REPORT OF THE

CONSUMER CREDIT STUDY COMMISSION

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

Senate Document No. 20

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
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JOHN A. BANKS, JR.
COURTNEY R. FRAZIER

Report of the
Consumer Credit Study Commission
to
The Governor and the General Assembly of Virginia

Richmond, Virginia
January 28, 1974

To: HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The Consumer Credit Study Commission was created by Senate Joint Resolution No. 41 of the 1970 Session of the General Assembly. In its report to the Governor and the General Assembly, the Commission recommended that its life be continued for two more years to allow the Commission further time to study the substantial changes which would be required by adoption of the Uniform Consumer Credit Code. The Commission was continued by adoption of Senate Joint Resolution No. 28 of the 1972 Session of the General Assembly. The following is a copy of that Senate Joint Resolution.

SENATE JOINT RESOLUTION NO. 28

To continue the work of the Consumer Credit Study Commission.

Whereas, the tremendous growth of consumer credit, the increase in the complexity of laws relating to credit charges, and the complaints of many groups representing the consumer, led the General Assembly to create the Virginia Consumer Credit Study Commission, to study the state of consumer credit in the Commonwealth and the Uniform Consumer Credit Code and other proposed legislation; and

Whereas, although the Commission has spent considerable time and effort in this study and has made recommendations for improvements, there is much information still to be obtained, and much work still to be done; and

Whereas, the importance of consumer credit, the intricacy and complexity of the law, and the possibility of improvement are substantial reasons for continuing the Commission; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Consumer Credit Study Commission be continued. The Commission shall be composed of fifteen members, five of whom shall be appointed by the Speaker of the House of Delegates from the membership thereof, three of whom shall be appointed by the Committee on Privileges and Elections from the membership of the Senate, and seven of whom shall be appointed by the Governor.

The Commission shall continue to investigate the Uniform Consumer Credit Code, and the present laws and provisions relating to various types of consumer credit in the Commonwealth, and make recommendations as to adoption of such Code, or of any improvements in present law which may be needed to ensure that consumers are adequately protected. Such study shall include, among other things, an examination of the loan ceiling for small loan companies.

Members of the Commission shall be reimbursed for their expenses, but shall receive no other compensation. For the expenses of the Commission and for such consultants or other assistants as the Commission shall deem necessary, there is hereby appropriated from the contingent fund of the General Assembly the sum of twelve thousand five hundred dollars.

All agencies of the State shall cooperate with the Commission in its investigations. The Commission shall complete its work and submit its recommendations to the Governor and the General Assembly no later than November one, nineteen hundred seventy-three.

Pursuant to his authority under the Resolution, the Speaker of the House appointed Delegates C. Richard Cranwell of Vinton, Garry G. DeBruhl of Critz, Jerry H. Geisler of Hillsville, Joseph A. Leafe of Norfolk and Eleanor P. Sheppard of Richmond. The Senate Committee on Privileges and Elections appointed Senators George S. Aldhizer, II, of Broadway, Herbert H. Bateman of Newport News and Clive L. DuVal, II, of McLean. The Governor appointed M. Patton Echols of Arlington, Aubrey V. Kidd of Richmond, William T. Lehner of Richmond, Jeff D. Smith of Richmond, Richard E. Speidel of Charlottesville, Mrs. Earl S. Vest of Roanoke and John P. Warner of Alexandria.

Senator Bateman was elected Chairman of the Commission. Mr. DeBruhl was elected Vice-Chairman. The Division of Legislative Services, formerly the Division of Statutory Research and Drafting, provided staff support and clerical assistance to the Commission.

