

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 6.2-303, 6.2-312, 6.2-435, 6.2-1500, 6.2-1501, 6.2-1505, 6.2-1507, 6.2-1509, 6.2-1517, 6.2-1518, 6.2-1520, 6.2-1523, 6.2-1524, 6.2-1800, 6.2-1801, 6.2-1803, 6.2-1804, 6.2-1807, 6.2-1809, 6.2-1810, 6.2-1811, 6.2-1816, 6.2-1817, 6.2-1819, 6.2-1820, 6.2-1827, 6.2-1828, 6.2-2200, 6.2-2201, 6.2-2203, 6.2-2204, 6.2-2207, 6.2-2210, 6.2-2215, 6.2-2216, 6.2-2217, 6.2-2224, 6.2-2226, 59.1-200, and 59.1-335.5 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 6.2-1508.1, 6.2-1523.1, 6.2-1523.2, 6.2-1523.3, 6.2-1816.1, 6.2-1817.1, 6.2-1818.1 through 6.2-1818.4, 6.2-2215.1, 6.2-2216.1 through 6.2-2216.5, and 6.2-2218.1; and to repeal § 6.2-1818 of the Code of Virginia, relating to open-end credit plans; payday lenders and short-term loans; consumer finance loans; car title lending.*

[S 421]

Approved

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

**1. That §§ 6.2-303, 6.2-312, 6.2-435, 6.2-1500, 6.2-1501, 6.2-1505, 6.2-1507, 6.2-1509, 6.2-1517, 6.2-1518, 6.2-1520, 6.2-1523, 6.2-1524, 6.2-1800, 6.2-1801, 6.2-1803, 6.2-1804, 6.2-1807, 6.2-1809, 6.2-1810, 6.2-1811, 6.2-1816, 6.2-1817, 6.2-1819, 6.2-1820, 6.2-1827, 6.2-1828, 6.2-2200, 6.2-2201, 6.2-2203, 6.2-2204, 6.2-2207, 6.2-2210, 6.2-2215, 6.2-2216, 6.2-2217, 6.2-2224, 6.2-2226, 59.1-200, and 59.1-335.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.2-1508.1, 6.2-1523.1, 6.2-1523.2, 6.2-1523.3, 6.2-1816.1, 6.2-1817.1, 6.2-1818.1 through 6.2-1818.4, 6.2-2215.1, 6.2-2216.1 through 6.2-2216.5, and 6.2-2218.1 as follows:**

**§ 6.2-303. Contracts for more than legal rate of interest.**

A. Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan at a rate that exceeds 12 percent per year.

B. Laws that permit payment of interest at a rate that exceeds 12 percent per year are set out, without limitation, in:

1. Article 4 (§ 6.2-309 et seq.) of this chapter;

2. Chapter 15 (§ 6.2-1500 et seq.), relating to powers of consumer finance companies;

3. Chapter 18 (§ 6.2-1800 et seq.), relating to ~~payday lenders~~ *short-term loans*;

4. Chapter 22 (§ 6.2-2200 et seq.), relating to interest chargeable by motor vehicle title lenders;

5. § 36-55.31, relating to loans by the Virginia Housing Development Authority;

6. § 38.2-1806, relating to interest chargeable by insurance agents;

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

8. § 54.1-4008, relating to interest chargeable by pawnbrokers; and

9. § 58.1-3018, relating to interest and origination fees payable under third-party tax payment agreements.

C. 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.

D. Any provision of this chapter that provides 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. Such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

E. *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.*

F. Any contract made in violation of this section is void and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the contract.

**§ 6.2-312. Open-end credit plans.**

A. *The provisions of this section shall apply to any person that makes, arranges, or negotiates a*

loan or otherwise extends credit under an open-end credit plan, whether or not the person maintains a physical presence in the Commonwealth. However, the provisions of this section shall not apply to any bank, savings institution, or credit union as such terms are defined in § 6.2-300.

B. Notwithstanding any provision of this chapter other than § 6.2-327, and except as provided in subsection C subsections D, E, and F, a seller or lender engaged in extending credit under an open-end credit plan may impose, on credit extended under the plan, finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the creditor and the obligor, if under the plan 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 25 days later than the prior billing date.

B. C. Notwithstanding the provisions of § 6.2-327 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. (i) A licensee, as defined in § 6.2-1800, shall not engage D. The following persons are prohibited from engaging in the extension of credit under an open-end credit plan described in this section and; (ii) a third party shall not engage in the extension of credit under an open-end credit plan described in this section: (i) any person licensed under Chapter 18 (§ 6.2-1800 et seq.), any person affiliated through common ownership with such licensed person, and any person that is a subsidiary of such licensed person; (ii) any person licensed under Chapter 22 (§ 6.2-2200 et seq.), any person affiliated through common ownership with such licensed person, and any person that is a subsidiary of such licensed person; and (iii) any person conducting business at any office, suite, room, or place of business where a licensee conducts the business of making payday loans person described in clause (i) or (ii) is conducting business. In addition to any other remedies or penalties provided for a violation of this section, any such extension of credit made by a licensee or third party in violation of this subsection shall be unenforceable against the borrower.

D. E. No person shall make a loan or otherwise extend credit under an open-end credit plan or any other lending arrangement that is secured by a non-purchase money security interest in a motor vehicle, as such term is defined in § 6.2-2200, unless such loan or extension of credit is made in accordance with, or is exempt from, the provisions of Chapter 22 (§ 6.2-2200 et seq.).

E. If a licensee, as defined in § 6.2-1800, surrenders its license under Chapter 18 (§ 6.2-1800 et seq.) or has its license revoked, and if following such surrender or revocation of its license the former licensee engages in the extension of credit under an open-end credit plan as described in this section, then the Commission shall not issue to such former licensee, or to any affiliate of the former licensee, a license under Chapter 18 (§ 6.2-1800 et seq.) for a period of 10 years from the date such license is surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a business entity that owns or controls, is owned or controlled by, or is under common ownership or control with, the former licensee.

F. A seller or lender engaged in extending credit under an open-end credit plan to a resident of the Commonwealth or to any individual in the Commonwealth shall not charge, collect, or receive, directly or indirectly, credit insurance premiums, charges for any ancillary product sold, charges for negotiating forms of loan proceeds or refunds other than cash, charges for brokering or obtaining an extension of credit, or any fees, interest, or charges in connection with credit extended under the plan, other than (i) interest at a simple annual rate not to exceed 36 percent and (ii) a participation fee not to exceed \$50 per year. Any extension of credit made in violation of this subsection is void and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the extension of credit.

G. Any violation of the provisions of this section 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.).

H. A third party shall not engage in the extension of credit under an open-end credit plan described in this section.

#### **§ 6.2-435. Law governing open-end credit contract or plan by seller or lender.**

An open-end credit plan as defined in § 6.2-300, between a seller or lender and an obligor shall be governed solely by federal law, and by the laws of the Commonwealth, unless otherwise expressly agreed in writing by the parties.

#### **§ 6.2-1500. Definitions.**

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

"Access partner" means a person that, at the person's physical location in the Commonwealth, facilitates the making and servicing of a loan through provision of some or all of the services described in § 6.2-1523.1 pursuant to a contract with a licensee. The term does not include (i) a person licensed

under Chapter 25.1 (§ 59.1-335.1 et seq.) of Title 59.1; (ii) a person that is ineligible for licensure under § 6.2-1502 or to which this chapter shall not apply under § 6.2-1503; (iii) a person that has had any license revoked by the Commission at any time in the previous three years; (iv) a person that has violated or participated in the violation of § 6.2-1501 in the previous five years; or (v) a person who is licensed under Chapter 18 (§ 6.2-1800 et seq.) or Chapter 22 (§ 6.2-2200 et seq.).

"Arranging or brokering" means, with respect to consumer finance loans, negotiating, placing, or finding consumer finance loans for consumers, or offering to negotiate, place, or find consumer finance loans for consumers, in return for compensation paid directly by the consumers.

"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.

"Licensee" means a consumer finance company to which one or more licenses have a license has been issued by the Commission pursuant to this chapter.

"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, whether or not the person has a location in the Commonwealth, except as provided in and authorized by this chapter, Chapter 18 (§ 6.2-1800 et seq.), 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:

1. Making a loan in accordance with Chapter 18 (~~§ 6.2-1800 et seq.~~) Providing the services of an access partner described in § 6.2-1523.1;

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; or

3. Extending credit as described in § 6.2-312 in any amount.

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

E. The provisions of this section shall apply to any person, whether or not the person has an office or conducts business at a location in the Commonwealth.

F. Any loan made in violation of this section is void, and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the loan.

**§ 6.2-1505. Application for license; application fee.**

A. Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the Commission.

