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**HOUSE BILL NO. 443**

Offered January 11, 2012

Prefiled January 10, 2012

*A BILL to amend and reenact §§ 6.2-1816, 6.2-2215, and 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-560, relating to debt collection practices; penalties.*

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Referred to Committee on Commerce and Labor

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

**1. That §§ 6.2-1816, 6.2-2215, and 59.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-560, as follows:**

§ 6.2-1816. Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. Part 226); (iv) evidence of receipt from the borrower of a check, dated as of the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until the date the loan is due, which date shall produce a loan term of at least two times the borrower's pay cycle and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.

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

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

4. A licensee shall not require or accept more than one check from a borrower as security for any loan.

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

6. A licensee shall not (i) refinance, renew or extend any payday loan; (ii) make a loan to a person if the loan would cause the person to have more than one payday loan from any licensee outstanding at the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following the date that the person has paid or otherwise satisfied in full a payday loan through an extended payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time.

8. A check accepted by a licensee as security for any loan shall be dated as of the date the loan is due.

9. Notwithstanding any provision of § 8.01-226.10 to the contrary, 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. In addition to any other remedies available at law, a licensee that knowingly violates this

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59 prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of  
60 the dishonored check.

61 10. A licensee shall not take an interest in any property other than a check payable to the licensee as  
62 security for a loan.

63 11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other  
64 product or service sold at the licensee's office location.

65 12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be  
66 charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

67 13. A check given as security for a loan shall not be negotiated to a third party.

68 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an  
69 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18  
70 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to  
71 all claims and defenses of the maker."

72 15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in  
73 form consistent with regulations adopted by the Commission, explaining in plain language the rights and  
74 responsibilities of the borrower and providing a toll-free number at the Commission for assistance with  
75 complaints.

76 16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and  
77 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet  
78 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash  
79 needs.

80 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on  
81 the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated  
82 receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the  
83 loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled,"  
84 return it to the borrower, and retain a copy in its records.

85 18. Each licensee shall conspicuously post in each approved office a schedule of fees and interest  
86 charges, with examples using a \$300 loan payable in 14 days and 30 days.

87 19. Any advertising materials used to promote payday loans that includes the amount of any  
88 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall  
89 also include a statement of the interest, fees and charges, expressed as an annual percentage rate,  
90 payable using as an example a \$300 loan payable in 14 and 30 days.

91 20. In any print media advertisement, including any web page, used to promote payday loans, the  
92 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in  
93 subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,  
94 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to  
95 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio  
96 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure  
97 statement shall last at least two seconds and the statement shall be spoken so that its contents may be  
98 easily understood.

99 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of  
100 the military services of the United States or the spouse or other dependent of a member of the military  
101 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of  
102 every prospective borrower if he is a member of the military services of the United States or the spouse  
103 or other dependent of a member of the military services of the United States. The loan documents shall  
104 include verification that the borrower is not a member of the military services of the United States or  
105 the spouse or other dependent of a member of the military services of the United States.

106 22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions  
107 and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15  
108 U.S.C. § 1692 et seq.) or in Chapter 50 (§ 59.1-550 et seq.) of Title 59.1 regarding harassment or abuse,  
109 false or misleading misrepresentations, and unfair practices in collections.

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

113 24. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in  
114 connection with any payday loan.

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

117 26. A borrower may pay any outstanding payday loan from any licensee by means of an extended  
118 payment plan as follows:

119 a. A borrower shall not be eligible to enter into more than one extended payment plan in any  
120 12-month period.

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

c. If the borrower enters into an extended payment plan, then no licensee may make a payday loan to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower pays or satisfies in full the balance of the loan under the terms of the extended payment plan.

d. At each approved office, the licensee shall post a notice in at least 24-point bold type, in a form established or approved by the Commission, informing persons that they may be eligible to enter into an extended payment plan.

e. The licensee shall provide oral notice to any borrower who is eligible to enter into an extended payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability to pay the payday loan by means of an extended payment plan. The information contained in the notice shall be in a form provided by the Bureau.

27. In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to any person within a period of 180 days shall be made only in compliance with, at the option of the borrower, either of the following:

a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise satisfied in full and (ii) the borrower may elect, at any time on or before its due date, to repay such fifth payday loan by means of an extended payment plan as provided in subdivision 26 b; or

b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a loan that complies with the terms and conditions otherwise applicable to payday loans under the terms of this chapter except that (i) the principal amount of the loan, and any interest and fees permitted by § 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150 days following the date the extended term loan is made.