In accordance with its directive, the Commission undertook a comprehensive study of the Uniform Consumer Credit Code and the laws of Virginia relating to the extension of credit to consumers. In doing so, the Commission held public hearings at which it heard from representatives of the lending industry and consumer groups. Early in its deliberations, the Commission was made aware of the enactment of the Wisconsin Consumer Act. The Commission determined that the Wisconsin Act would make an excellent model for studying the problems with consumer credit in this Commonwealth. The Commission has considered the Uniform Consumer Credit Act, the Wisconsin Consumer Act and specific problems in the law governing consumer credit transactions and possible methods of correcting them. After much deliberation, the Commission makes the following report.

Recommendations

I. The Commission recommends that neither the Uniform Consumer Credit Code nor the Wisconsin Consumer Act be enacted by the General Assembly but the Commission does recommend that the General Assembly direct the Virginia Code Commission to recodify Virginia statutes relating to consumer credit.

The Commission, during its continued existence, studied further the Uniform Consumer Credit Code. The Commission found that very few states have adopted the Code, and that most states which have acted respecting it have rejected it. To date, only Colorado, Idaho, Indiana, Oklahoma, Utah and Wyoming have adopted this Code. Clearly, adoption of the U.C.C.C. by Virginia would not produce uniformity of the law among the several states. The Commission is aware that a later draft of the U.C.C.C. has been accomplished. This draft or later drafts may find wider acceptance but, at this time, we believe the adoption of the U.C.C.C. would not serve the best interest of Virginia consumers or extenders of credit.

At the request of one of the members, the Commission agreed to use the Wisconsin Consumer Act as a focal point for its study as this Act addressed all the problem areas of consumer credit and was more oriented toward the protection of the consumer. The Commission concluded not to recommend this Act as there were significant points of disagreement with the substantive provisions of the Act. The Commission found further that there was no widespread support for the Act among consumer groups. In fact, many of the provisions of the Act would result in a higher cost for credit than presently exists in Virginia.

Realizing that the focal point of the study was a "code", the Commission found that the concept of a consumer credit code is a good one. The time consumed in the Commission's deliberations on whether to adopt the U.C.C.C. or the Wisconsin Consumer Act precluded the Commission from formulating a comprehensive new consumer credit act for Virginia. The Commission does recognize the need for and recommends a systematic rewrite and reorganization of the Virginia statutes dealing with consumer credit which will reflect any action taken by the 1974 General Assembly as well. The Commission recommends that this task be assigned to the Virginia Code Commission (See Appendix, page 17).

Since the Commission was unable to formulate a comprehensive consumer credit code, it felt that the best way to solve the specific problems which the Commission found in its public hearings and other deliberations was to make individual recommendations on each problem. The following recommendations are proposed to deal with these problems.

II. Assignees of consumer paper should be subject to the consumer's defenses for a period of sixty days following a notice of the assignment of the paper.

One of the subjects most frequently discussed concerning consumer credit is the application of the holder in-due-course doctrine in a consumer credit sale. When a consumer purchases goods or services, he often signs a negotiable instrument payable to the seller. In order to meet his cash requirements, the seller frequently assigns this instrument to a bank or other financial institution (the assignee) at a discount. The assignee assumes the legal status of a holder in-due-course unless he has prior notice or reason to know of any defense or defect in the transaction. If, for an extreme example, the goods are never delivered to the consumer and the seller absconds with the money paid by the assignee, the consumer must continue to pay the assignee, as the consumer's defense against the seller is not available to him against the assignee who is a holder in-due-course. It is very obvious from this application of the holder in-due-course doctrine that the consumer is placed in an inequitable position.

Twenty-six of the states have modified or abolished the holder in-due-course doctrine as it applies to consumer credit sales. The majority of the members of the Commission felt that abolition of the doctrine in consumer sales would be harmful to small merchants and to those who were going into business for the first time. If the protection for the financial institutions of the doctrine were eliminated, these institutions might be unwilling to discount the commercial paper of newer and smaller merchants, leaving them with the necessity of financing their own sales or being unable to compete. The elimination of competition among sellers would not serve the interests of the consumer.