B. The application shall contain:

1. The name and address of the applicant;

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

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

4. If the applicant is a business trust, the name and address of each trustee and beneficiary;

5. The address, with street and number, if any, addresses of the locations where the business is to be conducted; and

6. Such other information as may be required by the Commission.

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

**§ 6.2-1507. Issuance of license.**

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

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

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

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

4. *That the applicant will not make loans in accordance with the provisions of this chapter at the same location at which the applicant, its affiliate, or its subsidiary conducts business under either Chapter 18 (§ 6.2-1800 et seq.) or Chapter 22 (§ 6.2-2200 et seq.).*

If the Commission fails to make the findings required by subdivisions 1, 2, ~~and 3, and 4~~, it shall deny the application for a license.

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

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

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

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

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

#### **§ 6.2-1508.1. Additional offices; relocation of offices.**

A. *No licensee shall open an additional office without prior approval of the Commission. Applications for such approval shall be made in writing on a form prescribed 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 surety bond or has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with the law. The application shall be deemed approved if notice to the contrary has not been sent by the Commission to the applicant within 30 days of the date the application is received by the Commission.*

B. *Prior approval of the Commission shall not be required in the event that a licensee needs to temporarily open an office due to a natural disaster or act of God. However, the licensee shall notify the Commission within 10 days of opening the office.*

C. *A licensee shall notify the Commission in writing within 10 days of relocating any approved office.*

#### **§ 6.2-1509. Contents, posting, transfer, and duration of license.**

A. Each license shall contain:

1. The address at which the business is to be conducted;

2. The full name of the licensee or, if the licensee is a partnership or association, the names of the partners or members; and

3. If the licensee is a corporation, the date and place of incorporation.

B. The licensee shall ~~keep post~~ the license ~~conspicuously posted~~ *prominently in its each approved place of business of the licensee. The licensee shall prominently disclose on its website the license number assigned by the Commission to the licensee.*

C. The license shall not be transferable or assignable.

D. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter or by lawful order of the Commission.

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

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

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

license.

C. A licensee shall not use any name other than the legal name or fictitious name set forth on the license issued by the Commission. No licensee shall conduct the business of making loans provided for by this chapter under any other name or at within any place of business within the Commonwealth other than as is designated in the license issued by the Commission.

**§ 6.2-1518. Notice of conduct of other business in same place of business; fee.**

A. A licensee shall not conduct the business of making loans under this chapter within any office, suite, room, or other place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless the licensee has first given 30 days' written notice to the Commission. Every notice shall be accompanied by a fee of \$300.

B. Upon receipt of such notice and fee, the Commission may require the licensee to provide information relating to the other business, including how and by whom it will be conducted. The Commission shall have the authority to investigate the conduct of such other businesses in the licensee's place of business.

C. The provisions of this section shall not affect (i) any regulations adopted by the Commission prior to July 1, 2000, governing the conduct of other businesses in the place of business designated in a license or (ii) the authority of the Commission to adopt such regulations as the Commission deems necessary.

D. If the Commission finds that the other business (i) is of such a nature or is being conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of this chapter or regulations adopted pursuant to it; (ii) is contrary to the public interest; or (iii) is otherwise being conducted in an unlawful manner, the Commission may, after notice to the licensee and an opportunity for a hearing, prohibit or limit the conduct of such other business in the place of business designated in the license.

E. Any authority granted under this section shall remain in full force and effect until surrendered, or until revoked or suspended by the Commission as provided in this chapter or by lawful order of the Commission.

F. A licensee that conducts the business of making loans pursuant to this chapter solely over the Internet shall not offer, sell, or make available any other products or services to Virginia residents, except as permitted by Commission regulation or upon approval of a written application with the Commission, payment of a fee of \$300, and provision of such information as the Commission may deem pertinent.

G. This section shall not apply to any other business that is transacted solely with persons residing outside the Commonwealth.

**§ 6.2-1520. Rate of interest; late charges; processing fees.**

A. A licensee may charge and receive interest on make installment loans of:

1. Not more than \$2,500, between \$300 and \$35,000, which loans shall have a term of no fewer than six months and no more than 120 months and shall be repayable in at least six substantially equal consecutive payments. A licensee may charge and collect interest on a loan made under this chapter at a single annual rate not to exceed 36 percent; and

2. More than \$2,500, at such single annual rate as shall be stated in the loan contract.

The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance but shall be computed and paid only as a percentage of the unpaid principal balance. For the purpose of calculating interest under this section, a year may be any period of time consisting of 360 or 365 days. Interest shall be computed on the basis of the number of days elapsed; however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid interest on the prior loan that has accrued within 90 days before the making of the new loan contract. For the purpose of computing interest, a day may equal 1/360th or 1/365th of a year.

B. A licensee may impose charge a late charge for failure to make timely payment fee of \$20 for any installment due on a debt, which late charge shall not exceed five percent of the amount of such installment payment or portion of a payment not received and applied within 10 days of the contractual due date. The late charge shall be specified in the loan contract between the lender and the borrower. For purposes of this section, "timely payment" means a payment made by the date fixed for payment or within a period of seven calendar days after such fixed date a late payment fee for any individual scheduled contractual payment due may be assessed only once. The late payment fee shall be specified in the contract between the lender and the borrower.

C. A licensee may charge and receive a loan processing fee, charged on not to exceed the greater of \$50 or six percent of the principal amount of the loan, for processing the loan contract provided that the loan processing fee shall in no event exceed \$150. The loan processing fee shall be stated in the loan

contract. ~~Such~~ The loan processing fee shall not be deemed to constitute interest charged on the principal amount of the loan for purposes of determining whether the interest charged on a loan of not more than \$2,500 exceeds the 36 percent annual contract interest rate limitation imposed by subdivision subsection A ~~±~~. Upon payment of the full amount of principal due plus accrued interest and any other applicable fees within the first 30 days, whether through outside funds or a refinancing under a new loan advance, the borrower shall be entitled to a full rebate of the loan processing fee less an amount not to exceed \$50 or the actual loan processing fee, whichever is less. If a loan is refinanced or renewed, a licensee may assess an additional loan processing fee on the loan no more than once during any 12-month period.

D. A licensee may collect from the borrower the amount of any actual fees necessary to file, record, or release its security interest with any public official or agency of a locality or the Commonwealth as may be required by law.

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

In addition to the interest, late charges payment fees, and loan 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~~ \$25 for each check returned to the licensee because the drawer had no account or insufficient funds in the payor bank.

**§ 6.2-1523.1. Access partners.**

A. Notwithstanding the provisions of §§ 6.2-1501 and 6.2-1518, a licensee may use the services of one or more access partners, provided that all of the following conditions are met:

1. All loans made in connection with an access partner comply with the requirements of this chapter.

2. The licensee maintains a written agreement with each access partner. The written agreement shall (i) require the access partner to comply with this section and all rules adopted under this section regarding the activities of access partners; (ii) give the Commission access to the access partner's books and records pertaining to the access partner's operations under the agreement with the licensee in accordance with § 6.2-1533 and authority to examine the access partner pursuant to § 6.2-1531; (iii) prohibit the access partner from charging or accepting any fees or compensation in connection with a loan from any person, other than what the licensee pays to the access partner under the terms of the contract; and (iv) require the access partner to keep written records sufficient to ensure compliance with this chapter, including records of all loan disbursements and loan payments for at least three years.

3. A licensee shall conduct a due diligence review of all access partners. The due diligence shall include a review of the access partner's financial soundness and legal compliance and the criminal history of the access partner and its employees. A licensee shall be responsible for implementing and maintaining a reasonable risk-based supervision program to monitor its access partners. The licensee shall provide to the Commission any information relating to the access partners as the Commissioner prescribes. Such information shall be provided in a form and manner as prescribed by the Commissioner.

4. The services of an access partner shall be limited to (i) distributing written materials or providing written factual information about loans that has been prepared or authorized in writing by the licensee; (ii) explaining the loan application process to prospective borrowers or assisting applicants to complete a loan application according to procedures the licensee approves; (iii) processing credit applications provided by the licensee, which applications shall clearly state that the licensee is the lender and disclose the licensee's contact information and how to submit complaints to the Commission; (iv) communicating with the licensee or the applicant about the status of applications; (v) obtaining the borrower's signature on documents prepared by the licensee and delivering final documents to the borrower; (vi) disbursing loan proceeds or receiving loan payments, provided the access partner provides a plain and complete written receipt at the time each disbursement or payment is made; and (vii) operating electronic access points through which a prospective borrower may directly access the website of the licensee to apply for a loan.

5. An access partner shall not (i) provide counseling or advice to a borrower or prospective borrower with respect to any loan term; (ii) provide loan-related marketing material that has not previously been approved by the licensee; (iii) negotiate a loan term between a licensee and a prospective borrower; (iv) offer information pertaining to a single prospective borrower to more than

one licensee, except that if a licensee has declined to offer a loan to a prospective borrower in writing the access partner may offer information pertaining to that borrower to another licensee with whom it has an access partner agreement; or (v) offer information pertaining to any prospective borrower to any person or entity other than a licensee operating under this chapter, subject to clause (iv).

6. A licensee shall apply any payment a borrower makes to an access partner as of the date on which the payment is received by the access partner.

