.1-486. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ 6.1-483 and 6.1-484, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter at the offices specified in the application if it finds:

1. That the financial responsibility, character, reputation, experience and general fitness of the applicant and its members, senior officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest and in accordance with law; and

2. That applicant has a tangible net worth that comprises tangible assets less liabilities of not less than \$75,000 for each location.

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant in writing of the denial and the reasons for such denial, including citations of authority. The applicant shall have the right to a formal contested case hearing under § 2.2-4020 pursuant to rules adopted by the Commission, and the final order after the hearing shall be subject to judicial review.

§ 6.1-487. Licenses; offices; change of office location.

A. Each license shall:

1. State the address of each approved office at which the business is to be conducted;

2. State fully the name of the licensee; and

3. Be prominently posted in each office of the licensee.

B. No licensee shall:

1. Use any name other than the name set forth on the license issued by the Commission; or

2. Open an additional office or relocate any office without prior approval of the Commission.

C. Applications for Commission approval to open an additional office or relocate any office 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 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 30 days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within 10 days of the commencement of business at the additional office or relocated office.

D. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any office 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.

E. Licenses shall:

1. Not be transferable or assignable, by operation of law or otherwise; and

2. Remain in force until they have been surrendered, revoked or suspended. The surrender, revocation or suspension of a license shall not affect any preexisting legal right or obligation of the licensee.

F. Each licensee shall conspicuously post in each approved office a schedule of interest charges and fees on title loans, with an example using a \$2,500 loan payable in 30 days.

§ 6.1-488. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or more of the voting shares of a corporation or 25 percent or more of the ownership of any other person licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals and members, and of any proposed new directors, senior officers, principals or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers and principals, and any proposed new directors, members, senior officers and principals have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant in writing of the denial and the reasons for the denial, including citations of authority. The applicant shall have the right to a formal contested case hearing under § 2.2-4020 pursuant to rules adopted by the Commission, and the final order after the hearing shall be subject to judicial review.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

§ 6.1-489. Retention of books, accounts, and records.

Every licensee shall maintain in its approved 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 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 title 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.

§ 6.1-490. Annual report.

Each licensee under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each approved office. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

§ 6.1-491. Other reporting requirements.

A. A licensee shall file a written report with the Commissioner within 15 days following the occurrence of any of the following:

1. The filing of bankruptcy, reorganization or receivership proceedings by or against the licensee;

2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;

3. Any felony indictments of the licensee or any of its members, partners, directors, officers, or principals;

4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or principals; and

5. Such other event as the Commission may prescribe by regulation.

B. The report shall be in writing and describe the event and its expected impact on the business of the licensee.

§ 6.1-492. Investigations; examinations.

The Commission may, as often as it deems necessary, investigate and examine the affairs, business, premises and records of any person licensed or required to be licensed under this chapter or any person who may be violating § 6.1-481. Examinations of licensees shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners and employees of such person being investigated or examined shall, upon demand of

305 the person making such investigation or examination, afford full access to all premises, books, records  
306 and information that the person making such investigation or examination deems necessary. For the  
307 foregoing purposes, the person making such investigation or examination shall have authority to  
308 administer oaths, examine under oath all the aforementioned persons, and compel the production of  
309 papers and objects of all kinds.

310 § 6.1-493. Annual fees.

311 A. To defray the costs of their examination, supervision and regulation, every licensee shall pay an  
312 annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a  
313 reasonable relationship to the business volume of licensees, the actual costs of their examinations, and  
314 to other factors relating to their supervision and regulation. All such fees shall be assessed on or before  
315 September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer  
316 on or before October 15 following each assessment.

317 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or  
318 investigate the books and records of a licensee at a location outside the Commonwealth, the licensee  
319 shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized  
320 statement, the actual travel and reasonable living expenses incurred on account of its examination,  
321 supervision and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

322 § 6.1-494. Regulations.

323 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this  
324 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
325 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's  
326 Rules.

327 § 6.1-495. Interest and other charges.

328 A. A licensee may charge and collect interest on the outstanding principal balance of a title loan at  
329 rates not to exceed the following:

330 1. Twenty-two percent per month on the portion of the principal that does not exceed \$1,000;

331 2. Twenty percent per month on the portion of the principal exceeding \$1,000 but not exceeding  
332 \$2,000; and

333 3. Eighteen percent per month on the portion of the principal in excess of \$2,000.

