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HOUSE BILL NO. 1027

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Commerce and Energy)
 (Patron Prior to Substitute—Delegate Tran)
 House Amendments in [] — February 11, 2022

A BILL to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 22.1, consisting of sections numbered 6.2-2228 through 6.6-2238, relating to financial institutions; sales-based financing providers.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 22.1, consisting of sections numbered 6.2-2228 through 6.2-2238, as follows:

CHAPTER 22.1.

SALES-BASED FINANCING PROVIDERS.

§ 6.2-2228. Definitions.

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

"Recipient" means a person whose principal place of business is in the Commonwealth and that applies for sales-based financing and is made a specific offer of sales-based financing by a provider. A recipient may also be an authorized representative of such person. A person acting as a broker cannot be a recipient.

"Sales-based financing" means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

"Sales-based financing broker" or "broker" means a person that, for compensation or the expectation of compensation, obtains or offers to obtain sales-based financing from a provider for a recipient.

"Sales-based financing provider" or "provider" means a person that extends a specific offer of sales-based financing to a recipient. Unless otherwise exempt, "provider" also includes a person that solicits and presents specific offers of sales-based financing under an exclusive contract or arrangement with a provider.

"Specific offer" means the specific terms of sales-based financing, including price or amount, that are quoted to a recipient, based on information obtained from or about the recipient, which, if accepted by a recipient, shall be binding on the provider, as applicable, subject to any specific requirements stated in such terms.

§ 6.2-2229. Exemptions.

The provisions of this chapter shall not apply to and shall not place any additional requirements or obligations upon any of the following:

1. A financial institution;
2. Any person, provider, or broker that enters into no more than five sales-based financing transactions with a recipient in a 12-month period; or
3. A single sales-based financing transaction in an amount over \$500,000.

§ 6.2-2230. Registration; authority to transact business.

On or before November 1, 2022, every sales-based financing provider and sales-based financing broker (i) shall register with the Commission in accordance with procedures established by the Commission and (ii) unless such provider or broker is organized under the laws of Virginia or otherwise is not required to obtain a certificate of authority to transact business in the Commonwealth as a foreign entity, shall obtain authority to transact business in the Commonwealth in accordance with the provisions of Title 13.1.

An application for registration shall include disclosure of any judgement, memorandum of understanding, cease and desist order, or conviction, any of which involve a crime or an act of fraud, breach of trust, or money laundering with respect to that person or any officer, director, manager, operator, or individual who otherwise controls the operations of such provider or broker.

Each sales-based financing provider and sales-based financing broker shall pay an initial registration fee of \$1,000 and an annual registration fee of \$500 by September 15 every year thereafter. If the provider or broker fails to pay the annual registration fee by September 15, its registrations shall automatically expire by operation of law.

§ 6.2-2231. Disclosure requirements.

Each provider shall provide the following disclosures to a recipient at the time of extending a specific offer of sales-based financing, according to formatting prescribed by the Commission:

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60 1. The total amount of the sales-based financing, and the disbursement amount, if different from the
61 financing amount, after any fees deducted or withheld at disbursement.

62 2. The finance charge.

63 3. The total repayment amount, which is the disbursement amount plus the finance charge.

64 4. The estimated number of payments, which is the number of payments expected, based on the
65 projected sales volume, to equal the total repayment amount.

66 5. The payment amounts, based on the projected sales volume (i) for payment amounts that are fixed,
67 the payment amounts, frequency, and method or (ii) for payment amounts that are variable, a payment
68 schedule or a description of the method used to calculate the amounts and frequency of payments and
69 payment method.

70 6. A description of all other potential fees and charges not included in the finance charge, including
71 draw fees, late payment fees, returned payment fees, and prepayment fees or penalties.

72 7. If the recipient elects to pay off or refinance the sales-based financing prior to full repayment, an
73 updated disclosure of:

74 a. The information required by subdivisions 1 through 6 as of the day of prepayment or refinance;
75 and

76 b. A description of prepayment policies including whether the recipient will be required to pay any
77 additional fees, penalties, or other amounts not already included in the finance charge, or if the
78 recipient will receive any discount to the finance charge.

79 8. A description of collateral requirements or security interests, if any.

80 9. A statement of whether the provider will pay compensation directly to a broker in [~~connection~~
81 connection] with the specific offer of sales-based financing and the amount of compensation.

82 **§ 6.2-2232. Recipient place of business; required signature.**

83 A. For the purpose of determining whether a person's principal place of business is in the
84 Commonwealth, a provider or broker may rely upon (i) any written representation by the person as to
85 whether the person's principal place of business is in the Commonwealth, or (ii) the business address
86 provided by the person is in the application for financing.

87 B. The provider shall obtain the recipient's signature, which may be fulfilled by an electronic
88 signature, on all disclosures required to be presented to the recipient by this chapter at the time the
89 recipient accepts the specific sales-based financing offer.

90 **§ 6.2-2233. Additional information.**

91 Nothing in this chapter shall prevent a provider from providing or disclosing additional information
92 on a sales-based financing being offered to a recipient, provided, however, that such additional
93 information shall not be disclosed as part of the disclosure required by this chapter.

94 **§ 6.2-2234. Place for bringing action under a contract or agreement to provide sales-based
95 financing; certain fees paid by provider; confessions of judgment prohibited.**

96 A. Where a provider enters into a contract or agreement with a recipient to provide sales-based
97 financing, any cause of action arising under such contract or agreement shall be brought in a court in
98 the Commonwealth. Any provision in the contract or agreement mandating that such action be brought
99 outside the Commonwealth shall be unenforceable.

100 B. Where a contract between a provider or broker and recipient contains an arbitration provision,
101 such contract shall not require face-to-face arbitration proceedings outside the jurisdiction where the
102 recipient's principal place of business is located. If the contract requires face-to-face arbitration
103 proceedings outside such jurisdiction, such provision is unenforceable. The enforceability of the
104 remaining provisions of the arbitration agreement and the method of selecting a forum for the conduct
105 of the arbitration proceedings are as provided in this Code, the United States Arbitration Act (P.L.
106 68-401), and any applicable rules of arbitration. The provider shall pay any arbitrators' expenses or
107 fees or any other expenses or administrative fees incurred in the conduct of the arbitration proceedings.

108 C. No sales-based financing contract shall contain any confession by judgment provision or any
109 similar provision. Any such provision in the contract shall be unenforceable.

110 **§ 6.2-2235. Applicability of chapter to internet transactions.**

111 The provisions of this chapter shall apply to providers or brokers offering, obtaining, or making
112 sales-based financing over the internet to or for a recipient, whether or not the provider or broker
113 maintains a physical presence in the Commonwealth.

114 **§ 6.2-2236. Unfair, misleading, deceptive, or fraudulent acts; validity of noncompliant sales-based
115 financing.**

116 A. No provider or broker shall engage in any unfair, misleading, deceptive, or fraudulent acts in the
117 conduct of its business.

118 B. If any provision of a sales-based financing agreement violates this chapter, such provision shall
119 be unenforceable against the recipient.

120 **§ 6.2-2237. Regulations.**

121 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this

chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the rules of the Commission.

§ 6.2-2238. Authority of Attorney General.

A. 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. 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.

2. That the provisions of this act shall apply only to contracts or agreements for sales-based financing, as that term is defined in § 6.2-2228 of the Code of Virginia, as created by this act, entered into on or after July 1, 2022.

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