7. A licensee shall not (i) hold a borrower liable for a failure or delay by an access partner in transmitting a payment to the licensee; (ii) knowingly conduct business with an access partner that has solicited or accepted fees or compensation in connection with a licensee's loan other than what is specified in the written agreement described in subdivision 2; or (iii) directly or indirectly pass on to a borrower any fee or other compensation that a licensee pays to an access partner in connection with such borrower's loan.

B. A licensee shall be responsible for any act of its access partner if such act would violate any provision of this chapter.

C. The Commission may (i) bar a licensee that violates any part of this chapter from using the services of specified access partners, or access partners generally; (ii) subject a licensee to disciplinary action for any violation of this chapter committed by a contracted access partner; or (iii) bar any person who violates the requirements of this chapter from performing services pursuant to this chapter generally or at particular locations.

D. The Commission shall have the authority to conduct investigation and examination of access partners, provided the scope of any investigation or examination shall be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with this chapter.

E. An access partner location shall not be considered an office for purposes of § 6.2-1508.1.

F. An access partner shall not be required to be licensed under Chapter 19 (§ 6.2-1900 et seq.) to provide the services of an access partner described in subdivision A 4.

#### **§ 6.2-1523.2. Application of chapter to Internet loans.**

A. The provisions of this chapter, including specifically the licensure requirements of § 6.2-1501, shall apply to persons making loans over the Internet to Virginia residents or any individuals in Virginia, whether or not the person maintains a physical presence in the Commonwealth.

B. The Commission may, from time to time, by administrative rule or policy statement, set requirements that the Commission reasonably deems necessary to ensure compliance with this section.

#### **§ 6.2-1523.3. Bond required.**

An application for a license under this chapter 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 \$25,000, or such greater sum as the Commission may require, but not to exceed a total of \$500,000. The form of such bond shall be approved by the Commission. Such bond shall be continuously maintained thereafter in full force. Such 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 it in its licensed business, and conducting its licensed business in conformity with this chapter and all applicable laws. 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.

#### **§ 6.2-1524. Required and prohibited activities and conduct.**

A. Each licensee shall maintain at all times the minimum *unencumbered liquid* assets prescribed by this chapter for each license, either (i) in liquid form available for the operation of the business at the location specified in each license or (ii) actually used, whether pledged or not, in the conduct of the business at the location specified in each license § 6.2-1507.

B. A licensee or other person subject to this chapter shall not advertise, display, distribute or broadcast, or cause or permit to be advertised, displayed, distributed or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans made under this chapter. The Commission may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as it deems necessary to prevent misunderstanding by prospective borrowers. The Commission may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by it to prevent false, misleading, or deceptive impression as to the scope or degree of protection provided by this chapter.

C. A licensee shall not take a lien upon real estate as security for any loan made under the provisions of this chapter, except a lien arising upon rendition of a judgment. Any lien taken in violation of this subsection shall be void.

D. A licensee shall, at the time any loan is made, deliver to the borrower, or if there are two or more borrowers to one of them, a statement disclosing (i) the names and addresses of the licensee and of the principal debtor on the loan contract, and (ii) a statement in compliance with Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026).

E. A licensee shall give the borrower a receipt for all cash payments. The Commission may specify the form and content of such receipts in keeping with the intent and purpose of this chapter.

F. A licensee shall permit payment to be made in advance in whole, or in part equal to one or more full installments. The licensee may apply the payment first to any amounts that are due and unpaid at the time of such payment.

G. A licensee shall, upon repayment of the loan in full, (i) mark plainly every obligation and security other than a security agreement executed by the borrower with the word "Paid" or "Canceled," (ii) mark satisfied any judgment, (iii) restore any pledge, (iv) cancel and return any note and any assignment given by the borrower to the licensee, and (v) release any security agreement or other form of security instrument that no longer secures an outstanding loan between the borrower and the licensee.

H. In the event of collection by foreclosure sale or otherwise, a licensee shall pay and return to the borrower, or to another person entitled thereto, any surplus arising after the payment of the expenses of collection, sale or foreclosure and satisfaction of the debt.

I. A licensee shall not take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding. Any such confession of judgment or power of attorney to confess judgment shall be void.

J. A licensee shall not take any note, promise to pay, or instrument of security in which blanks are left to be filled in after execution, or that does not give the amount of the loan, a clear description of the installment payments required, and the rate of interest charged. A licensee may also include the disclosures required by Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026) in the note, promise to pay, or instrument of security.

K. Every loan contract shall be in writing, be signed by the borrower, and provide for repayment of the amount loaned in substantially equal monthly installments of principal and interest, and include the following statement: *"This loan is made pursuant to Chapter 15 of Title 6.2 of the Code of Virginia"*. Nothing contained in this chapter shall prevent (i) a loan being considered a new loan because the proceeds of the loan are used to pay an existing loan contract or (ii) a licensee from entering into a loan contract providing for an odd first payment period of up to 45 days and an odd first payment greater than other monthly payments because of such odd first payment period.

## CHAPTER 18.

### PAYDAY LENDERS SHORT-TERM LOANS.

#### § 6.2-1800. Definitions.

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

*"Affiliate" means a person related to a licensee by common ownership or control, or any employee or agent of a licensee.*

*"Annual percentage rate" has the same meaning as in the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and its implementing regulations, as they may be amended from time to time. All fees and charges payable directly or indirectly by a borrower to a licensee as a condition to a loan, including interest and the monthly maintenance fees authorized under § 6.2-1817, shall be included in the computation of the annual percentage rate.*

*"Check" means a draft drawn on the account of an individual at a depository institution.*

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

*"Interest" means all charges payable directly or indirectly by a borrower to a licensee as a condition to a loan, including fees, service charges, and renewal charges, and any ancillary product sold in connection with a loan, but does not include the monthly maintenance fees, deposit item return fees, or late charges authorized under § 6.2-1817.*

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

*"Payday loan" means a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual at a depository institution, or (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds.*

*"Loan amount" means the principal amount of a loan, exclusive of fees or charges.*

*"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 or a limited liability company.*

*"Short-term loan" means a loan made pursuant to this chapter.*

#### § 6.2-1801. License requirement.

A. No person shall engage in the business of making payday loans to any consumer 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 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, whether or not the person has a location in the Commonwealth, except as provided and authorized by this chapter, Chapter 15 (§ 6.2-1500 *et seq.*), or Chapter 22 (§ 6.2-2200 *et seq.*) 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 ~~payday~~ short-term loans for any consumer residing in the Commonwealth, whether or not the person has an office or conducts business at a location in the Commonwealth.

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. Any loan made in violation of this section is void, and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the loan.

**§ 6.2-1803. 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; and

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.

C. The application shall be accompanied by payment of an application fee of \$500 or other reasonable amount that the Commission prescribes by regulation.

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.

**§ 6.2-1804. 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 \$10,000 per office, or such greater sum as the Commission may require, but not to exceed a total of \$50,000 or \$500,000. 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 him in his licensed business, and conducting his 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.

**§ 6.2-1807. Licenses; places of offices; changes.**

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 or other reasonable amount as the Commission may prescribe by

*regulation.* 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.

**§ 6.2-1809. 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 ~~payday~~ *short-term* 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.

**§ 6.2-1810. Loan database.**

A. The Commission shall certify and contract with one or more third parties to develop, implement, and maintain a real-time, Internet-accessible database that contains such ~~payday~~ *short-term* loan information as the Commission may require from time to time by administrative rule or policy statement. ~~The database shall be operational by January 1, 2009.~~

B. The following provisions shall apply to the database:

1. Before making a ~~payday~~ *short-term* loan, a licensee shall query the database through a Commission-certified database provider and shall retain evidence of the query for the Commission's supervisory review. The database shall allow a licensee to make a ~~payday~~ *short-term* loan only if making the loan is permissible under the provisions of this chapter. During any period that the database is unavailable due to technical problems beyond the licensee's control, a licensee may rely on the ~~payday~~ loan applicant's written representations, rather than the database's information, to verify that making the loan applied for is permissible under the provisions of this chapter. Because a licensee may rely on the accuracy of the applicant's representations and the database's information, a licensee is not subject to any administrative penalty or civil liability if that information is later determined to be inaccurate.

2. The database provider shall maintain the database, take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, be responsible for the confidentiality and security of such information, and own the information contained in the database. The Commission shall have access to and utilize the database as ~~an~~ *a supervision and enforcement tool* to ensure licensees' compliance with the provisions of this chapter.

3. Upon a licensee's query, the database shall advise the licensee whether the applicant is eligible for a new ~~payday~~ *short-term* loan and, if the applicant is ineligible, the reason for such ineligibility. If the database advises the licensee that the applicant is ineligible for a ~~payday~~ *short-term* loan, then the applicant shall direct any inquiry regarding the specific reason for such ineligibility to the database provider rather than to the licensee. The information contained in the ~~payday~~ *loan* database is confidential and exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

4. If a licensee and borrower consummate a ~~payday~~ loan, then the licensee shall pay a fee to defray the costs of submitting the database inquiry. The amount of the database inquiry fee shall be calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to actual cost of the operation of the database. If a licensee submits a database inquiry but does not consummate a ~~payday~~ loan with the applicant, then the licensee shall not pay the database inquiry fee. Each licensee shall remit all database inquiry fees directly to the database provider on a weekly basis.