As a solution to alleviate at least the most glaring inequities, the majority of the Commission members recommend legislation providing for a notice of assignment of consumer credit paper and a sixty-day period after

this notice in which the consumer may assert his defenses to the transaction against the assignee. The Commission further recognized the unusually large amounts of capital needed by an automobile dealer and the large sums of money involved in most automobile sales. In order to eliminate a potential hardship for this class of sellers, the Commission recommends that consumer credit paper resulting from a sale of an automobile be exempted from the modification of the holder in-due-course doctrine. In lieu of modification of the doctrine in the sales, it is proposed that motor vehicle dealers be covered by a bond in favor of purchasers to assure a purchaser that a source is available from which proven losses and damages could be recovered. (Appendix, Page 18).

III. The collateral in a consumer credit sale should be limited to the goods sold or financed in one transaction.

In its deliberations, the Commission heard complaints from consumers concerning abuses in the taking of collateral as security in a consumer credit sale. As an example, a consumer will purchase a refrigerator on credit from a seller and give a security interest in the refrigerator. When the credit for the refrigerator is nearly paid, the consumer will purchase from the same seller a washing machine and the seller will require as a security interest for the extension of credit collateral in both the almost fully paid for refrigerator and the washing machine. If the consumer defaults in his payments on the purchase of the washing machine, the seller may repossess all the collateral, the refrigerator and washing machine—even though the consumer then owes no money for the refrigerator. The Commission feels that this situation has many potential abuses which create hardships for the consumer, and that it is conducive to some merchants permitting, if not encouraging, consumers to overextend themselves. This overextension is detrimental to consumers and to more responsible merchants.

The Commission, therefore, recommends legislation to prevent this potential abuse by prohibiting a seller from taking, as a security interest for the extension of credit in a consumer credit sale, collateral in goods other than those identified to the sale. (Appendix Page 20).

IV. The Commission recognized that there are a number of problems associated with deficiency judgments and repossession of chattels in a consumer credit sale but time would not allow the Commission to recommend workable solutions to them.

If a consumer buys goods on time and fails to make the installment payments, the seller may repossess the goods and sell them at a public or private sale. If the proceeds of this sale do not satisfy the remaining debt owed, the seller may ask a court to award him a judgment for any deficiency. This judgment is enforceable as any other legal judgment.

At its public hearings, the Commission found that there were consumer complaints concerning this procedure. First, if the consumer has paid off most of the debt and has defaulted on one payment, he could still lose his nearly paid for goods at the creditor's sale. Other complaints concerned the fact that repossessed goods are sold at less than fair market value, sometimes to the creditor, resulting in the proceeds of the sale being less than the unpaid balance on the debt, or a deficiency. This deficiency can be collected by obtaining a deficiency judgment. As can be readily seen, the present law dealing with deficiency judgments and repossession of chattels can be easily abused by unscrupulous creditors.

The Commission, after much deliberation, was unable to find a satisfactory solution to these problems. Several solutions were suggested in-

cluding requiring judicial review of a sale of repossessed goods; not allowing the creditor to buy at his own sale; requiring a creditor to seek a judgment or repossession but not both; requiring invalidation of a sale for less than fair market value; and restricting certain methods of self-help used by creditors to repossess goods.

V. The Commission recommends that a default in an instrument resulting from a consumer credit transaction be defined by statute.

Current statutory law in Virginia does not define the term "default" but leaves it to contractual agreement. The Commission recognizes that a seller, in most cases, will prepare the instrument which will define default and that this instrument will give a definition which, in most cases, is favorable to the seller. The frequently unequal bargaining positions of the seller and the consumer create a situation which may, and does in some cases, lead to abuse by some sellers. A typical example is a clause inserted in many instruments which allows a seller to unilaterally declare the entire debt due whenever he deems himself "insecure." Under present Virginia law, the creditor may declare the entire unpaid balance due because of a single, inadvertently and slightly late payment of an installment. This may cause undue hardship on consumers and sometimes induces the consumer debtor to declare bankruptcy, which is detrimental to many responsible merchants. Fortunately, most creditors do not engage in such practices, but unfortunately some do.