334 B. The interest allowed pursuant to subsection A cannot be precomputed and shall accrue on a daily  
335 basis for each day any portion of principal remains outstanding. The licensee may not charge a  
336 prepayment penalty in the event the loan is repaid early. On loans in excess of \$1,000 the licensee may  
337 accrue interest utilizing a single blended interest rate so long as the maximum charge allowed pursuant  
338 to subsection A is not exceeded.

339 C. A licensee may charge its costs to perfect its security interest in the motor vehicle pledged as  
340 collateral and its reasonable costs of repossession and sale in accordance with § 6.1-497.

341 D. Any amounts collected or received by a licensee in violation of this section shall be refunded to  
342 the borrower.

343 § 6.1-496. Loan term; renewals; principal reduction.

344 A. The original term of a title loan agreement shall be one month. The licensee and borrower may  
345 agree, in the loan agreement or thereafter, to renew or extend the loan subject to the limitations of this  
346 section.

347 B. On or before the maturity date of each loan or renewal period, the borrower shall pay an amount  
348 sufficient to both satisfy any interest due and to reduce the outstanding principal balance by at least  
349 seven percent of the original loan amount. If the borrower fails to make principal payments as required  
350 herein, the licensee shall nevertheless cease accruing interest on such unpaid amount so that the amount  
351 of principal accruing interest during any renewal period is less, by at least seven percent of the original  
352 loan amount, than the amount of principal accruing interest in the previous period. The licensee may  
353 allow the borrower to defer repayment of any non-interest bearing principal to a later date.

354 C. The licensee shall cease accruing interest on any balance that remains unpaid after one year.

355 D. The licensee shall cease accruing interest upon taking possession of the motor vehicle serving as  
356 collateral for the title loan.

357 § 6.1-497. Limited recourse; repossession and sale of motor vehicle.

358 A. Except as otherwise provided in subsection E, a licensee taking a security interest in a motor  
359 vehicle pursuant to this chapter shall, upon default by a borrower, be limited to seeking repossession of,  
360 preparing for sale, and selling the motor vehicle in accordance with Title 8.9A. Except as otherwise  
361 provided in subsection E, a licensee is prohibited from seeking a personal money judgment against a  
362 borrower for any amount owed under a title loan agreement or any deficiency resulting after the sale of  
363 a motor vehicle.

364 B. At least 15 days prior to the sale of a motor vehicle, a licensee shall notify the borrower of the  
365 date and time after which their vehicle is subject to sale and provide the borrower with a written  
366 accounting of the principal amount due to the licensee, interest accrued through the date the licensee

took possession of the motor vehicle, and any reasonable expenses incurred to date by the licensee in taking possession of, preparing for sale, and selling the motor vehicle. At any time prior to such sale, the licensee shall permit the borrower to redeem the motor vehicle by tendering cash or other good funds instrument for the principal amount due to the licensee, interest accrued through the date the licensee took possession, and any reasonable expenses incurred to date by the licensee in taking possession of, preparing for sale, and selling the motor vehicle.

C. Within 30 days of the licensee's receipt of funds from the sale of a motor vehicle, the borrower is entitled to receive all proceeds from such sale of the motor vehicle in excess of the principal amount due to the licensee, interest accrued through the date the licensee took possession, and the reasonable expenses incurred by the licensee in taking possession of, preparing for sale, and selling the motor vehicle. The prevailing party is entitled to reasonable attorney fees and costs incurred in any action or proceeding brought by the borrower to recover such proceeds.

D. Except in the case of fraud or a voluntary surrender of the motor vehicle, a licensee shall not take possession of a motor vehicle until such time as a borrower is in default. Except as otherwise provided in this chapter, the repossession and sale of a motor vehicle shall be subject to the provisions of Title 8.9A.

E. Notwithstanding anything else to the contrary, upon default by a borrower, a licensee may seek a personal money judgment against the borrower for any amounts owed under a title loan agreement if the borrower impairs the licensee's security interest by intentionally damaging or destroying the motor vehicle, intentionally concealing the motor vehicle, pledging to the licensee for a loan a motor vehicle that is already encumbered by an undisclosed prior lien, or by subsequently pledging or selling a motor vehicle serving as security for a title loan to a third party without the licensee's written consent.

§ 6.1-498. Required and prohibited business methods.