5. If a borrower enters into a ~~payday~~ *short-term* loan or pays or otherwise satisfies a ~~payday~~ *short-term* loan in full, or if a borrower enters into an extended payment plan as provided in subdivision 26 of § 6.2-1816 or an extended term loan as provided in subdivision 27 of § 6.2-1816, then the licensee making the loan shall report such event or other information to the database not later than the close of business on the date of such event.

**§ 6.2-1811. Annual report.**

A. 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.

B. *The Commissioner shall publish annually and make available to the public an analysis of the information required under this section and other information the Commissioner may choose to include. The published analysis shall include all of the following:*

1. *The total number of borrowers, loans, defaulted loans, and charged-off loans and the total dollar value of the charged-off loans;*

2. *The average loan size, average contracted annual percentage rate, average contracted loan charges, average loan charges actually paid, total contracted loan charges, and total loan charges actually paid;*

3. *The total number of deposit item return fees and the total dollar value of those charges;*

4. *The total number of licensee business locations and the average number of borrowers per location; and*

5. *A summary of pending and completed enforcement actions, which shall include lists of suspended or revoked licenses, cease and desist orders, and civil penalties pursuant to this chapter.*

**§ 6.2-1816. Required and prohibited business methods.**

Each licensee shall comply with the following requirements *and prohibitions*:

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 Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026); (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. *A licensee shall not make a loan that does not comply with § 6.2-1816.1.*

2. ~~The A licensee shall give a duplicate original of the loan agreement to the borrower at the time of the transaction not charge, collect, or receive, directly or indirectly, credit insurance premiums, charges for any ancillary product sold, charges for disbursing loan proceeds or refunds including check-cashing charges and any other charges for negotiating forms of payment other than cash, charges for brokering or obtaining a loan, or any fees, interest, or charges in connection with a loan, other than fees and charges permitted by § 6.2-1817.~~

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 the borrower's right to legal recourse or any other right the borrower has under this chapter~~ *any otherwise applicable provision of state or federal law.*

4. A licensee shall not ~~require or accept more than one check from a borrower as security for any loan make a loan to a person if that person is obligated upon any loan to a person licensed under Chapter 22 (§ 6.2-2200 et seq.). Prior to making a loan, a licensee shall make a reasonable attempt to verify the borrower's eligibility under this subsection that includes reviewing the files of any affiliate that is licensed under Chapter 22. Unless the Commission requires otherwise by administrative rule or policy statement, a licensee may rely on the loan applicant's written representations with respect to the applicant's obligations to lenders that are licensed under Chapter 22 (§ 6.2-2200 et seq.) but are not affiliates of the licensee, and a licensee is not subject to any administrative penalty or civil liability if such representations are later determined to be inaccurate.~~

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~~ \$2,500.

6. ~~A Except as provided in § 6.2-1818.1, a licensee shall not (i) refinance, renew, or extend any payday short-term loan; (ii) or make a loan to a person if the loan would cause the person to have more than one payday short-term 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 no earlier than the date of the first required loan payment shown in the loan agreement.

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 or for any reason related to the borrower's failure to pay any sum due under a loan agreement. In addition to any other remedies available at law, a licensee that knowingly violates this prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of the dishonored check.

10. A licensee shall not take an (i) accept the title or registration of a vehicle, real or personal property, or any interest in any property other than a check payable to the licensee as security for a loan; (ii) create or accept any remotely created check, as defined in 12 C.F.R. § 229.2(fff), in connection with a loan; (iii) draft funds electronically from a borrower's account without express written authorization from the borrower; or (iv) fail to stop attempts to draft funds electronically from a borrower's account upon request from the borrower or his agent. Nothing in this section shall prohibit the conversion of a negotiable instrument into an electronic form for processing through the automated clearing house system.

11. A licensee shall not present a check, negotiable order of withdrawal, share draft, or other negotiable instrument that has been previously presented by the licensee and subsequently returned dishonored for any reason, unless the licensee obtains new written authorization from the borrower to present the previously returned item.

12. A licensee shall not attempt to draft funds electronically from a borrower's account after two consecutive attempts have failed, unless the licensee obtains new written authorization from the borrower to transfer or withdraw funds electronically from the borrower's account.

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

~~12.~~ 14. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be charged by the licensee or an affiliated check casher affiliate for cashing a loan proceeds check.

~~13.~~ 15. A check given as security for a loan shall not be negotiated to a third party.

~~14.~~ 16. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an endorsement stating: "This check is being negotiated as part of a payday short-term loan pursuant to Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to all claims and defenses of the maker."

~~15.~~ 17. Before entering into a payday short-term loan, the licensee shall provide each borrower with a pamphlet, in form consistent with regulations adopted by the Commission, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number at the Commission for assistance with complaints.

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

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

18. Each licensee shall conspicuously post in each approved office (i) a schedule of fees and interest charges, with which shall include examples using a \$300 loan payable repaid in 14 days and 30 days three months, a \$500 loan repaid in five months, and a \$1,000 loan repaid in 10 months, and (ii) a notice containing the following statement: "If 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.

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

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

21. A licensee or affiliate shall not knowingly make a *payday short-term* loan to a person who is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States. Prior to making a *payday short-term* loan, every licensee or affiliate shall inquire of every prospective borrower if he is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States. The loan documents shall include verification that the borrower is not a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States.

22. 20. In collecting or attempting to collect a *payday short-term* 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.) regarding harassment or abuse, false or misleading misrepresentations, and unfair practices in collections.

21. A licensee shall not contact a borrower for any reason other than (i) for the borrower's benefit regarding upcoming payments, options for obtaining loans, payment options, payment due dates, the effect of default, or, after default, receiving payments or other actions permitted by the licensee; (ii) to advise the borrower of missed payments or dishonored checks; or (iii) to assist the transmittal of payments via a third-party mechanism.

22. A short-term loan agreement shall not be sold or otherwise assigned to any other person who is not also a licensee, and if a loan agreement or its servicing is sold or assigned to another licensee, the buyer or assignee of the loan agreement shall be subject to the same obligations under this chapter that apply to the selling or assigning licensee. If a licensee sells or assigns a short-term loan or its servicing, the licensee shall provide to the borrower written notice and the information needed to make future payments no later than 10 days before the borrower's next payment due date.

23. A licensee shall not make a loan to a borrower that includes an acceleration clause or demand feature that permits the licensee, in the event the borrower fails to meet the repayment terms for any outstanding balance, to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, unless both of the following conditions are met: (i) not earlier than 10 days after the borrower's payment was due, the licensee provides written notice to the borrower of the termination of the loan and (ii) in addition to the outstanding balance, the licensee collects only prorated interest and the fees earned up to termination of the loan. For purposes of this subdivision, the outstanding balance and prorated interest and fees shall be calculated as if the borrower had voluntarily prepaid the loan in full on the date of termination.

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

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

25. A licensee shall not recommend to a borrower that the borrower obtain a loan for a dollar amount that is higher than the borrower has requested.

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

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

a. A borrower shall not be eligible to enter into more than one extended payment plan in any 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.

e. 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.

#### **§ 6.2-1816.1. Loan terms and conditions.**

A licensee may engage in the business of making short-term loans, provided that each loan meets all of the following conditions:

1. The total amount of the loan does not exceed \$2,500.

2. The minimum duration of the loan is four months and the maximum duration of the loan is 24 months; however, the minimum duration of the loan may be less than four months if the total monthly payment on the loan does not exceed the greater of (i) an amount that is five percent of the borrower's verified gross monthly income or (ii) six percent of the borrower's verified net monthly income.

3. The loan is made pursuant to a written loan contract that sets forth the terms and conditions of the loan, 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. A copy of the signed loan contract shall be provided to the borrower. The loan contract shall disclose in a clear and concise manner all of the following:

a. The principal amount of the loan and the total amount of fees and charges the borrower will be required to pay in connection with the loan pursuant to the loan contract;

b. The amount of each payment of principal and interest, when each payment is due, the total number of payments that the borrower will be required to make under the loan contract, and the loan's maturity date;

c. If the licensee receives a check as security for the loan, evidence of receipt from the borrower of a check, stating the amount of the check and terms upon which the check may be presented for payment;

d. A statement, printed in a minimum font size of 10 points, that informs the borrower that complaints regarding the loan or lender may be submitted to the Bureau and includes the correct telephone number, website address, and mailing address for the Bureau;

e. Any disclosures required under the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and its implementing regulations, as they may be amended from time to time;

f. The annual percentage rate;

g. A statement, printed in a minimum font size of 10 points, as follows: "This loan is made pursuant to Chapter 18 of Title 6.2 of the Code of Virginia. You have the right to rescind or cancel this loan by returning the loan proceeds check or the originally contracted loan amount by 5 p.m. of the third business day immediately following the day you enter into this contract.";

h. A statement, printed in a minimum font size of 10 points, as follows: "Electronic payment is optional. You have the right to revoke or remove your authorization for electronic payment at any time.";

i. The borrower's mailing address.

j. Such other information relating to the loan as the Commission shall determine, by regulation, is necessary to ensure that the borrower is provided adequate notice of the relevant provisions of the loan.

