

HOUSE BILL NO. 1027

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Tran)

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.

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:

"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.

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

31 **§ 6.2-2229. Exemptions.**

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

34 1. A financial institution;

35 2. Any person or provider who makes no more than five sales-based financing transactions in the
36 Commonwealth in a 12-month period; or

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

38 **§ 6.2-2230. Registration; authority to transact business.**

39 Every sales-based financing provider (i) shall register with the Commission in accordance with
40 procedures established by the Commission and (ii) unless such provider is organized under the laws of
41 Virginia, shall obtain a certificate of authority to transact business in the Commonwealth in accordance
42 with the provisions of Title 13.1. Each sales-based financing provider shall pay an initial registration fee
43 of \$1,000 and a registration fee of \$500 every year thereafter.

44 **§ 6.2-2231. Disclosure requirements.**

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

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

49 2. The finance charge.

50 3. The estimated annual percentage rate, expressed as a yearly rate, inclusive of any fees and
51 finance charges, and calculated in accordance with the federal Truth in Lending Act (15 U.S.C. § 1601 et
52 seq.) and its implementing regulations, based on the estimated term of repayment and the projected
53 periodic payment amounts. The estimated term of repayment and the projected periodic payment amounts

54 shall be calculated based on the projection of the recipient's sales, called the projected sales volume. The
55 projected sales volume may be calculated using the historical method or the opt-in method. The provider
56 shall provide notice to the Commission on which method they intend to use across all instances of sales-
57 based financing offered in calculating an estimated annual percentage rate pursuant to this section.

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

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

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

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

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

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

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

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

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

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

96 **§ 6.2-2232. Required signature.**

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

100 **§ 6.2-2233. Additional information.**

101 Nothing in this chapter shall prevent a provider from providing or disclosing additional
102 information on a sales-based financing being offered to a recipient, provided, however, that such
103 additional information shall not be disclosed as part of the disclosure required by this chapter. If other
104 metrics of financing cost are disclosed or used in the application process of a sales-based financing, these
105 metrics shall not be presented as a "rate" if they are not the annual interest rate or the annual percentage
106 rate. The term "interest," when used to describe a percentage rate, shall only be used to describe annualized
107 percentage rates, such as the annual interest rate. When a provider states a rate of finance charge or a

108 financing amount to a recipient during an application process for sales-based financing, the provider shall
109 also state the rate as an annual percentage rate.

110 **§ 6.2-2334. Place for bringing action under a contract or agreement to provide sales-based**
111 **financing; certain fees paid by provider.**

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

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

126 **§ 6.2-2235. Regulations.**

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

131 **§ 6.2-2236. Authority of Attorney General; referral by Commission to Attorney General.**

132 A. The Attorney General is authorized to seek to enjoin violations of this chapter. The circuit court
133 having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at
134 law.

