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SENATE BILL NO. 1252

Offered January 8, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 6.2-300 and 6.2-303 of the Code of Virginia, relating to financial institutions; loans and legal rate of interest.

Patrons—Bagby and Williams Graves

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-300 and 6.2-303 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-300. Definitions.

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

"Bank" means any national bank, any bank organized under Chapter 8 (§ 6.2-800 et seq.), or any bank incorporated and organized under the laws of another state.

"Credit union" means any credit union organized under Chapter 13 (§ 6.2-1300 et seq.) or any credit union incorporated and organized under the laws of another state. "Credit union" shall not include any federal credit union.

"First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and amendments thereto, that are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate.

"Grantor" or "mortgagor" includes an owner of real estate, and spouse, who has assumed responsibility for the obligation secured by a mortgage or deed of trust encumbering the real estate.

"Loan" means a loan or forbearance of money lent at interest or for a fee or other charge and includes open-end and closed-end loan transactions and recourse and nonrecourse loans.

"Make" or "making" when used in reference to a loan, means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

"Open-end credit" or "open-end credit plan" means consumer credit extended by a creditor under a plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

"Savings institution" means any savings institution, as defined in § 6.2-1100, incorporated and organized under the laws of the United States, the Commonwealth, or another state.

"Subordinate mortgage or deed of trust" means a mortgage or deed of trust that is subject to a prior mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate mortgage or deed of trust.

§ 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 short-term loans;
4. Chapter 22 (§ 6.2-2200 et seq.), relating to interest chargeable by motor vehicle title lenders;
5. Section 36-55.31, relating to loans by the Virginia Housing Development Authority;
6. Section 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. Section 54.1-4008, relating to interest chargeable by pawnbrokers; and
9. Section 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

59 be included in the rate of interest stated in the contract of indebtedness.

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

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

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

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

69 4. *Making of loans disguised as personal property sale and leaseback transactions;*

70 5. *Disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; and*

71 6. *Making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate of interest,
72 consideration, or charge than permitted under this section through any method, including mail, telephone, I
73 nternet, or any electronic means, regardless of whether the person has a physical location in the state.*

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

76 G. Any contract entered into on or after July 1, 2024, pursuant to which a person receives a cash advance
77 for assigning to a company or other entity a portion of such person's rights to receive inheritance funds from a
78 will that has been, or is anticipated to be, offered for probate in a circuit court of the Commonwealth shall be
79 considered a loan. Any funds such person is obligated to pay under the terms of such contract in addition to
80 the total of the cash advance shall be considered interest. Such contract shall be subject to the provisions of
81 subsection A.

82 H. *Any contract entered into on or after July 1, 2025, pursuant to which a person receives a cash advance
83 for an amount that is based, by estimate or otherwise, on the wages, compensation, or other income that an
84 individual has earned or accrued but that has not been paid to the individual, and for which repayment to the
85 cash advance provider will be made by some automatic means, like a scheduled payroll deduction or a
86 preauthorized account debit, at or after the end of the pay cycle shall be considered a loan. Any funds such
87 person is obligated to pay under the terms of such contract in addition to the total of the cash advance shall
88 be considered interest. Such contract shall be subject to the provisions of subsection A.*