4. The loan is a precomputed loan and is payable in substantially equal installments consisting of principal, fees, and interest combined. For purposes of this section, "precomputed loan" means a loan in which the debt is a sum comprising the principal amount and the amount of fees and interest computed in advance on the assumption that all scheduled payments will be made when due.

5. The loan may be rescinded or canceled on or before 5 p.m. of the third business day immediately following the day of the loan transaction upon the borrower returning the original loan proceeds check or paying to the licensee, in the form of cash or other good funds instrument, the loan proceeds.

**§ 6.2-1817. Authorized fees and charges.**

A. A licensee may charge, collect, and receive on each only the following fees and charges in connection with a short-term loan interest, provided such fees and charges are set forth in the written loan contract described in § 6.2-1816.1:

1. Interest at a simple annual rate not to exceed 36 percent. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.

B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the amount of the loan proceeds advanced to the borrower.

C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan made under this chapter. The verification fee shall be used in part to defray the costs of submitting a database inquiry as provided in subdivision B 4 of § 6.2-1810.;

2. Subject to § 6.2-1817.1, a monthly maintenance fee that does not exceed the lesser of eight percent of the originally contracted loan amount or \$25, provided the fee is not added to the loan balance on which interest is charged;

3. Any deposit item return fee incurred by the licensee, not to exceed \$25, if a borrower's check or electronic draft is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment of the check or electronic draft, provided that the terms and conditions upon which such fee will be charged to the borrower are set forth in the written loan contract described in § 6.2-1816.1; and

4. Damages and costs to which the licensee may become entitled to by law in connection with any civil action to collect a loan after default, except that the total amount of damages and costs shall not exceed the originally contracted loan amount.

B. A licensee may impose a late charge according to the provisions of § 6.2-400 provided, however, that the late charge shall not exceed \$20.

**§ 6.2-1817.1. Inflation adjustment of maximum monthly maintenance fee.**

The Commission may, from time to time, by regulation, adjust the dollar amount of \$25 specified in subsection A of § 6.2-1817 to reflect the rate of inflation from the previous date that the dollar amount was established, as measured by the Consumer Price Index or other method of measuring the rate of inflation that the Commission determines is reliable and generally accepted.

**§ 6.2-1818.1. Refinancing of short-term loans.**

Subject to subsection F of § 6.2-1818.2, a licensee may refinance a short-term loan, provided that the refinanced loan is also a short-term loan.

**§ 6.2-1818.2. Statement of balance due; repayment and refunds.**

A. The licensee shall, upon the request of the borrower or his agent, provide a statement of balance due on a short-term loan.

B. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on the loan at any time prior to maturity, without charge. The licensee shall give the borrower dated receipts for each payment made, which shall state the updated balance due on the loan.

C. When providing a statement of balance due on the loan, the licensee shall state the amount required to discharge the borrower's obligation in full as of the date the notice is provided and for each of the next three business days following that date. If the licensee cannot reasonably supply a firm statement of balance due when requested or required, the licensee may provide a good faith estimate of the balance due immediately and provide to the borrower or his agent a firm statement of balance due within two business days.

D. The licensee shall provide any statement of balance due verbally and in writing, and shall not fail to provide the information by phone upon the request of the borrower or his agent.

E. A licensee shall not fail to accept cash or other good funds instrument from the borrower, or a third party when submitted on behalf of the borrower, for repayment of a short-term loan in full or in part. Payments shall be credited by the licensee on the date received.

F. Notwithstanding any other provision of law, if a short-term loan is prepaid in full or refinanced prior to the loan's maturity date, the licensee shall refund to the borrower a prorated portion of fees and charges based on a ratio of the number of days the loan was outstanding and the number of days

for which the loan was originally contracted. For purposes of this section, all charges made in connection with the loan shall be included when calculating the loan charges except for deposit item return fees and late charges authorized under § 6.2-1817.

G. If a licensee presents a check held as security for a loan, the licensee shall refund any amount received that is in excess of the payment due on the loan as of the day the licensee presents the check. For purposes of this subsection, the payment due on the loan shall be no more than the amount of unpaid payments and fees that have already come due according to the loan contract or, if applicable, the amount due according to a valid contractual acceleration clause or demand feature as described in subdivision 23 of § 6.2-1816.

H. The licensee shall provide any refund due to a borrower in the form of cash or business check as soon as reasonably possible and not later than two business days after receiving payment from the borrower.

I. Upon repayment of the loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records.

**§ 6.2-1818.3. Restriction on certain fees and charges.**

Notwithstanding any provision of this chapter to the contrary, a licensee shall not contract for, charge, collect, or receive in connection with a short-term loan a total amount of fees and charges that exceeds either (i) 50 percent of the originally contracted loan amount, if the originally contracted loan amount was \$1,500 or less or (ii) 60 percent of the originally contracted loan amount, if the originally contracted loan amount was greater than \$1,500. For purposes of this section, all charges made in connection with the loan shall be included when calculating the total loan charges except for deposit item return fees and late charges authorized under § 6.2-1817.

**§ 6.2-1818.4. Verification of borrower's income.**

Before initiating a short-term loan transaction with a borrower, a licensee shall make a reasonable attempt to verify the borrower's income. At a minimum, the licensee shall obtain from the borrower one or more recent pay stubs or other written evidence of recurring income, such as a bank statement. The written evidence shall include at least one document that, when presented to the licensee, is dated not earlier than 45 days prior to the borrower's initiation of the short-term loan transaction.

**§ 6.2-1819. Advertising.**

A. No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading or deceptive statement or representation; or (ii) identifies the person by any name other than the name set forth on the license issued by the Commission.

B. Any advertising materials used to promote short-term loans that includes the amount of any payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall also include a statement of the interest, fees and charges, expressed as an annual percentage rate, payable using examples of a \$300 loan repaid in three months, a \$500 loan repaid in five months, and a \$1,000 loan repaid in 10 months.

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

**§ 6.2-1820. Other business.**

No licensee shall conduct the business of making ~~payday~~ short-term loans under this chapter at any office, suite, room, or other place of business where any other business is solicited or conducted except a registered check cashing business, a motor vehicle title loan business licensed under Chapter 22 (§ 6.2-2200 et seq.), 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 such other 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 or other reasonable amount that the Commission may set, 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. This section shall not apply to any other business that is transacted with persons residing solely outside the Commonwealth.

**§ 6.2-1827. Application of chapter to Internet loans.**

A. The provisions of this chapter, including specifically the licensure requirements of § 6.2-1801, shall apply to persons making ~~payday~~ short-term loans over the Internet to Virginia residents or any



individual in the Commonwealth, whether or not the person making the loan maintains a physical presence in the Commonwealth.

*B. The Commission may, from time to time, by administrative rule or policy statement, set requirements that the Commission reasonably deems necessary to ensure compliance with this section.*

**§ 6.2-1828. Authority of Attorney General; referral by Commission to Attorney General.**

A. If the Commission determines that a person is in violation of, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. ~~Upon~~ *With or without* such referral, the Attorney General is authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

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

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

*D. If the Attorney General files an action to enjoin violations of this chapter, the Attorney General shall give notice of such action to the Commission.*

**§ 6.2-2200. Definitions.**

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

*"Affiliate" means a person related to a licensee by common ownership or control, or any employee or agent of a licensee.*

*"Annual percentage rate" has the same meaning as in the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and its implementing regulations, as they may be amended from time to time. All fees and charges payable directly or indirectly by a borrower to a licensee as a condition to a loan, including interest and the monthly maintenance fees authorized under § 6.2-2216, shall be included in the computation of the annual percentage rate.*

*"Bond" includes any form of financial instrument that provides security equivalent to that provided by a bond, such as an irrevocable letter of credit, if its use in lieu of a bond is authorized pursuant to regulations adopted by the Commission.*

*"Interest" means all charges payable directly or indirectly by a borrower to a licensee as a condition to a loan, including fees, service charges, and renewal charges, and any ancillary product sold in connection with a loan, but does not include the monthly maintenance fees, deposit item return fees, late charges, or reasonable costs of repossession and sale authorized under § 6.2-2216.*

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

*"Loan amount" means the principal amount of a loan exclusive of fees or charges.*

*"Motor vehicle" means an automobile, motorcycle, mobile home, truck, van, or other vehicle operated on public highways and streets.*

*"Motor vehicle title loan" or "title loan" means a loan secured by a non-purchase money security interest in a motor vehicle.*

*"Motor vehicle title loan agreement" or "loan agreement" means a written document that sets out the terms and conditions under which a licensee agrees to make a motor vehicle title loan to a borrower, and the borrower agrees to give to the licensee a security interest in a motor vehicle owned by the borrower to secure repayment of the motor vehicle title loan and performance of the other obligations under the loan agreement.*

*"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 any other type of entity.*

**§ 6.2-2201. License required.**

A. Unless exempted from the provisions of this chapter pursuant to § 6.2-2202:

1. No person shall engage in the business of making motor vehicle title loans to residents of the Commonwealth or to any individuals in the Commonwealth, whether or not the person has 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; ~~and~~

2. No person shall engage in the business of arranging or brokering motor vehicle title loans for residents of the Commonwealth, or any individuals in the Commonwealth, whether or not the person has a location in the Commonwealth; ~~and~~

3. Any loan made in violation of this section is void, and no person shall have the right to collect,

receive, or retain any principal, interest, fees, or other charges in connection with the loan.

