

1 HOUSE BILL NO. 1027
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee on/for Commerce and Energy
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Tran)

6 A BILL to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 22.1, consisting of
 7 sections numbered 6.2-2228 through 6.6-2236, relating to financial institutions; sales-based
 8 financing providers.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 22.1, consisting**
 11 **of sections numbered 6.2-2228 through 6.2-2236, as follows:**

12 CHAPTER 22.1.

13 SALES-BASED FINANCING PROVIDERS.

14 **§ 6.2-2228. Definitions.**

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

16 "Recipient" means a person that applies for sales-based financing and is made a specific offer of
 17 sales-based financing by a provider. A recipient may also be an authorized representative of such person.
 18 A person acting as a broker cannot be a recipient.

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

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

27 "Sales-based financing provider" or "provider" means a person that extends a specific offer of
28 sales-based financing to a recipient. Unless otherwise exempt, "provider" also includes a person that
29 solicits and presents specific offers of sales-based financing on behalf of a third party.

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

34 **§ 6.2-2229. Exemptions.**

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

37 1. A financial institution;

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

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

41 **§ 6.2-2230. Registration; authority to transact business.**

42 Every sales-based financing provider and sales-based financing broker (i) shall register with the
43 Commission in accordance with procedures established by the Commission and (ii) unless such provider
44 or broker is organized under the laws of Virginia, shall obtain a certificate of authority to transact business
45 in the Commonwealth in accordance with the provisions of Title 13.1. Each sales-based financing provider
46 and sales-based financing broker shall pay an initial registration fee of \$1,000 and a registration fee of
47 \$500 by September 15 every year thereafter.

48 **§ 6.2-2231. Disclosure requirements.**

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

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

53 2. The finance charge.

- 54 3. The total repayment amount, which is the disbursement amount plus the finance charge.
- 55 4. The estimated number of payments, which is the number of payments required, based on the
56 projected sales volume, to equal the total amount required to be repaid.
- 57 5. The payment amounts, based on the projected sales volume (i) for payment amounts that are
58 fixed, the payment amounts and frequency, or (ii) for payment amounts that are variable, a payment
59 schedule or a description of the method used to calculate the amounts and frequency of payments.
- 60 6. A description of all other potential fees and charges not included in the finance charge, including
61 draw fees, late payment fees, and returned payment fees.
- 62 7. If the recipient elects to pay off or refinance the sales-based financing prior to full repayment,
63 disclosure of:
- 64 a. Whether the recipient will be required to pay any finance charges other than interest accrued
65 since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge
66 and maximum dollar amount the recipient could be required to pay; and
- 67 b. Whether the recipient will be required to pay any additional fees not already included in the
68 finance charge.
- 69 8. A description of collateral requirements or security interests, if any.
- 70 **§ 6.2-2232. Required signature.**
- 71 The provider shall obtain the recipient's signature, which may be fulfilled by an electronic
72 signature, on all disclosures required to be presented to the recipient by this chapter before authorizing the
73 recipient to proceed further with the sales-based financing transaction application.
- 74 **§ 6.2-2233. Additional information.**
- 75 Nothing in this chapter shall prevent a provider from providing or disclosing additional
76 information on a sales-based financing being offered to a recipient, provided, however, that such
77 additional information shall not be disclosed as part of the disclosure required by this chapter.
- 78 **§ 6.2-2334. Place for bringing action under a contract or agreement to provide sales-based**
79 **financing; certain fees paid by provider; confessions of judgment prohibited.**

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

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

94 C. No such contract or agreement entered into on or after July 1, 2022, shall contain any confession
95 by judgment provision or any similar provision. Any such provision in the contract or agreement shall be
96 unenforceable.

97 **§ 6.2-2235. Regulations.**

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

102 **§ 6.2-2236. Authority of Attorney General; referral by Commission to Attorney General.**

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

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

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

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

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