A. Each licensee shall comply with the following requirements and prohibitions:

1. Each title loan shall be made under a written title loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements. The agreement shall be dated on or before the day the loan is made and disbursed, and shall set forth or contain, at a minimum: (i) the amount of the loan made to the borrower; (ii) the interest rate; (iii) the annual percentage rate, which shall be stated using that term, calculated in accordance with the Federal Reserve Board's Regulation Z; (iv) the make, model, year, and vehicle identification number of the motor vehicle being used as security for the loan; (v) an agreement by the licensee that the borrower shall have the right to cancel the title loan agreement at any time before the close of business on the next business day following the date the agreement is executed by returning the original loan proceeds check or paying to the licensee, in the form of cash, the amount advanced to the borrower; and (vi) an agreement that the borrower shall have the right to prepay a motor vehicle loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest; No title loan agreement shall provide for the waiver or modification of any provisions of this chapter or Title 8.9A.

2. A title loan agreement shall contain the following notice in at least 10-point bold type immediately above the borrower's signature:

**THE INTEREST RATE ON THIS LOAN IS HIGH. YOU SHOULD CONSIDER WHETHER THERE ARE OTHER LOWER COST LOANS AVAILABLE TO YOU.**

**THIS IS A TITLE LOAN AGREEMENT. IT ALLOWS YOU TO RECEIVE A CASH ADVANCE TO MEET YOUR IMMEDIATE CASH NEEDS. IT IS NOT INTENDED TO MEET YOUR LONG-TERM FINANCIAL NEEDS.**

**WHEN USING THIS LOAN, YOU SHOULD REQUEST THE MINIMUM AMOUNT REQUIRED TO MEET YOUR IMMEDIATE NEEDS AND YOU SHOULD REPAY THE LOAN AS QUICKLY AS POSSIBLE TO REDUCE THE AMOUNT OF INTEREST YOU ARE CHARGED.**

**YOU SHOULD TRY TO REPAY THIS LOAN AS QUICKLY AS POSSIBLE. IF YOU RENEW OR EXTEND THIS LOAN, YOU WILL BE REQUIRED TO PAY AN AMOUNT SUFFICIENT TO BOTH SATISFY ANY INTEREST DUE AND REDUCE THE OUTSTANDING PRINCIPAL BALANCE BY AT LEAST 7% OF THE ORIGINAL LOAN AMOUNT. YOU SHOULD TRY TO PAY EVEN MORE TOWARDS YOUR OUTSTANDING PRINCIPAL AT EACH RENEWAL. DOING SO WILL SAVE YOU MONEY.**

**YOU MAY RESCIND THIS LOAN WITHOUT COST OR FURTHER OBLIGATION IF YOU RETURN THE PRINCIPAL AMOUNT ADVANCED, IN CASH OR THE ORIGINAL LOAN CHECK, PRIOR TO THE CLOSE OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY FOLLOWING THE EXECUTION OF THIS AGREEMENT.**

**YOU ARE PLEDGING YOUR MOTOR VEHICLE AS COLLATERAL FOR THIS LOAN. IF YOU FAIL TO REPAY THE LOAN PURSUANT TO THIS AGREEMENT, WE MAY REPOSSESS YOUR MOTOR VEHICLE.**

**UNLESS YOU CONCEAL OR INTENTIONALLY DAMAGE THE MOTOR VEHICLE, OR**

428 OTHERWISE IMPAIR OUR SECURITY INTEREST BY PLEDGING THE MOTOR VEHICLE TO A  
429 THIRD PARTY OR PLEDGING A MOTOR VEHICLE TO US THAT IS ALREADY SUBJECT TO AN  
430 UNDISCLOSED EXISTING LIEN, YOUR LIABILITY FOR DEFAULTING UNDER THIS LOAN IS  
431 LIMITED TO THE LOSS OF THE MOTOR VEHICLE.

432 IF YOUR MOTOR VEHICLE IS SOLD DUE TO YOUR DEFAULT, YOU ARE ENTITLED TO ANY  
433 SURPLUS OBTAINED AT SUCH SALE BEYOND WHAT IS OWED PURSUANT TO THIS  
434 AGREEMENT ALONG WITH ANY REASONABLE COSTS OF RECOVERY AND SALE.

435 3. A licensee shall give a duplicate original of the loan agreement to the borrower at the time it is  
436 executed.