B. 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.

**§ 6.2-2203. 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 and (i) if the applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and address of each trustee and beneficiary;

2. The addresses of the locations of the business to be licensed; and

3. 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.

C. The application shall be accompanied by payment of an application fee of \$500, or other reasonable amount that the Commission may prescribe by regulation.

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.

**§ 6.2-2204. Bond required.**

The application for a license shall also 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 location, or such greater sum as the Commission may require, but not to exceed a total of \$500,000. The form of such bond shall be approved by the Commission. Such bond shall be continuously maintained thereafter in full force. Such 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 him in his licensed business, and conducting his licensed business in conformity with this chapter and all applicable laws. 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.

**§ 6.2-2207. Licenses; places of business; changes.**

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious name by which the licensee is operating in the Commonwealth. Each license shall be posted prominently in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth on the license issued by the Commission.

B. No licensee shall open an additional office or relocate any place of business without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee or other reasonable amount that the Commission may prescribe by regulation. 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 location or relocated place of business.

C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any business location 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.

D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The

surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

**§ 6.2-2210. Annual report.**

A. 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 licensed place of business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

B. *The Commissioner shall publish annually and make available to the public an analysis of the information required under this section and other information the Commissioner may choose to include. The published analysis shall include all of the following:*

1. *The total number of borrowers, loans, defaulted loans, and charged-off loans and the total dollar value of the charged-off loans;*

2. *The average loan size, average contracted annual percentage rate, average contracted charges per loan, total contracted loan charges, and total loan charges actually paid;*

3. *The total number of deposit item return fees and the total dollar value of those charges;*

4. *The total number of licensee business locations and the average number of borrowers per location;*

5. *The total number of title loan contracts that resulted in repossession or surrender of a vehicle, the total number of title loan contracts that resulted in a borrower redeeming a repossessed or surrendered vehicle, the total number of repossessed or surrendered vehicles that were sold, the total fair market value of repossessed or surrendered vehicles that were sold as stated in the loan contracts, the total amount of proceeds licensees received from the sale of repossessed or surrendered vehicles, the total amount of sale proceeds in excess of the redemption amount paid to borrowers as described in subsection C of § 6.2-2217, the total amount of charges licensees received from borrowers related to the repossession and sale of vehicles, and the percentage of all title loan contracts that resulted in a repossession of a vehicle; and*

6. *A summary of pending and completed enforcement actions, which shall include lists of suspended or revoked licenses, cease and desist orders, and civil penalties pursuant to this chapter.*

**§ 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 Consumer Financial Protection Bureau Regulation Z (12 C.F.R. Part 1026); (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 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. YOU WILL BE REQUIRED TO PAY THE PRINCIPAL AND INTEREST ON THE LOAN IN MONTHLY SUBSTANTIALLY EQUAL INSTALLMENTS. YOU SHOULD TRY TO PAY EVEN MORE TOWARDS YOUR PRINCIPAL BALANCE EACH MONTH. DOING SO WILL SAVE YOU MONEY.

YOU MAY RESCIND THIS LOAN WITHOUT COST OR FURTHER OBLIGATION IF YOU RETURN THE LOAN PROCEEDS, 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 OTHERWISE IMPAIR OUR SECURITY INTEREST BY PLEDGING THE MOTOR VEHICLE TO A THIRD PARTY OR PLEDGING A MOTOR VEHICLE TO US THAT IS ALREADY SUBJECT TO AN UNDISCLOSED EXISTING LIEN, YOUR LIABILITY FOR DEFAULTING UNDER THIS LOAN IS LIMITED TO THE LOSS OF THE MOTOR VEHICLE.

IF YOUR MOTOR VEHICLE IS SOLD DUE TO YOUR DEFAULT, YOU ARE ENTITLED TO ANY SURPLUS OBTAINED AT SUCH SALE BEYOND WHAT IS OWED PURSUANT TO THIS AGREEMENT ALONG WITH ANY REASONABLE COSTS OF RECOVERY AND SALE. A licensee shall not make a loan that does not comply with § 6.2-2215.1;

2. A licensee shall not charge, collect, or receive, directly or indirectly, credit insurance premiums, charges for any ancillary product sold, charges for disbursing loan proceeds or refunds including check-cashing charges and any other charges for negotiating forms of payment other than cash, charges for brokering or obtaining a loan, or any fees, interest, or charges in connection with a loan, other than fees and charges permitted by § 6.2-2216;

3. A licensee shall not make a loan to a person if that person is obligated upon any loan to a person licensed under Chapter 18 (§ 6.2-1800 et seq.). Prior to making a loan, a licensee shall make a reasonable attempt to verify the prospective borrower's eligibility under this section which shall include reviewing the files of any affiliate that is licensed under Chapter 18. Unless the Commission requires otherwise by administrative rule or policy statement, a licensee may rely on the loan applicant's written representations with respect to the applicant's obligations to lenders that are licensed under Chapter 18 but are not affiliates of the licensee and a licensee is not subject to any administrative penalty or civil liability if such representations are later determined to be inaccurate;

4. Except as provided in § 6.2-2216.2, a licensee shall not refinance, renew, or extend any title loan or make a loan to a person if the loan would cause the person to have more than one title loan from any licensee outstanding at the same time;

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

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

4. 6. A licensee shall give a duplicate original of the loan agreement to the borrower at the time it is executed not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than \$2,500;

5- 7. 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 or modifying any the borrower's right the borrower has under this chapter or Title 8.9A; or (iv) requiring the borrower to use arbitration or other alternative dispute resolution mechanisms that do not conform to Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 to legal recourse or any other right the borrower has under any otherwise applicable provision of state or federal law;

6- 8. A motor vehicle title loan agreement shall not (i) contain a provision by which a person acting on behalf of the licensee is treated as an agent of the borrower in connection with its formation or execution other than for purposes of filing or releasing a lien with the state where the motor vehicle is registered; (ii) contain an acceleration clause under which a licensee may demand immediate payment of

any amount owed to it unless the borrower is in default under the terms of the loan agreement, or (iii) (ii) be sold or otherwise assigned to any other person who is not also a licensee, and if a loan agreement is sold or assigned to another licensee, the buyer or assignee of the loan agreement shall be subject to the same obligations under this chapter that apply to the selling or assigning licensee. *If a motor vehicle title loan or its servicing is sold or assigned, a licensee shall provide to the borrower written notice and the information needed to make future payments no later than 10 days before the borrower's next payment due date;*

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

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

9. 10. A licensee shall not ~~take an~~ (i) accept a check, real or personal property, or any interest in any real or personal property other than the title of one motor vehicle owned by the borrower as security for a title loan; (ii) create or accept any remotely created check, as defined in 12 C.F.R. § 229.2(fff), in connection with a loan; (iii) draft funds electronically from a borrower's account without express written authorization from the borrower; (iv) fail to stop attempts to draft funds electronically from a borrower's account upon request from the borrower or his agent; or (v) require or accept from a borrower a set of keys to a motor vehicle that secures a loan. Nothing in this subdivision shall prohibit the conversion of a negotiable instrument into an electronic form for processing through the automated clearing house system. For purposes of this subdivision, "motor vehicle" includes any accessories or accessions to a motor vehicle that are affixed thereto;

11. A licensee shall not attempt to draft funds electronically from a borrower's account after two consecutive attempts have failed, unless the licensee obtains new written authorization from the borrower to transfer or withdraw funds electronically from the borrower's account;

~~10.~~ 12. A licensee shall not (i) make a motor vehicle title loan if, on the date the loan agreement is signed by the borrower, the motor vehicle's certificate of title evidences that the motor vehicle is security for another loan or otherwise is encumbered by a lien; (ii) make a loan to an individual who the 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.~~ 13. 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.~~ 14. A licensee shall not knowingly 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 by an affiliate* 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. 15. 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. 16. 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-~~ 17. 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.) regarding harassment or abuse, false, misleading or deceptive statements or representations, and unfair practices in collections;

18. A licensee shall not contact a borrower for any reason other than (i) for the borrower's benefit regarding upcoming payments, options for obtaining loans, payment options, payment due dates, the effect of default, or, after default, receiving payments or other actions permitted by the licensee; (ii) to advise the borrower of missed payments or dishonored checks; (iii) to advise the borrower regarding a repossessed or surrendered vehicle; or (iv) to assist the transmittal of payments via a third-party mechanism;

19. A licensee shall not make a loan to a borrower that includes an acceleration clause or a demand feature that permits the licensee, in the event the borrower fails to meet the repayment terms for any outstanding balance, to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, unless both of the following conditions are met: (i) not earlier than 10 days after the borrower's payment was due, the licensee provides written notice to the borrower of the termination of the loan and (ii) in addition to the outstanding balance, the licensee collects only prorated interest and the fees earned up to the date the loan was terminated or the borrower's vehicle was repossessed or surrendered, whichever is earlier. For purposes of this subsection, the outstanding balance and prorated interest and fees shall be calculated as if the borrower had voluntarily prepaid the loan in full on the date of termination, repossession, or surrender;

20. A licensee shall not recommend to a borrower that the borrower obtain a loan for a dollar amount that is higher than the borrower has requested;

~~17-~~ 21. 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) (ii) 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-~~ 22. A licensee shall provide a safe place for the keeping of all certificates of title while they are in its possession;

~~20-~~ 23. 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-~~ 24. If ~~the~~ a licensee or any person acting at its direction takes possession of a motor vehicle securing a title loan, the vehicle and any personal items in it shall be stored in a secure location.