The Commission recommends legislation which will provide a statutory definition of default. Under this definition, default may not occur until the tenth day after the date of the first delinquent payment. From the research of the Commission, this time period appeared to be the one most used in the business community. The Commission rejected proposals that the time period be longer as a longer delay might prejudice the rights of a creditor with a perfectly valid claim against the consumer.

The recommended legislation would also provide a consumer debt could not be declared in default, unless the creditor is reasonable in deeming himself insecure. This recommendation would deter unwarranted declarations of default on a unilateral, totally subjective basis. (Appendix Page 21)

VI. Balloon balances in consumer credit transactions should be restricted by statute.

Another major area of concern by consumer credit advocates is the use of the balloon balance in a consumer credit transaction. The Commission heard testimony at its public hearings concerning abuses of this practice. For example, a consumer buys goods and gives an instrument in return for the goods. The consumer is paying a monthly amount which may double or even triple on the last payment. This substantial deviation from the normal monthly payment may produce a default and a repossession of the security or force the consumer to refinance the transaction at terms which are highly unfavorable to him. The Commission felt that there was no good reason for the "balloon balance" in most consumer credit transactions, though properly used is necessary and legitimate in some. For this reason, the Commission recommends that this practice be permitted, but limited so as to discourage abuses.

The Commission recommends legislation which will prohibit the use of balloon balances which exceed regular installment payments by more than ten percent unless such balances, at the option of the consumer, may be refinanced at a monthly payment rate which is not substantially larger than those monthly payments called for by the original instrument. The

legislation would make this restriction applicable only to consumer credit transactions. (Appendix Page 22)

VII. Non-profit debt counseling by persons who are not attorneys should be permitted and properly regulated in this State.

Credit has become the way of life in this State and throughout the nation. Advertising and merchandising techniques urge the consumer to "buy now and pay later." Due to this heavy emphasis on making purchases on credit, many consumers find themselves in a financial position which will not allow them to make all their monthly payments. Their own attempts to consolidate these debts, often worsen their economic condition. The results of this process are judgments, garnishments, repossessions and bankruptcies. In the first ten months of the 1973 fiscal year, three thousand, eight hundred and sixty-six non-business bankruptcies were filed in this State. In the Eastern District of Virginia only three per centum of the two thousand three hundred and sixteen bankruptcies were filed under Chapter XIII which provides for a "wage earner" plan to pay the consumer's creditors.

At present, there are one hundred fifty consumer debt-counseling services in the United States and Canada. Non-profit debt counseling is available in all but nine of the states of our nation and Virginia is one of those nine. At the Commission's Public Hearing held in Arlington, it was related to the Commission that many Northern Virginia consumers are using debt counseling services available in the District of Columbia.

In Virginia, such credit counseling services have been impossible because § 54-44.1 of the Code of Virginia provides that such services are an unauthorized practice of law. The Commission recommends legislation that will permit qualified persons who are not licensed to practice law to offer debt counseling services on a non-profit basis. The Commission further proposes that these non-profit debt counseling services be regulated and licensed by the State Corporation Commission, and that they be subject to rules to prevent conflicts of interests. (Appendix, Page 23)

VIII. The Virginia Collection Agencies Board should be given the authority to review complaints from consumers and to revoke or suspend the license of any collection agency which engages in certain unethical practices when dealing with consumers.

In its public hearings, the Commission heard several persons request that the laws authorizing the licensing of collection agencies be amended to provide for more protection for the consumer. The Commission studied the statute creating and the rules and regulations of the Virginia Collection Agencies Board and determined that the Board needed additional authority to accept and act upon complaints about collection agency practices from consumers. As the statute is presently phrased, the Commission felt that it was questionable whether the Board can accept such complaints and take action upon them.