437 4. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third  
438 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee  
439 or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii)  
440 waiving any right the borrower has under this chapter. Furthermore, no agreement shall contain (a) an  
441 acceleration clause under which a licensee may demand immediate payment of any amount owed to it  
442 unless the borrower is in default under the terms of such agreement or (b) a provision by which a  
443 person acting on behalf of the licensee is treated as an agent of the borrower in connection with its  
444 formation or execution. Any clause or provision in violation of this subsection shall be unenforceable.  
445 The term "default" when used in this chapter means both a monetary default and any non-monetary  
446 default specified in the agreement evidencing the loan.

447 5. A licensee shall not require or accept a lien upon more than one motor vehicle from a borrower  
448 as security for any title loan.

449 6. A licensee shall not accept from a borrower either a post-dated check or an authorization to  
450 electronically debit the borrower's deposit account.

451 7. A licensee shall not take an interest in any real or personal property other than a motor vehicle  
452 as security for a title loan. For purposes of this section, the term "motor vehicle" includes any  
453 accessories or accessions to a motor vehicle that are affixed thereto.

454 8. Loan proceeds shall be disbursed (i) in cash, (ii) by the licensee's business check, or (iii) by debit  
455 card provided that the borrower has the ability to withdraw all funds off such card without being  
456 directly or indirectly charged a fee by the licensee in connection with its use. No fee shall be charged  
457 by the licensee or an affiliated check casher for cashing a loan proceeds check.

458 9. A licensee, within seven days following the date of the title loan agreement, shall file to have its  
459 security interest in the motor vehicle serving as collateral added to the certificate of title by complying  
460 with the requirements of §46.2-637.

461 10. A borrower may prepay a loan at any time without penalty. The licensee shall give the borrower  
462 signed, dated receipts for each cash payment made in person.

463 11. A licensee shall not cause a borrower to be obligated under more than one motor vehicle loan  
464 agreement per motor vehicle at any time.

465 12. A licensee shall not engage in any misleading or deceptive acts or practices.

466 13. A licensee shall not engage in any business or activity that directly or indirectly results in an  
467 evasion of the provisions of this chapter.

468 14. A licensee shall not accept as collateral a motor vehicle that is already encumbered by a  
469 third-party lien.

470 § 6.1-499. Other business.

471 No licensee shall conduct the business of making title loans under this chapter at any office, suite,  
472 room, or other place of business where any other business is solicited or conducted except a registered  
473 check cashing business or such other business as the Commission determines should be permitted, and  
474 subject to such conditions as the Commission deems necessary and in the public interest. No such other  
475 business shall be allowed except as permitted by Commission regulation or upon the filing of a written  
476 application with the Commission, payment of a \$300 fee, and provision of such information as the  
477 Commission may deem pertinent. The Commission shall not, however, permit the sale of insurance or  
478 the enrolling of borrowers under group insurance policies.

479 § 6.1-500. Safekeeping of collateral; insurance; damaged property.

480 Every licensee shall provide a safe place for the keeping of all certificates of title while they are in  
481 its possession. If the lender ever takes possession of repossessed motor vehicles, it shall have sufficient  
482 insurance coverage on such motor vehicles, in the event of loss or damage, for the benefit of the  
483 borrower to pay the loan value of the motor vehicle, as stated on the title loan agreement. "Loan  
484 value," for purposes of this section, means the amount of money loaned in consideration of the motor  
485 vehicle as stated on the title loan agreement.

486 § 6.1-501. Suspension or revocation of license.

487 A. The Commission may suspend or revoke any license issued under this chapter upon any of the  
488 following grounds:

489 1. Any ground for denial of a license under this chapter;



2. Any material violation of the provisions of this chapter or regulations adopted by the Commission pursuant thereto, or a material violation of any other law or regulation applicable to the conduct of the licensee's business that reflects on the licensee's fitness to hold a license under this chapter;

3. A course of conduct consisting of the failure to perform title loan agreements with borrowers;

4. Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit;

5. Entry of a judgment against the licensee involving fraud, misrepresentation or deceit;

6. Entry of a federal or state administrative order against such licensee for a material violation of any law or any regulation applicable to the conduct of his business;

7. Refusal to permit an investigation or examination by the Commission;

8. Failure to pay any fee or assessment imposed by this chapter after receiving reasonable notice of such failure; or

9. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner or principal shall be deemed acts of the licensee; however, if the acts were not the acts which were made in the course of making or servicing title loans, those acts shall only subject the person who performed those acts to regulatory action pursuant to § 6.1-494, and shall not be a basis to suspend or revoke the license.

§ 6.1-502. Cease and desist orders.

