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HOUSE BILL NO. 1027

Offered January 12, 2022

Prefiled January 12, 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 6.6-2236, relating to financial institutions; sales-based financing providers.*

 Patron—Tran

Referred to Committee on Commerce and Energy

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 6.2-2236, 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:

"Financial institution" means any bank, trust company, savings institution, industrial loan association, or credit union.

"Recipient" means a person 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 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 on behalf of a third party.

"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 or provider who makes no more than five sales-based financing transactions in the Commonwealth in a 12-month period; or

3. An individual sales-based financing transaction in an amount over \$500,000.

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

Every sales-based financing provider (i) shall register with the Commission in accordance with procedures established by the Commission and (ii) unless such provider is organized under the laws of Virginia, shall obtain a certificate of authority to transact business in the Commonwealth in accordance with the provisions of Title 13.1.

§ 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:

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

2. The finance charge.

3. The estimated annual percentage rate, expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and its implementing regulations, based on the estimated term of repayment and the projected periodic payment amounts. The estimated term of repayment and the projected periodic payment amounts shall be calculated based on the projection of the recipient's sales, called the projected sales volume. The projected sales volume may be calculated using the historical method or the opt-in method.

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HB1027

59 The provider shall provide notice to the Commission on which method they intend to use across all
60 instances of sales-based financing offered in calculating an estimated annual percentage rate pursuant
61 to this section.

62 a. A provider using the historical method shall use an average historical volume of sales or revenue
63 by which the financing's payment amounts are based and the estimated annual percentage rate is
64 calculated. The provider shall fix the historical time period used to calculate the average historical
65 volume and use such period for all disclosure purposes for all sales-based financing products offered.
66 The fixed historical time period shall either be the preceding time period from the specific offer or,
67 alternatively, the provider may use average sales for the same number of months with the highest sales
68 volume within the past 12 months. The fixed historical time period shall be no less than one month and
69 shall not exceed 12 months.

70 b. A provider using the opt-in method shall determine the estimated annual percentage rate, the
71 estimated term, and the projected payments, using a projected sales volume that the provider elects for
72 each disclosure, provided that they participate in a review process prescribed by the Commission. A
73 provider shall on an annual basis report data to the Commission of estimated annual percentage rates
74 disclosed to the recipient and actual retrospective annual percentage rates of completed transactions.
75 The report shall contain such information as the Commission, by rule or regulation, may prescribe as
76 necessary or appropriate for the purpose of making a determination of whether the deviation between
77 the estimated annual percentage rate and actual retrospective annual percentage rates of completed
78 transactions was reasonable. The Commission shall establish the method of reporting and may, upon a
79 finding that the use of projected sales volume by the provider has resulted in an unacceptable deviation
80 between estimated and actual annual percentage rate, require the provider to use the historical method.
81 The Commission may consider unusual and extraordinary circumstances impacting the provider's
82 deviation between estimated and actual annual percentage rate in the determination of such finding.

83 4. The total repayment amount, which is the disbursement amount plus the finance charge.

84 5. The estimated term, which is the period of time required for the periodic payments, based on the
85 projected sales volume, to equal the total amount required to be repaid.

86 6. The payment amounts, based on the projected sales volume (i) for payment amounts that are fixed,
87 the payment amounts and frequency and, if the payment frequency is other than monthly, the amount of
88 the average projected payments per month or (ii) for payment amounts that are variable, a payment
89 schedule or a description of the method used to calculate the amounts and frequency of payments and
90 the amount of the average projected payments per month.

91 7. A description of all other potential fees and charges not included in the finance charge, including
92 draw fees, late payment fees, and returned payment fees.

93 8. If the recipient elects to pay off or refinance the sales-based financing prior to full repayment,
94 disclosure of:

95 a. Whether the recipient will be required to pay any finance charges other than interest accrued
96 since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge
97 and maximum dollar amount the recipient could be required to pay; and

98 b. Whether the recipient will be required to pay any additional fees not already included in the
99 finance charge.

100 9. A description of collateral requirements or security interests, if any.

101 **§ 6.2-2232. Required signature.**

102 The provider shall obtain the recipient's signature, which may be fulfilled by an electronic signature,
103 on all disclosures required to be presented to the recipient by this chapter before authorizing the
104 recipient to proceed further with the sales-based financing transaction application.

105 **§ 6.2-2233. Additional information.**

106 Nothing in this chapter shall prevent a provider from providing or disclosing additional information
107 on a sales-based financing being offered to a recipient, provided, however, that such additional
108 information shall not be disclosed as part of the disclosure required by this chapter. If other metrics of
109 financing cost are disclosed or used in the application process of a sales-based financing, these metrics
110 shall not be presented as a "rate" if they are not the annual interest rate or the annual percentage rate.
111 The term "interest," when used to describe a percentage rate, shall only be used to describe annualized
112 percentage rates, such as the annual interest rate. When a provider states a rate of finance charge or a
113 financing amount to a recipient during an application process for sales-based financing, the provider
114 shall also state the rate as an annual percentage rate.

115 **§ 6.2-2334. Place for bringing action under a contract or agreement to provide sales-based**
116 **financing; certain fees paid by provider.**

117 A. Where a provider enters into a contract or agreement with a recipient whose principal place of
118 business is in the Commonwealth on or after July 1, 2022, to provide sales-based financing, any cause
119 of action arising under such contract or agreement shall be brought in the jurisdiction where the
120 recipient's principal place of business is located. Any provision in the contract or agreement mandating

121 that such action be brought outside such jurisdiction shall be unenforceable.

122 B. The forum for any arbitration proceedings required in such a contract or agreement entered into
123 on or after July 1, 2022, shall be in the jurisdiction where the recipient's principal place of business is
124 located. If the contract provides for arbitration proceedings outside such jurisdiction, such provision is
125 unenforceable and arbitration proceedings shall be in the jurisdiction where the recipient's principal
126 place of business is located. The enforceability of the remaining provisions of the arbitration agreement
127 and the method of selecting a forum for the conduct of the arbitration proceedings are as provided in
128 this Code, the United States Arbitration Act (P.L. 68-401), and any applicable rules of arbitration. The
129 provider shall pay any arbitrators' expenses or fees or any other expenses or administrative fees
130 incurred in the conduct of the arbitration proceedings.

131 **§ 6.2-2235. Regulations.**

132 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this
133 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content
134 and shall afford interested parties an opportunity to be heard, in accordance with the rules of the
135 Commission.

136 **§ 6.2-2236. Authority of Attorney General; referral by Commission to Attorney General.**

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

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

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

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