The Commission proposes legislation that will allow the Virginia Collection Agencies Board to receive sworn complaints from any person alleging that a collection agency has engaged in certain prohibited practices. The Commission further proposes that this legislation prohibit certain practices so as to protect the consumer. The proposed prohibited practices include using certain materials which create the impression that the collection agency is a governmental agency; using physical violence or threats of physical violence; advertising or publishing for sale any claim of debt except under certain circumstances; collecting any money not expressly authorized by the agreement creating the debt or by the law; using

illegal means of collection; and failing to reveal in any oral or written communication to the debtor the business address of the collection agency. (Appendix, Page 24)

IX. The Commission calls for a comprehensive consumer education program for elementary and secondary school children as well as for adult citizens.

Members of the Study Commission are unanimous in calling for and anxious to see a broad based, comprehensive program of consumer education in the elementary and secondary schools. We also strongly recommend a more extensive consumer education program for adult citizens. The best protection for consumers is a better informed more aware consumer, who better protects himself by utilizing better judgment in consumer transactions. Conferring new remedies on consumers and restricting the existing remedies of merchants and lenders too often proves of little value to those consumers such action is supposed to benefit. Sometime things advocated as consumer protection measures merely add increased costs of doing business for all merchants and lenders, especially the most legitimate ones, without any substantial advantage for consumers, especially those consumers whose judgment is most likely to be poor. The attendant result is that higher costs of doing business are passed on to all consumers, without meaningful benefit to the less informed, and gullible.

Delegate Eleanor Sheppard on behalf of the Study Commission has discussed with the State Department of Education the extent to which consumer education is presently incorporated into the elementary and secondary school curricula. We are pleased to learn that there is a Departmental Committee on Consumer Education which has made a review of "on-going programs designated as consumer education. The introduction to the Committee draft report, under date of January 11, 1973 states—"The State Department of Education supports the philosophy that all students and adults in Virginia's public (and private) schools should have the opportunity to develop through formal education programs consumer skills and concepts which are of the fundamental importance in real life situations.

To this end there has been a renewed endeavor to improve consumer knowledge about products, services, and credit through the teaching of consumer education in many subjects. It is generally agreed that consumer education is a vital and necessary part of the educational program for all students.

A concerted effort has been made by the Consumer Education Committee appointed by the State Department of Education to determine the existing practices in the Virginia public schools for providing instruction in consumer education.

Data concerning the general status of consumer education have been collected from various divisions within the Department, including the Divisions of Elementary and Secondary Education, the Division of Vocational Education, and the Division of Educational Research and Statistics. A review was made of the on-going programs designated as consumer education which are taught as separate units and those programs which include consumer education as an integral part of the overall curriculum."

This recommendation is wholeheartedly endorsed by this Study Commission and we urge the State Department of Education to continue efforts to assure meaningful consumer education in our public schools. In our view the program should be broad based and designed to reach all

students since all students will be consumers all their life. It should not be confined to the home economics or general economics curricula.

Beyond an effective comprehensive consumer education program in the public schools we urge more effective consumer education programs designed to reach the citizenry at large. Adults not participating in the public school system seriously need consumer education. We recommend more extensive broad based consumer education programs be conducted by the Office of Consumer Affairs of the Department of Agriculture and Commerce. Educational television, is an important vehicle for consumer education for the general public, which we believe should be used more extensively. Public broadcasting in other states in cooperation with state consumer protection offices have produced some outstanding consumer protection programs. These programs as demonstrated by our sister state of Maryland can be significant, meaningful and even entertaining.

An informed consumer is a better protected consumer. To the extent we have successful and inovative consumer education programs we can protect consumers without the high costs of doing business which is passed on to consumers which so frequently attends legislative remedies designed to deter isolated abuses.