If the Commission determines that any person has violated any provision of this chapter or any regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

§ 6.1-503. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set forth in § 6.1-501 until it has given the licensee 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1.

§ 6.1-504. Civil penalties.

In addition to the authority conferred under §§ 6.1-501 and 6.1-502, the Commission may impose a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any of the provisions of this chapter, the regulations adopted 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 civil penalty herein prescribed, up to a maximum penalty of \$100,000, and in the case of a violation of § 6.1-481, each loan made or arranged shall constitute a separate violation which is not subject to a maximum penalty.

§ 6.1-505. Criminal penalties.

Any person violating § 6.1-481 is guilty of a Class 6 felony. For the purposes of this section, each violation shall constitute a separate offense.

§ 6.1-506. Validity of noncompliant loan agreement; private right of action.

A. If any provision of a title 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 or arbitration proceeding to enforce such provision. Any person who is successful in such action shall recover reasonable attorney fees, expert witness fees and court costs incurred by bringing such action.

§ 6.1-507. Application of chapter to Internet loans.

The provisions of this chapter, including specifically the licensure requirements of § 6.1-481, shall apply to persons making title loans over the Internet to Virginia residents, whether or not the person making the loan maintains a physical presence in the Commonwealth.

§ 6.1-508. Authority of Attorney General; referral by Commission to Attorney General.

551 *A. If the Commission determines that a person is in violation, or has violated, any provision of this*  
552 *chapter, the Commission may refer the information to the Attorney General and may request that the*  
553 *Attorney General investigate such violations. Upon such referral, the Attorney General is authorized to*  
554 *seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations*  
555 *notwithstanding the existence of an adequate remedy at law.*

556 *B. Upon such referral by the Commission, the Attorney General may also seek, and the circuit court*  
557 *may order or decree, damages and such other relief allowed by law, including restitution to the extent*  
558 *available to borrowers under applicable law. Persons entitled to any relief as authorized by this section*  
559 *shall be identified by order of the court within 180 days from the date of the order permanently*  
560 *enjoining the unlawful act or practice.*

561 *C. In any action brought by the Attorney General by virtue of the authority granted in this section,*  
562 *the Attorney General shall be entitled to seek reasonable attorney fees and costs.*

563 **2. That the Bureau of Financial Institutions shall establish a procedure by August 1, 2010, for any**  
564 **person to apply prior to October 1, 2010, for a license under Chapter 21 (§ 6.1-480 et seq.) of Title**  
565 **6.1 of the Code of Virginia. Any person engaged in the business of making loans to consumers**  
566 **secured by the consumer's motor vehicle pursuant to § 6.1-330.78 of the Code of Virginia residing**  
567 **in the Commonwealth on July 1, 2010, who has submitted a complete application for a license**  
568 **under Chapter 21 (§ 6.1-480 et seq.) of Title 6.1 of the Code of Virginia prior to October 1, 2010,**  
569 **may continue to operate as provided pursuant to Chapter 21 (§6.1-480 et. seq.) without a license**  
570 **until the earliest of the following: (i) the date the Commission issues a license under such chapter;**  
571 **or (ii) the date the Commission denies an application for a license under such chapter; provided**  
572 **that if the applicant requests a hearing pursuant to § 2.2-4020 to contest the denial of the**  
573 **application, the applicant may continue to operate without a license until the entry of a final order**  
574 **after the hearing pursuant to § 2.2-4023 or, if appealed to the Supreme Court of Virginia, the final**  
575 **decision of such court. Nothing in this act shall prohibit the collection of any outstanding**  
576 **vehicle-secured loans or extensions of credit made under § 6.1-330.78 of the Code of Virginia, in**  
577 **accordance with the terms of a loan agreement made prior to the effective date of this act;**  
578 **however, no additional extensions of credit or advances shall be made under such vehicle-secured**  
579 **loan agreement on or after the effective date of this act.**

580 **3. The Commission shall not request, review, take into consideration, or otherwise utilize any**  
581 **business records or other documents or facts related to loans made by a person under § 6.1-330.78**  
582 **of the Code of Virginia prior to the effective date of this act for any regulatory or licensing action**  
583 **involving such person pursuant to Chapter 21 (§ 6.1-480 et seq.) of Title 6.1 of the Code of**  
584 **Virginia.**

585 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**  
586 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
587 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
588 **781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to**  
589 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
590 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**  
591 **Juvenile Justice.**

592 **5. That the provisions of the first enactment of this act shall become effective on October 1, 2010.**