§ 6.2-2215. Required and prohibited business methods.

Each licensee shall comply with the following requirements and prohibitions:

1. Each motor vehicle title loan shall be evidenced by a written motor vehicle title loan agreement. Each motor vehicle title loan agreement shall:

a. Be signed by the borrower and by a person authorized by the licensee to sign such agreements;

b. Be dated the day it is executed by the borrower;

c. Set forth or contain, at a minimum: (i) the loan amount; (ii) the interest rate and any fees charged pursuant to the loan, which shall not exceed the maximum rate permitted pursuant to § 6.2-2216; (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 amounts and scheduled due dates of the monthly installment payments of principal and interest; (v) the borrower's mailing address; (vi) the make, model, year, and vehicle identification number of the motor vehicle in which a security interest is being given as security for the loan; (vii) that the borrower shall have the right to cancel the loan agreement at any time before the close of business on the next business day following the day the loan agreement is executed by returning the original loan proceeds check to or paying to the licensee, in the form of cash or other good funds instrument, the loan proceeds; (viii) the loan's maturity date, which shall not be earlier than 120 days from the date the loan agreement is executed nor later than 12 months from the date the loan agreement is executed; and (ix) such other information relating to the title loan as the Commission shall determine, by regulation, is necessary in order to ensure that the borrower is provided adequate notice of the relevant provisions of the title loan;

d. Not cause any person to be obligated to the licensee for a principal amount that exceeds 50 percent of the fair market value of the motor vehicle in which the licensee is taking an interest, which value shall be determined by reference to the loan value for the motor vehicle specified in a recognized pricing guide if the motor vehicle is included in a recognized pricing guide; and

e. Contain the following notice in at least 14-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 MOTOR VEHICLE TITLE LOAN AGREEMENT. IT ALLOWS YOU TO RECEIVE LOAN PROCEEDS TO MEET YOUR IMMEDIATE CASH NEEDS. IT IS NOT INTENDED TO**

182 MEET YOUR LONG-TERM FINANCIAL NEEDS.

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

186 YOU SHOULD TRY TO REPAY THIS LOAN AS QUICKLY AS POSSIBLE. YOU WILL BE  
187 REQUIRED TO PAY THE PRINCIPAL AND INTEREST ON THE LOAN IN MONTHLY  
188 SUBSTANTIALLY EQUAL INSTALLMENTS. YOU SHOULD TRY TO PAY EVEN MORE  
189 TOWARDS YOUR PRINCIPAL BALANCE EACH MONTH. DOING SO WILL SAVE YOU  
190 MONEY.

191 YOU MAY RESCIND THIS LOAN WITHOUT COST OR FURTHER OBLIGATION IF YOU  
192 RETURN THE LOAN PROCEEDS, IN CASH OR THE ORIGINAL LOAN CHECK, PRIOR TO THE  
193 CLOSE OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY FOLLOWING THE EXECUTION  
194 OF THIS AGREEMENT.

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

198 UNLESS YOU CONCEAL OR INTENTIONALLY DAMAGE THE MOTOR VEHICLE, OR  
199 OTHERWISE IMPAIR OUR SECURITY INTEREST BY PLEDGING THE MOTOR VEHICLE TO A  
200 THIRD PARTY OR PLEDGING A MOTOR VEHICLE TO US THAT IS ALREADY SUBJECT TO  
201 AN UNDISCLOSED EXISTING LIEN, YOUR LIABILITY FOR DEFAULTING UNDER THIS LOAN  
202 IS LIMITED TO THE LOSS OF THE MOTOR VEHICLE.

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

206 2. Before entering into a motor vehicle title loan, a licensee shall provide each borrower with a  
207 pamphlet, in a form consistent with regulations adopted by the Commission, explaining in plain  
208 language the rights and responsibilities of the borrower and providing a toll-free number at the  
209 Commission for assistance with complaints;

210 3. The borrower shall have the right to prepay the title loan prior to maturity by paying the  
211 outstanding balance at any time without penalty. A borrower shall also be permitted to make partial  
212 payments on a motor vehicle equity loan without charge at any time prior to the date such amounts  
213 would otherwise be due to the licensee. The licensee shall give the borrower signed, dated receipts for  
214 any cash payment made in person;