XI. Certain inequities exist in the garnishment of wages and these inequities should be reviewed by the General Assembly for possible changes in the statutes governing garnishments.

Garnishment of wages is an effective legal process for the collection of debts. The Commission found however that the process placed an undue burden on the employer of a person who has been garnisheed as the employer must perform bookkeeping, administrative, and clerical functions for the benefit of others. The employer will also incur additional bookkeeping and other clerical expenses. The Commission determined that this amounted to an additional expense to the employer for the collection of the debt of another. The Commission reviewed the Maine statute which deals with the garnishment of wages and believes it might have merit but did not have sufficient time to fully evaluate that act, or to recommend it at present to the General Assembly. The Maine statute is designed to reduce garnishment from a three-party collection process (debtor, creditor and employer) to a plan by which the debtor pursuant to a court order makes installment payments directly to the creditor. The employer need not participate and the debtor is less likely to lose his job because of a garnishment.

Another inequity exists in that the Virginia law allows a stated amount (25% of the debtor's disposable weekly earnings, or by which the debtor's disposable weekly earnings exceed thirty times the federal minimum hourly wage) of earnings to be subject to garnishment. The present law applies to a single person the same as it does to a married person with children. The Commission discussed several ways of remedying this situation but each solution presented its own particular problems.

The Commission has sought without success to find ways of regulating the garnishment of wages which would eliminate these inequitable aspects without abolishing it altogether. The Commission is not prepared to recommend its abolition as it can be and often is used as a justifiable tool for the collection of debts, but it urges the General Assembly to consider ways to eliminate the problems found by the Commission.

XII. The time-price doctrine should be eliminated by a statute regulating the rate of interest to be charged on "closed-end" consumer credit installment sales.

The "time-price doctrine" in Virginia is the result of Virginia case

law. The doctrine allows a merchant to quote to the consumer a cash price and a price to be paid if the consumer pays over a period of time. If the consumer elects to pay the time price, the merchant cannot be cited for violating the usury law as the differential between the cash price and the time price is not considered to be interest.

The Commission received testimony that this doctrine is being abused. In some so-called "lease agreements", the interest rates were as high as two to three hundred percent per annum. The Commission determined that such practices should not be allowed in Virginia.

The Commission recommends legislation to remedy this situation by allowing an interest rate of no more than two percent per month for all "closed-end" consumer credit installment payment plans. The Commission recognizes the fact that the rate allowed is higher than allowed for revolving credit payment plans, which is one and one-half percent per month on a thirty-day charge account. Each new purchase under a "closed-end" plan causes the seller to incur new account costs. In addition, a "closed-end" plan requires a larger capital investment per dollar of credit sales as these accounts receivables are normally for longer periods of time than the revolving type of credit where the payment for the credit sales are much quicker. The Commission determined that the two percent per month would allow an adequate return to permit the merchant to defray his costs of extending credit but would prevent this type of abuse which was shown to the Commission to exist in this Commonwealth. (Appendix Page 26)

XIII. The State Corporation Commission should be given the authority to regulate the rates of interest, the size of loan ceilings and the terms of loans for small loan companies.

The small loan company developed from an awareness of a need which existed to secure small loans for consumers of limited means at reasonable rates consistent with the lender's cost and risk and to prevent such a consumer from falling prey to illegal lenders. Regulation of the small loan company emerged as a device to insure that consumers are adequately protected against unfair rates of interest, that consumers can secure loans, and that the small loan companies can make loans at a profit which justifies their remaining in business. With the rapid rise in the cost of money, evidence was presented that small loan companies were being adversely affected. There is no doubt that the "money market" and interest rates as an indicia of the costs of money have become much more volatile than in former years. Interest rates can and do fluctuate sharply and statutory regulations of all rates does not allow timely adjustments of rates and terms of loans.

