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## HOUSE BILL NO. 2310

Offered January 12, 2017

A BILL to amend and reenact §§ 6.2-1500 through 6.2-1503, 6.2-1507, 6.2-1517, 6.2-1519, 6.2-1523, 6.2-1526 through 6.2-1529, and 6.2-1531 of the Code of Virginia, relating to the licensing and regulation of consumer finance companies not located within the Commonwealth.

Patron—Kilgore

Referred to Committee on Commerce and Labor

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

1. That §§ 6.2-1500 through 6.2-1503, 6.2-1507, 6.2-1517, 6.2-1519, 6.2-1523, 6.2-1526 through 6.2-1529, and 6.2-1531 of the Code of Virginia are amended and reenacted as follows:

**§ 6.2-1500. Definitions.**

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

"Consumer finance company" means a person engaged in the business of making loans to individuals for personal, family, household, or other nonbusiness purposes.

"License" means a single license issued under this chapter with respect to a single place of business within or outside the Commonwealth.

"Licensee" means a consumer finance company to which one or more licenses have been issued.

"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 another person.

**§ 6.2-1501. Compliance with chapter; license required; attempts to evade application of chapter.**

A. No person shall engage in the business of making loans 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 interest, charges, compensation, consideration, or expense that in the aggregate is greater than the interest permitted by ~~§ 6.2-303~~ 12 percent per year, whether or not the person has a location in the Commonwealth, except as provided in and authorized by this chapter or Chapter 22 (~~§ 6.2-2200 et seq.~~) and without first having obtained a license from the Commission.

B. Subject to subdivision C 3 and subsection C of § 6.2-1524, the prohibition in subsection A shall not be construed to prevent any person, other than a licensee, from making a loan or extending credit pursuant to the following laws:

1. Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.), relating to payday lenders;

2. Making a mortgage loan pursuant to ~~§§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328~~ in any principal amount Article 4 of Chapter 3 (§ 6.2-309 et seq.), relating to mortgage loans, open-end credit plans, and certain other types of loans or extensions of credit, including those made by banks, savings institutions, credit unions, and sellers of goods or services; or

3. Extending credit as described in ~~§ 6.2-312~~ in any amount Chapter 22 (§ 6.2-2200 et seq.), relating to motor vehicle title lenders;

4. Section 36-55.31, relating to loans by the Virginia Housing Development Authority;

5. Section 38.2-1806, relating to interest chargeable by insurance agents;

6. Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by insurance premium finance companies;

7. Section 54.1-4008, relating to interest chargeable by pawnbrokers;

8. Section 58.1-3018, relating to interest and origination fees payable under third-party tax payment agreements; or

9. Any other laws of the Commonwealth that permit payment of interest at an annual rate that exceeds 12 percent.

C. The provisions of subsection A shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever, including:

1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or otherwise; (ii) money; (iii) goods; or (iv) things in action;

2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and

3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

D. The provisions of this chapter, including specifically the licensure requirement in subsection A, shall apply to persons making loans over the Internet to residents of the Commonwealth or any

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59 *individuals in the Commonwealth, whether or not the person making the loans maintains a physical*  
60 *presence in the Commonwealth.*

61 **§ 6.2-1502. Certain persons ineligible as licensees; exception for subsidiaries.**

62 A. No person doing business under the authority of any law of the Commonwealth, *of any other*  
63 *state*, or of the United States relating to banks, savings institutions, trust companies, building and loan  
64 associations, industrial loan associations, or credit unions shall be eligible for licensure under this  
65 chapter.

66 B. Nothing contained in subsection A or any other section of this title shall be construed to prevent a  
67 subsidiary of a bank or savings institution from becoming a licensee under this chapter. A licensee that  
68 is a subsidiary or affiliate of a bank or savings institution shall be governed by the provisions of this  
69 chapter, and all regulations adopted hereunder, as fully as if such licensee were not such a subsidiary or  
70 affiliate.

71 **§ 6.2-1503. Scope of chapter.**

72 This chapter shall not apply to:

73 1. Any business transacted by any person under the authority of and as permitted by any law of the  
74 Commonwealth, *of any other state*, or of the United States relating to banks, savings institutions, trust  
75 companies, building and loan associations, industrial loan associations, or credit unions;

76 2. Any bona fide pawnbroking business transacted under a pawnbroker's license; or

77 3. Any person operating in accordance with the specific provisions of any other provision of this title  
78 currently in effect or hereafter enacted.

79 **§ 6.2-1507. Issuance of license.**

80 A. The Commission shall issue and deliver to the applicant a license to make loans in accordance  
81 with the provisions of this chapter at the location ~~in the Commonwealth~~ specified in the application if it  
82 finds:

83 1. That the financial responsibility, experience, character and general fitness of the applicant and its  
84 members, senior officers, directors, and principals are such as to command the confidence of the public  
85 and to warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within  
86 the purpose of this chapter;

87 2. That the applicant has available, for the operation of the business at the specified location, liquid  
88 assets of at least \$50,000 if the specified location is in a locality with a population of more than 20,000,  
89 or of at least \$25,000 if the location is not in a locality with a population of more than 20,000; and

90 3. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by  
91 § 6.2-1505.