215 4. A licensee shall give a duplicate original of the loan agreement to the borrower at the time it is  
216 executed;

217 5. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third  
218 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee  
219 or any third party to bring suit against the borrower in a court outside the Commonwealth; (iii) waiving  
220 or modifying any right the borrower has under this chapter or Title 8.9A; or (iv) requiring the borrower  
221 to use arbitration or other alternative dispute resolution mechanisms that do not conform to Chapter 21  
222 (§ 8.01-577 et seq.) of Title 8.01;

223 6. A motor vehicle title loan agreement shall not (i) contain a provision by which a person acting on  
224 behalf of the licensee is treated as an agent of the borrower in connection with its formation or  
225 execution other than for purposes of filing or releasing a lien with the state where the motor vehicle is  
226 registered, (ii) contain an acceleration clause under which a licensee may demand immediate payment of  
227 any amount owed to it unless the borrower is in default under the terms of the loan agreement, or (iii)  
228 be sold or otherwise assigned to any other person who is not also a licensee, and if a loan agreement is  
229 sold or assigned to another licensee, the buyer or assignee of the loan agreement shall be subject to the  
230 same obligations under this chapter that apply to the selling or assigning licensee;

231 7. Loan proceeds shall be disbursed (i) in cash, (ii) by the licensee's business check, or (iii) by debit  
232 card provided that the borrower will not be directly charged a fee by the licensee in connection with the  
233 withdrawal of the funds. No fee shall be charged by the licensee or check casher for cashing a title loan  
234 proceeds check;

235 8. A licensee shall not obtain or accept from a borrower an authorization to electronically debit the  
236 borrower's deposit account;

237 9. A licensee shall not take an interest in any real or personal property other than one motor vehicle  
238 owned by the borrower as security for a title loan. For purposes of this subdivision, "motor vehicle"  
239 includes any accessories or accessions to a motor vehicle that are affixed thereto;

240 10. A licensee shall not (i) make a motor vehicle title loan if, on the date the loan agreement is  
241 signed by the borrower, the motor vehicle's certificate of title evidences that the motor vehicle is  
242 security for another loan or otherwise is encumbered by a lien; (ii) make a loan to an individual who the  
243 licensee knows is a borrower under another motor vehicle title loan, whether made by the same or

another licensee, or (iii) knowingly cause a borrower to be obligated upon more than one motor vehicle title loan at any time. Prior to making a motor vehicle title loan, every licensee shall inquire of every prospective borrower if the individual is obligated on a motor vehicle title loan with any licensee. Each loan agreement shall include the borrower's certification that the borrower is not obligated on another motor vehicle title loan;

11. A licensee shall (i) hold the certificate of title to the motor vehicle throughout the period that the loan agreement is in effect and (ii) within seven days following the date of the motor vehicle title loan agreement, file to have its security interest in the motor vehicle added to its certificate of title by complying with the requirements of § 46.2-637, or in the case of a motor vehicle registered in a state other than the Commonwealth by complying with that state's requirements for perfecting a security interest in a motor vehicle;

12. A licensee shall not make a title loan to a borrower to enable the borrower to (i) pay for any other product or service sold at the licensee's business location or (ii) repay any amount owed to the licensee or an affiliate of the licensee in connection with another credit transaction;

13. A licensee's security interest in a motor vehicle shall be promptly released when the borrower's obligations under the loan agreement are satisfied in full. When releasing the security interest in a motor vehicle, a licensee shall (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower;

14. A licensee shall conspicuously post in each licensed location (i) a schedule of finance charges on a title loan, using as an example a \$1,000 loan that is repaid over a 12-month period and (ii) a notice containing the following statement: "Should you wish to file a complaint against us, you may contact the Bureau of Financial Institutions at [insert contact information]." The Commission shall furnish licensees with the appropriate contact information;

15. A licensee or affiliate shall not knowingly make a motor vehicle title loan to a covered member of the armed forces or a dependent of such member. Prior to making a motor vehicle title loan, every licensee or affiliate shall inquire of every prospective borrower if the individual is a covered member of the armed forces or a dependent of a covered member. The prospective borrower shall affirm in writing to the licensee or affiliate if he is not a covered member of the armed forces or a dependent of a covered member. For purposes of this section, "covered member of the armed forces" means a person on active duty under a call or order that does not specify a period of 30 days or less or on active guard and reserve duty. For purposes of this section, "dependent of a covered member of the armed forces" means the member's spouse, the member's child as defined by 38 U.S.C. § 101(4), or an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding the date the motor vehicle title loan is sought;