The Commission recommends legislation which will give to the State Corporation Commission the authority to regulate the rates of interest, the size of loan ceilings and the terms of loans for small loan companies. This will substantially reduce the present regulatory lag which currently exists so that appropriate changes in loan rates and sizes can be made when economic conditions warrant such a change. In making this recommendation, the Commission was mindful that present Virginia law confers upon the State Corporation Commission the authority to set the maximum interest rates for loans within the statutory limitations thereon. The rates and sizes of loans can be set by a knowledgeable Commission, which already regulates the industry to some extent, on the basis of relevant economic data within the framework of a formal hearing process. (Appendix, Page 27).

XIV. All second mortgage lenders should be allowed to charge a seven percent add-on interest rate and a two percent investigation fee and should not be allowed to charge any additional fee or interest.

At the public hearings, there were complaints that some second mortgage lenders have been charging borrowers brokerage fees in excess of the seven percent add-on interest plus the two percent investigation fee. Most lenders supported a provision in the law which would limit the fees and charges on the second mortgage to the seven percent add-on and the two percent investigation fee.

The Commission recognized the fact that there has been an unprecedented increase in the cost of money to lenders and a substantial increase in operating costs of lenders. The Commission further recognizes that it is impractical for a consumer to refinance a first mortgage for improvements to his home in these times of rising interest rates. As the interest rate rises on the first mortgage, the use of the second mortgage to finance such improvements becomes more attractive to the consumer. If the lending institution is unable to make a profit from lending money under a second mortgage, the money will be loaned elsewhere.

In order to remedy these situations and place all lending institutions on a parity concerning the rates of interest for second mortgages, the Commission recommends legislation which will provide that all lenders of second mortgage money will be allowed to charge seven percent add-on interest and a two percent investigation fee and no other fees and charges. The legislation would prohibit a broker's fee paid to a third party to be passed on to the borrower, if it would increase the charge to the borrower to more than the 7% add-on rate, plus the 2% investigation fee.

XV. All extenders of credit should quote and advertise their interest rates and charges as simple or annual rate of interest.

The Commission recognizes the need for all interest rates and charges to be expressed in a simple annual rate of interest calculated as required by the Federal Truth-in-Lending Act. The Commission has determined that, under official interpretations of Federal law binding on banks, quotations of rates of interest on all loans must be made in terms of simple interest whether in advertisement or in oral or written replies to specific inquiries of prospective borrowers. The Commission fears that there may be some other extenders of credit who do not interpret the Federal law in the same manner. The Commission recommends legislation which will require all extenders of credit to make quotations, oral or written, or advertisements of interest rates and charges in terms of simple annual interest rates. An important objective of this recommendation is to provide the borrower with the most meaningful and understandable information before he finalizes a loan or the extension of credit, rather than have the information come to him only when he has agreed to terms and is called upon to sign a "truth-in-lending" statement. (Appendix, Page 37)

XVI. The loan ceiling on residential loans for a Savings and Loan Association should be raised from forty-five thousand dollars to fifty-five thousand dollars.

The Commission found that the cost of housing in Virginia has increased very rapidly over the past few years especially in the Northern Virginia area. According to a study conducted for the Northern Virginia Builders Association in 1970, forty-one percent of the housing in the area cost in excess of thirty-five thousand dollars. Using a conservative ten percent per year increase in values since 1970, the cost of a thirty-five thou-

sand dollar house would be forty-six thousand five hundred and eighty-five dollars today. The present economic situation which includes increasing land costs, land development costs, increased costs for labor and materials and the increased price of existing housing make it imperative that the loan ceiling be increased to insure that there is enough available credit for financing the purchase of a home. It was also noted that, in the Northern Virginia area, out-of-state lenders are lending more and more for financing of a home.