92 If the Commission fails to make the findings required by subdivisions 1, 2, and 3, it shall deny the  
93 application for a license.

94 B. Notwithstanding the provisions of subsection A, if the applicant has an existing license at another  
95 location ~~in the Commonwealth~~, the Commission shall issue and deliver to the applicant a license to  
96 make loans in accordance with the provisions of this chapter at the location specified in the application  
97 if it finds:

98 1. That the general fitness of the licensee is such as to command the confidence of the public and to  
99 warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within the  
100 purpose of this chapter; and

101 2. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by  
102 § 6.2-1505.

103 If the Commission fails to make the findings required by subdivisions 1 and 2, it shall deny the  
104 application for a license.

105 C. If the Commission denies an application for a license, it shall notify the applicant of the denial.  
106 The Commission shall retain the application fee.

107 **§ 6.2-1517. Place of business generally.**

108 A. Not more than one place of business shall be maintained under the same license.

109 B. The Commission may issue more than one license to the same licensee upon compliance, as to  
110 each additional license, with all applicable provisions of this chapter governing issuance of a single  
111 license.

112 C. No licensee shall conduct the business of making loans provided for by this chapter under any  
113 other name or at any place of business within *or outside* the Commonwealth other than as designated in  
114 the license.

115 **§ 6.2-1519. Changing place of business.**

116 A. A licensee may change its place of business to a different location ~~in the Commonwealth~~ if the  
117 new location is:

118 1. Within the original locality; or

119 2. From the original locality to a location in a contiguous locality.

120 B. A licensee shall notify the Commission of a change in the place of business within 10 days of

such relocation. Upon receipt of the notification, the Commission shall issue and deliver to the licensee an amended license covering the new location if it finds that the change in the place of business meets one of the criteria listed in subsection A. Each notice of change of location under this section shall be accompanied by a fee of \$250.

**§ 6.2-1523. Additional charges prohibited; exceptions.**

In addition to the interest, late charges, and processing fee permitted under § 6.2-1520, no further or other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, or other thing or otherwise shall be directly or indirectly charged, contracted for, collected, or received, except:

1. Insurance premiums actually paid out by the licensee to any insurance company or agent duly authorized to do business in the Commonwealth *or another state* for insurance for the protection and benefit of the borrower written in connection with any loan;

2. The actual cost of recordation fees or, on loans over \$100, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of not recording any instrument securing the loan; and

3. A handling fee not to exceed \$15 for each check returned to the licensee because the drawer had no account or insufficient funds in the payor bank.

**§ 6.2-1526. Wage assignments.**

A. A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services may be given as security for a loan made by any licensee, notwithstanding the provisions of any other law to the contrary.

B. No assignment of, or order for payment of, any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee shall be valid unless:

~~1. The amount of the loan is paid to the borrower simultaneously with its execution; and~~

~~2. The~~ the assignment or order is in writing, signed ~~in person~~ by the borrower, and not by an attorney, or if the borrower is married unless it is signed ~~in person~~ by both husband and wife, and not by an attorney. Written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the giving of the assignment or order. The provisions of this section are in addition to, and not in derogation of, the general statutes pertaining to the subject.

C. Under the assignment or order, an amount equal to not more than 10 percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of the salary, wages, commission, or other compensation for services, from the time that a copy of the assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon the loan and a printed copy of this section, is served upon the employer.

**§ 6.2-1527. Liens on household furniture.**

No chattel mortgage or other lien on household furniture then in the possession and use of the borrower given to secure any loan made by a licensee shall be valid unless it is in writing, signed ~~in person~~ by the borrower, and not by an attorney, or if the borrower is married unless it is signed ~~in person~~ by both husband and wife, and not by an attorney. Written assent of a spouse shall not be required when a husband and wife have been living separate and apart for a period of at least five months prior to the giving of the mortgage or lien.

**§ 6.2-1528. Exemptions unimpaired.**

A. Nothing in this chapter shall have the effect of impairing any rights on the part of anyone as to exemptions under the poor debtors law or under any other applicable exemption law now in effect or hereafter enacted.

B. The provisions of ~~subdivision~~ subsection B 2 of § 6.2-1526 and § 6.2-1527 are in addition to, and not in derogation of, the general statutes pertaining to the subject.

**§ 6.2-1529. Collection of loans made outside Commonwealth.**

A. No loan made outside the Commonwealth for which greater rates of interest, consideration or charges than are permitted by the law applicable to such loan in the state in which the loan was made, have been charged, contracted for, or received shall be collected in the Commonwealth. Every person in any way participating in an effort to enforce the collection of such loan in the Commonwealth shall be subject to the provisions of this chapter.

B. *The prohibition in subsection A shall not apply to loans that are made by a licensee in accordance with the provisions of this chapter.*

**§ 6.2-1531. Examination.**

The Commission shall, as often as it deems to be in the public interest, examine the affairs, business, office, and records of each licensee that pertain to any business licensed under this chapter. Such examination shall be conducted at least once in every three-year period. The licensee shall furnish

**182** promptly by mail or otherwise such facts and statements in connection with its business transacted in the  
**183** Commonwealth that the Commission may request from time to time.