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HOUSE BILL NO. 1907

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 6.2-1524 and 6.2-1816 of the Code of Virginia, relating to consumer finance companies; short-term loan providers; licensee requirements.

Patron—Batten

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1524 and 6.2-1816 of the Code of Virginia are amended and reenacted as follows:

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

A. Each licensee shall maintain at all times the minimum unencumbered liquid assets prescribed by § 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, 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.

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59 *L. A licensee shall include as part of every loan application a question regarding whether the*
60 *potential borrower has been approached, including via telephone or electronic means, by any person to*
61 *send money in consideration of receiving money via a government or lottery organization.*

62 **§ 6.2-1816. Required and prohibited business methods.**

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

64 1. A licensee shall not make a loan that does not comply with § 6.2-1816.1.

65 2. A licensee shall not charge, collect, or receive, directly or indirectly, credit insurance premiums,
66 charges for any ancillary product sold, charges for disbursing loan proceeds or refunds including
67 check-cashing charges and any other charges for negotiating forms of payment other than cash, charges
68 for brokering or obtaining a loan, or any fees, interest, or charges in connection with a loan, other than
69 fees and charges permitted by § 6.2-1817.

70 3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third
71 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee
72 or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii)
73 waiving the borrower's right to legal recourse or any other right the borrower has under any otherwise
74 applicable provision of state or federal law.

75 4. A licensee shall not make a loan to a person if that person is obligated upon any loan to a person
76 licensed under Chapter 22 (§ 6.2-2200 et seq.). Prior to making a loan, a licensee shall make a
77 reasonable attempt to verify the borrower's eligibility under this subsection that includes reviewing the
78 files of any affiliate that is licensed under Chapter 22. Unless the Commission requires otherwise by
79 administrative rule or policy statement, a licensee may rely on the loan applicant's written
80 representations with respect to the applicant's obligations to lenders that are licensed under Chapter 22
81 (§ 6.2-2200 et seq.) but are not affiliates of the licensee, and a licensee is not subject to any
82 administrative penalty or civil liability if such representations are later determined to be inaccurate.

83 5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time
84 in the principal amount of more than \$2,500.

85 6. Except as provided in § 6.2-1818.1, a licensee shall not refinance, renew, or extend any short-term
86 loan or make a loan to a person if the loan would cause the person to have more than one short-term
87 loan from any licensee outstanding at the same time.

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

89 8. A check accepted by a licensee as security for any loan shall be dated no earlier than the date of
90 the first required loan payment shown in the loan agreement.

91 9. Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or
92 cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is
93 dishonored or for any reason related to the borrower's failure to pay any sum due under a loan
94 agreement.

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

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

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

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

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

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

116 16. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an
117 endorsement stating: "This check is being negotiated as part of a short-term loan pursuant to Chapter 18
118 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject
119 to all claims and defenses of the maker."

120 17. Before entering into a 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.

18. Each licensee shall conspicuously post in each approved office (i) a schedule of fees and interest charges, which shall include examples using a \$300 loan repaid in 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. A licensee shall not knowingly make a 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 short-term loan, every licensee 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.

20. In collecting or attempting to collect a 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.

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 short-term loan, during which period the licensee and borrower may voluntarily enter into a repayment arrangement.

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.

27. *A licensee shall include as part of every loan application a question regarding whether the potential borrower has been approached, including via telephone or electronic means, by any person to send money in consideration of receiving money via a government or lottery organization.*

2. That the provisions of this act shall become effective on January 1, 2024.