#### **§ 6.2-2215.1. Loan terms and conditions.**

A licensee may engage in the business of making motor vehicle title loans provided that each loan meets all of the following conditions:

1. The total amount of the loan does not exceed \$2,500.

2. The minimum duration of the loan is six months and the maximum duration of the loan is 24 months; however, the minimum duration of the loan may be less than six months if the total monthly payment on the loan does not exceed the greater of an amount that is (i) five percent of the borrower's verified gross monthly income or (ii) six percent of the borrower's verified net monthly income.

3. The loan is made pursuant to a written loan contract that sets forth the terms and conditions of the loan, 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. A copy of the signed loan contract shall be provided to the borrower. The loan contract shall disclose in a clear and concise manner all of the following:

a. The principal amount of the loan and the total amount of fees and charges the borrower will be required to pay in connection with the loan pursuant to the loan contract.

b. The amount of each payment of principal and interest, when each payment is due, the total number of payments that the borrower will be required to make under the loan contract, and the loan's maturity date.

c. 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, and the fair market value of the vehicle which value the licensee shall determine by reference to the value for the motor vehicle specified in a recognized pricing guide if the motor vehicle is included in a recognized pricing guide.

d. A statement, printed in a minimum font size of 10 points, that informs the borrower that complaints regarding the loan or lender may be submitted to the Bureau and includes the correct telephone number, website address, and mailing address for the Bureau.

e. Any disclosures required under the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and its implementing regulations, as they may be amended from time to time.

f. The annual percentage rate.

g. A statement, printed in a minimum font size of 10 points, as follows: "This loan is made pursuant to Chapter 22 of Title 6.2 of the Code of Virginia. You have the right to rescind or cancel this loan by returning the loan proceeds check or the originally contracted loan amount by 5 p.m. of the third business day immediately following the day you enter into this contract."

h. A statement, printed in a minimum font size of 10 points, as follows: "Electronic payment is optional. You have the right to revoke or remove your authorization for electronic payment at any time."

i. The borrower's mailing address.

j. A statement, printed in at least 14-point bold type immediately above the borrower's signature, as follows:

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

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

k. Such other information relating to the loan as the Commission shall determine, by regulation, is necessary to ensure that the borrower is provided adequate notice of the relevant provisions of the loan.

4. The loan is a precomputed loan and is payable in substantially equal installments consisting of principal, fees, and interest combined. For purposes of this section, "precomputed loan" means a loan in which the debt is a sum comprising the principal amount and the amount of fees and interest computed in advance on the assumption that all scheduled payments will be made when due.

5. The loan may be rescinded or canceled on or before 5 p.m. of the third business day immediately following the day of the loan transaction upon the borrower returning the original loan proceeds check or paying to the licensee, in the form of cash or other good funds instrument, the loan proceeds.

#### **§ 6.2-2216. Authorized fees and charges.**

A. A licensee may charge and, collect interest on a motor vehicle title loan at rates not to exceed the following:

1. Twenty-two percent per month on the portion of the principal that does not exceed \$700;

2. Eighteen percent per month on the portion of the principal that exceeds \$700 but does not exceed \$1,400; and

3. Fifteen percent per month on the portion of the principal that exceeds \$1,400.

B. The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance. On motor vehicle title loans in excess of \$700, a licensee may accrue interest utilizing a single blended interest rate provided the maximum charge allowed pursuant to subsection A is not exceeded.

C. , and receive only the following fees and charges in connection with a motor vehicle title loan, provided such fees and charges are set forth in the written loan contract described in § 6.2-2215.1:

1. Interest at a simple annual rate not to exceed 36 percent;

2. Subject to § 6.2-2216.1, a monthly maintenance fee that does not exceed the lesser of eight percent of the originally contracted loan amount or \$15, provided the fee is not added to the loan balance on

which interest is charged;

3. Any deposit item return fee incurred by the licensee, not to exceed \$25, if a borrower's check or electronic draft is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment of the check or electronic draft;

4. Damages and costs to which the licensee may become entitled to by law in connection with any civil action to collect a loan after default, except that the total amount of damages and costs shall not exceed the originally contracted loan amount;

5. Reasonable costs of repossession and sale of the motor vehicle in accordance with § 6.2-2217, provided that the total amount of such costs of repossession and sale that a licensee or any person working on its behalf may charge or receive from the borrower shall be limited to an amount equal to five percent of the originally contracted loan amount; and

6. A late charge in accordance with the provisions of § 6.2-400 provided that the late charge shall not exceed \$20.

B. Notwithstanding anything set forth in subsection A, other provisions of this chapter, or in a motor vehicle title loan agreement, interest shall not accrue on the principal balance of a motor vehicle title loan from and after:

1. The date that the motor vehicle securing the title loan is repossessed by or at the direction of the licensee making the loan; or

2. Sixty days after the borrower has failed to make a monthly payment on a motor vehicle title loan as required by the loan agreement unless the borrower has not surrendered the motor vehicle and the borrower is concealing the motor vehicle.

D. In addition to the loan principal and interest permitted under subsection A, a licensee shall not directly or indirectly charge, contract for, collect, receive, recover, or require a borrower to pay any further or other fee, charge, or amount whatsoever except for (i) a licensee's actual cost of perfecting its security interest in a motor vehicle securing the borrower's obligations under a loan agreement and (ii) reasonable costs of repossession and sale of the motor vehicle in accordance with § 6.2-2217. C. A licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to § 6.2-302, 8.01-27.2, or 8.01-382. In no event shall the borrower be liable for fees incurred in connection with the storage of a motor vehicle securing a title loan following the motor vehicle's repossession by the licensee or its agent, or the voluntary surrender of possession of the motor vehicle by the borrower to the licensee.

E. Every title loan shall be a term loan providing for repayment of the principal and interest in substantially equal monthly installments of principal and interest; however, nothing in this chapter shall prohibit a loan agreement from providing for an odd first payment period and an odd first payment greater than other monthly payments because of such odd first payment period.

F. A title loan agreement may not be extended, renewed, or refinanced.

G. A licensee may impose a late charge for failure to make timely payment of any amount due under the loan agreement provided that such late charge does not exceed the amount permitted by § 6.2-400.

H. Payments shall be credited by the licensee on the date received.

D. If any person causes a borrower to pay fees related to repossession or sale of the motor vehicle in excess of the amount allowed under subdivision A 5, or any fee to store the motor vehicle, the borrower shall be entitled to recover such amounts or fees from the licensee upon presenting a valid receipt.

#### **§ 6.2-2216.1. Inflation adjustment of maximum monthly maintenance fee.**

The Commission may, from time to time, by regulation, adjust the dollar amount of \$15 specified in subdivision A 2 of § 6.2-2216 to reflect the rate of inflation from the previous date that the dollar amount was established, as measured by the Consumer Price Index or other method of measuring the rate of inflation which the Commission determines is reliable and generally accepted.

#### **§ 6.2-2216.2. Refinancing of motor vehicle title loan.**

Subject to subsection F of § 6.2-2216.3, a licensee may refinance a title loan, provided that the refinanced loan is also a title loan.

#### **§ 6.2-2216.3. Statement of balance due; repayment and refunds.**

A. The licensee shall, upon the request of the borrower or his agent, provide a statement of balance due on a motor vehicle title loan.

B. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on the loan at any time prior to maturity, without charge. The licensee shall give the borrower dated receipts for each payment made, which shall state the updated balance due on the loan.

C. When providing a statement of balance due on the loan, the licensee shall state the amount required to discharge the borrower's obligation in full as of the date the notice is provided and for each of the next three business days following that date. If the licensee cannot reasonably supply a firm statement of balance due when requested or required, the licensee may provide a good faith estimate of



the balance due immediately and provide to the borrower or his agent a firm statement of balance due within two business days.

D. The licensee shall provide any statement of balance due verbally and in writing, and shall not fail to provide the information by phone upon the request of the borrower or his agent.

E. A licensee shall not fail to accept cash or other good funds instrument from the borrower, or a third party when submitted on behalf of the borrower, for repayment of a title loan in full or in part. Payments shall be credited by the licensee on the date received.