16. In collecting or attempting to collect a motor vehicle title loan, a licensee shall comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) or in Chapter 50 (§ 59.1-550 et seq.) of Title 59.1 regarding harassment or abuse, false, misleading or deceptive statements or representations, and unfair practices in collections;

17. A licensee shall not (i) engage in any unfair, misleading, deceptive, or fraudulent acts or practices in the conduct of its business, (ii) engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter, or (iii) threaten, or cause to be instigated, criminal proceedings against a borrower arising from the borrower's failure to pay any sum due under a loan agreement;

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

19. A licensee shall provide a safe place for the keeping of all certificates of title while they are in its possession;

20. A licensee may require a borrower to purchase or maintain property insurance upon a motor vehicle securing a title loan made pursuant to this chapter. A licensee may not require the borrower to obtain such insurance from a particular provider; and

21. If the licensee takes possession of a motor vehicle securing a title loan, the vehicle shall be stored in a secure location.

§ 59.1-200. Prohibited practices.

305 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer  
306 transaction are hereby declared unlawful:

307 1. Misrepresenting goods or services as those of another;

308 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

309 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or  
310 services, with another;

311 4. Misrepresenting geographic origin in connection with goods or services;

312 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or  
313 benefits;

314 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

315 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,  
316 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first  
317 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods  
318 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"  
319 irregulars, imperfects or "not first class";

320 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
321 at the price or upon the terms advertised.

322 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or  
323 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
324 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph  
325 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
326 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
327 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
328 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

329 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts  
330 of price reductions;

331 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
332 installed;

333 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice  
334 or bill for merchandise or services previously ordered;

335 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"  
336 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the  
337 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
338 manufacturing the goods or services advertised or offered for sale;

339 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of  
340 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,  
341 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,  
342 or under federal statutes or regulations;

343 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
344 with a consumer transaction;

345 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain  
346 animals by pet dealers which is described in such sections, is a violation of this chapter;

347 16. Failing to disclose all conditions, charges, or fees relating to:

348 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
349 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
350 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
351 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
352 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
353 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
354 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
355 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
356 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
357 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
358 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
359 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
360 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
361 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
362 § 46.2-100;

363 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time  
364 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the  
365 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill  
366 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches

the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;

51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

52. Violating any provision of § 8.2-317.1; ~~and~~

53. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed; *and*

54. Violating any provision of Chapter 50 (§ 59.1-550 et seq.) of this title.

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

#### CHAPTER 50. DEBT COLLECTION PRACTICES.

§ 59.1-550. Definitions.

As used in this chapter, unless the context requires otherwise:

"Communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

"Consumer" means any natural person obligated or allegedly obligated to pay any debt.

"Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

"Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

"Debt collector" means any person engaged in the Commonwealth in a business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by subdivision 6, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of subdivision 6 of § 59.1-555, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include:

1. Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

2. Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom he is so related or affiliated and if the principal business of such person is not the collection of debts;

3. Any officer or employee of the government of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

4. Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

5. Any person licensed pursuant to Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2 that, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

6. Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

"Location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

§ 59.1-551. Acquisition of location information.

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

1. Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

2. Not state that such consumer owes any debt;

3. Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or



incomplete and that such person now has correct or complete location information;

4. Not communicate by post card;

5. Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

6. After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 59.1-552. Communication in connection with debt collection.

A. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt:

1. At any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. at the consumer's location;

2. If the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

3. At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

B. Except as provided in § 59.1-551, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

C. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except:

1. To advise the consumer that the debt collector's further efforts are being terminated;

2. To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

3. Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

D. For the purpose of this section, the term "consumer" includes the consumer's spouse; parent, if the consumer is a minor; guardian; executor; or administrator.

§ 59.1-553. Harassment or abuse.

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

1. The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

2. The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

3. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. § 603(f) or 15 U.S.C. § 604(a)(3);

4. The advertisement for sale of any debt to coerce payment of the debt;

5. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

6. Except as provided in § 59.1-551, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 59.1-554. False or misleading representations.

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

1. The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or facsimile

551 thereof.

552 2. The false representation of:

553 a. The character, amount, or legal status of any debt; or

554 b. Any service rendered or compensation which may be lawfully received by any debt collector for  
555 the collection of a debt;

556 3. The false representation or implication that any individual is an attorney or that any  
557 communication is from an attorney;

558 4. The representation or implication that nonpayment of any debt will result in the arrest or  
559 imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of  
560 any person unless such action is lawful and the debt collector or creditor intends to take such action;

561 5. The threat to take any action that cannot legally be taken or that is not intended to be taken;

562 6. The false representation or implication that a sale, referral, or other transfer of any interest in a  
563 debt shall cause the consumer to:

564 a. Lose any claim or defense to payment of the debt; or

565 b. Become subject to any practice prohibited by this chapter;

566 7. The false representation or implication that the consumer committed any crime or other conduct  
567 in order to disgrace the consumer;

568 8. Communicating or threatening to communicate to any person credit information which is known  
569 or which should be known to be false, including the failure to communicate that a disputed debt is  
570 disputed;

571 9. The use or distribution of any written communication which simulates or is falsely represented to  
572 be a document authorized, issued, or approved by any court, official, or agency of the United States or  
573 any state, or which creates a false impression as to its source, authorization, or approval;

574 10. The use of any false representation or deceptive means to collect or attempt to collect any debt  
575 or to obtain information concerning a consumer;

576 11. The failure to disclose in the initial written communication with the consumer and, in addition, if  
577 the initial communication with the consumer is oral, in that initial oral communication, that the debt  
578 collector is attempting to collect a debt and that any information obtained will be used for that purpose,  
579 and the failure to disclose in subsequent communications that the communication is from a debt  
580 collector, except that this paragraph shall not apply to a formal pleading made in connection with a  
581 legal action;

582 12. The false representation or implication that accounts have been turned over to innocent  
583 purchasers for value;

584 13. The false representation or implication that documents are legal process;

585 14. The use of any business, company, or organization name other than the true name of the debt  
586 collector's business, company, or organization;

587 15. The false representation or implication that documents are not legal process forms or do not  
588 require action by the consumer; or

589 16. The false representation or implication that a debt collector operates or is employed by a  
590 consumer reporting agency as defined by 15 U.S.C. § 603(f).

591 § 59.1-555. Unfair practices.

592 A debt collector may not use unfair or unconscionable means to collect or attempt to collect any  
593 debt. Without limiting the general application of the foregoing, the following conduct is a violation of  
594 this section:

595 1. The collection of any amount, including any interest, fee, charge, or expense incidental to the  
596 principal obligation, unless such amount is expressly authorized by the agreement creating the debt or  
597 permitted by law;

598 2. The acceptance by a debt collector from any person of a check or other payment instrument  
599 postdated by more than five days unless such person is notified in writing of the debt collector's intent  
600 to deposit such check or instrument not more than 10 nor less than three business days prior to such  
601 deposit;

602 3. The solicitation by a debt collector of any postdated check or other postdated payment instrument  
603 for the purpose of threatening or instituting criminal prosecution;

604 4. Depositing or threatening to deposit any postdated check or other postdated payment instrument  
605 prior to the date on such check or instrument;

606 5. Causing charges to be made to any person for communications by concealment of the true  
607 purpose of the communication. Such charges include, but are not limited to, collect telephone calls and  
608 telegram fees;

609 6. Taking or threatening to take any nonjudicial action to effect dispossession or disablement of  
610 property if:

611 a. There is no present right to possession of the property claimed as collateral through an  
612 enforceable security interest;

- b. There is no present intention to take possession of the property; or
- c. The property is exempt by law from such dispossession or disablement;

7. Communicating with a consumer regarding a debt by post card; or

8. Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 59.1-556. Validation of debts.

A. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

1. The amount of the debt;

2. The name of the creditor to whom the debt is owed;

3. A statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

4. A statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

5. A statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

B. If the consumer notifies the debt collector in writing within the 30-day period described in subsection A that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

C. The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

§ 59.1-557. Multiple debts.

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 59.1-558. Legal actions by debt collectors.

A. Any debt collector who brings any legal action on a debt against any consumer shall:

1. In the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in the city or county in which such real property is located; or

2. In the case of an action not described in subdivision 1, bring such action only in the city or county:

a. In which such consumer signed the contract sued upon; or

b. In which such consumer resides at the commencement of the action.

B. Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 59.1-559. Furnishing certain deceptive forms.

No debt collector or any other person shall design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

§ 59.1-560. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).