F. Notwithstanding any other provision of law, if a title loan is prepaid in full or refinanced prior to the loan's maturity date, the licensee shall refund to the borrower a prorated portion of loan charges based on a ratio of the number of days the loan was outstanding and the number of days for which the loan was originally contracted. For purposes of this section, all charges made in connection with the loan shall be included when calculating the loan charges except for deposit item return fees, late charges, and reasonable costs of repossession and sale authorized under § 6.2-2216.

G. The licensee shall provide any refund due to a borrower in the form of cash or business check as soon as reasonably possible and not later than two business days after receiving payment from the borrower.

H. Upon repayment of the loan in full, the 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 and (ii) promptly release any security interest in a motor vehicle.

I. When releasing a security interest in a motor vehicle, a licensee shall (i) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title and (ii) promptly return the certificate of title to the borrower.

**§ 6.2-2216.4. Restriction on certain fees and charges.**

Notwithstanding any provision of this chapter to the contrary, a licensee shall not contract for, charge, collect, or receive in connection with a motor vehicle title loan a total amount of fees and charges that exceeds either (i) 50 percent of the originally contracted loan amount, if the originally contracted loan amount was \$1,500 or less, or (ii) 60 percent of the originally contracted loan amount, if the originally contracted loan amount was greater than \$1,500. For purposes of this section, all charges made in connection with the loan shall be included when calculating the total loan charges except for deposit item return fees, late charges, and reasonable costs of repossession and sale authorized under § 6.2-2216.

**§ 6.2-2216.5. Verification of borrower's income.**

Before initiating a motor vehicle title loan transaction with a borrower, a licensee shall make a reasonable attempt to verify the borrower's income. At a minimum, the licensee shall obtain from the borrower one or more recent pay stubs or other written evidence of recurring income, such as a bank statement. The written evidence shall include at least one document that, when presented to the licensee, is dated not earlier than 45 days prior to the borrower's initiation of the title loan transaction.

**§ 6.2-2217. Limited recourse; repossession and sale of motor vehicle.**

A. Except as otherwise provided in subsection E, a licensee taking a security interest in a motor vehicle pursuant to this chapter shall be limited, upon default by the borrower, to seeking repossession of, preparing for sale, and selling the motor vehicle in accordance with Title 8.9A. Unless (i) the licensee, at least 10 days prior to repossessing the motor vehicle securing a title loan, has sent to the borrower, by first class mail, written notice advising the borrower that his title loan is in default and stating that the motor vehicle may be repossessed unless the principal and interest owed under the loan agreement are paid and (ii) the borrower does not pay such principal and interest prior to the date the motor vehicle is repossessed by or at the direction of the licensee, then the licensee shall not collect or charge the costs of repossessing and selling the motor vehicle described in ~~clause (ii) of subsection D~~ *subdivision A 5* of § 6.2-2216. A licensee shall not repossess a motor vehicle securing a title loan prior to the date specified in the notice. Except as otherwise provided in subsection E, a licensee shall not seek or obtain a personal money judgment against a borrower for any amount owed under a loan agreement or any deficiency resulting after the sale of a motor vehicle.

B. At least 15 days prior to the sale of a motor vehicle, a licensee shall (i) notify the borrower of the date and time after which the motor vehicle is subject to sale and (ii) provide the borrower with a written accounting of the *redemption amount, which shall be the sum 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 by the licensee in taking possession of, preparing for sale, and selling the motor vehicle~~ allowable fees or costs of repossessing and selling the motor vehicle described in *subdivision A*

5 of § 6.2-2216. Borrowers shall be permitted to recover personal items from repossessed motor vehicles promptly and at no cost.

C. Within 30 10 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 redemption amount included in the notice described in subsection B, less any additional allowable fees or costs of repossessing and selling the motor vehicle described in subdivision A 5 of § 6.2-2216 that were not included in the redemption amount.

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 under the loan agreement. 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 any provision to the contrary, *but subject to § 6.2-2216*, upon default by a borrower, a licensee may seek a personal money judgment against the borrower for any amounts owed under a loan agreement if the borrower impairs the licensee's security interest by (i) intentionally damaging or destroying the motor vehicle, (ii) intentionally concealing the motor vehicle, (iii) giving the licensee a lien in a motor vehicle that is already encumbered by an undisclosed prior lien, or (iv) subsequently giving a security interest in, or selling, a motor vehicle that secures a title loan to a third party, without the licensee's written consent.

**§ 6.2-2218.1. Other business.**

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, a short-term loan business licensed under Chapter 18 (§ 6.2-1800 et seq.), 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 such other 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, or other reasonable amount that the Commissioner may set, 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. This section shall not apply to any other business that is transacted solely with persons residing outside the Commonwealth.

**§ 6.2-2224. Validity of noncompliant loan agreement; private right of action.**

A. If any provision of a motor vehicle title loan agreement violates a requirement of 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 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.

**§ 6.2-2226. Authority of Attorney General; referral by Commission to Attorney General.**

A. If the Commission determines that a person is in violation of, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. ~~In the case of~~ With or without such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

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

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

**§ 59.1-200. Prohibited practices.**

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

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or

benefits;

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

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

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

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

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

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

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

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

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

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

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

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

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

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

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill 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

1643 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment  
 1644 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of  
 1645 receiving overpayments. If the credit balance information is incorporated into statements of account  
 1646 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;  
 1647 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in  
 1648 connection with a consumer transaction, failing to adhere to the terms and conditions of such an  
 1649 agreement;  
 1650 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);  
 1651 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et  
 1652 seq.);  
 1653 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et  
 1654 seq.);  
 1655 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
 1656 (§ 59.1-207.17 et seq.);  
 1657 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);  
 1658 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
 1659 (§ 59.1-424 et seq.);  
 1660 24. Violating any provision of § 54.1-1505;  
 1661 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
 1662 17.6 (§ 59.1-207.34 et seq.);  
 1663 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;  
 1664 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);  
 1665 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);  
 1666 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et  
 1667 seq.);  
 1668 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et  
 1669 seq.);  
 1670 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);  
 1671 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;  
 1672 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;  
 1673 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;  
 1674 35. Using the consumer's social security number as the consumer's account number with the supplier,  
 1675 if the consumer has requested in writing that the supplier use an alternate number not associated with  
 1676 the consumer's social security number;  
 1677 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;  
 1678 37. Violating any provision of § 8.01-40.2;  
 1679 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;  
 1680 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);  
 1681 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;  
 1682 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46  
 1683 (§ 59.1-525 et seq.);  
 1684 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);  
 1685 43. Violating any provision of § 59.1-443.2;  
 1686 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);  
 1687 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;  
 1688 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;  
 1689 47. Violating any provision of § 18.2-239;  
 1690 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);  
 1691 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has  
 1692 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable  
 1693 presumption that a supplier has reason to know a children's product was recalled if notice of the recall  
 1694 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale  
 1695 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to  
 1696 children's products that are used, secondhand or "seconds";  
 1697 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);  
 1698 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;  
 1699 52. Violating any provision of § 8.2-317.1;  
 1700 53. Violating subsection A of § 9.1-149.1;  
 1701 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential  
 1702 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective  
 1703 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;

55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

59. Violating any provision of subsection E of § 32.1-126; and

60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; and

61. Violating any provision of § 6.2-312.

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.

#### **§ 59.1-335.5. Prohibited practices.**

A credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall not do any of the following:

1. Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, unless the consumer has agreed to pay for such services during the term of a written subscription agreement that provides for the consumer to make periodic payments during the agreement's term in consideration for the credit services business's ongoing performance of services for or on behalf of the consumer, provided that such subscription agreement may be cancelled at any time by the consumer;

2. Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

3. Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

4. Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business; or

5. Advertise, offer, sell, provide, or perform any of the services of a credit services business in connection with an extension of credit that meets any of the following conditions:

a. The amount of credit is less than \$5,000;

b. The repayment term is one year or less;

c. The credit is provided under an open-end credit plan; or

d. The annual percentage rate exceeds 36 percent. For purposes of this section, "annual percentage rate" has the same meaning as in the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and its implementing regulations, as they may be amended from time to time.

2. That § 6.2-1818 of the Code of Virginia is repealed.

3. That any person not licensed under Chapter 15 (§ 6.2-1500 et seq.), Chapter 18 (§ 6.2-1800 et seq.), or Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia who will be required to be licensed when the provisions of the first and second enactments of this act become effective shall apply for a license on or before October 1, 2020. Any license issued by the State Corporation Commission to any such person prior to January 1, 2021, shall become effective January 1, 2021.

4. That every person licensed under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia shall, on or before January 1, 2021, file a surety bond with the Commissioner of Financial Institutions that meets the requirements of § 6.2-1523.3 of the Code of Virginia, as created by this act.

5. That the provisions of the first and second enactments of this act shall become effective on

1765 January 1, 2021, except that the database required by § 6.2-1810 of the Code of Virginia, as  
1766 amended by this act, shall be modified to accommodate the provisions of this first enactment of  
1767 this act by January 1, 2022.