Under present Virginia law, a State savings and loan association may invest its assets in loans secured by first liens on improved real estate so long as the loan does not exceed forty-five thousand dollars and does not exceed ninety per centum of the value of the real estate up to fifty thousand dollars. Such an association may also invest up to twenty per centum of its assets in loans secured by a first lien on real estate so long as the loan does not exceed eighty per centum of the value of the real estate being used for single family dwellings. As can be readily seen, the present law does not allow associations, especially in the Northern Virginia area, to provide the potential borrower with sufficient funds to purchase a home.

The Commission recommends legislation which will increase the loan ceiling for fully secured loans from forty-five thousand dollars to fifty-five thousand dollars.

XVII. The interest rate ceilings on certain installment loans should be increased from a six percent add-on rate to a seven percent add-on rate.

Interest rate ceilings were designed to protect the consumer from being charged exorbitant rates of interest by unscrupulous lenders. At the present time, the cost to the lending institution for funds to lend have risen rapidly including interest paid on deposits. In these times of "tight money", the interest ceiling, if too low, tends to force the lending institution to use its funds for loans of larger amounts which involve less risk and lower cost of handling. As lending institutions limit the number of installment loans, the consumer suffers as he can no longer finance small home improvements, automobiles and other necessary consumer goods. The detriment to the consumer and the economy as a whole can readily be discerned.

In order to assure that there will be money available for these consumer loans, the Commission recommends an increase in the loan ceiling from six percent add-on to seven percent add-on for installment loans made by banks and for home improvement loans made by savings and loan associations. The Commission also recommends that banks and savings and loan associations be allowed to charge an interest rate of three percent above the passbook account rate for loans made to customers when the loan is secured by an offsetting amount deposited or credited to the borrower's savings account.

XVIII. Discrimination in the extension of credit based solely upon sex, race or religion is condemned by the Commission and such practices should be discontinued by any lending institutions engaging in them.

The Commission has heard a number of complaints from persons who alleged they have been denied credit solely on the basis of their sex. The Commission unanimously condemns denial of credit to any citizen because of sex, race or creed. All applicants for credit, as a matter of simple justice and equity, should be treated on the basis of their ability to repay and other proper criteria. Any lending institutions engaging in such practice as were complained of should be condemned for their action. The Commission tried to find a practical statutory solution to this problem which would be constitutionally sound and which would not create greater problems than

those it was intended to solve. We were unable to do so. Failing to do so, the Commission exhorts all lending institutions in this Commonwealth to end any unfair discrimination in credit decisions. The Commission is encouraged that most lending institutions are sensitive to the alleged abuses and that such practices are being eliminated.

XIX. The Commission recommends that the Congress of the United States amend 12 U.S.C.A. § 85 to provide for a parity in interest rates between national and state banks.

In 1972 and 1973, two Federal Courts of appeal and the Maryland Supreme Court reaffirmed the decision in *Tiffany v. National Bank of Missouri,* 85 U.S. 409 (1874), which stated that national banks may charge interest at the highest rate permitted by state law to any lender for the particular type of loan. See *Northway Lanes v. Hackley,* 464 F 2d 855 (7th Cir, 1972) ; *Partian v. First National Bank of Montgomery,* 467 F2d 167 (5th Cir, 1972) ; and *Commissioner v. First National Bank of Maryland,* 300 A.2d 685 (Md., 1973). Rulings of the Comptroller of the United States have been to the same effect.

The basis for these cases and rulings has been 12 U.S.C.A. § 85 which states, in effect, that the national banks in a state may charge interest in an amount allowed by state law. In the Maryland case cited above, this was construed to mean the rate allowed to small loan companies for "small loan" types of loans. In times of rising interest rates, this puts a national bank in an unfair competitive advantage vis-a-vis state banks. State banks are bound to charge interest rates which comply with State law specifically for State banks not small loan companies.

The Commission does not believe the situation created by the interpretations of 12 U.S.C.A. § 85 is what Congress intended when it passed the statute. Therefore, the Chairman has been directed to request the members of the Congress of the United States from Virginia to take legislative action to remedy this inequitable situation.

CONCLUSION

Consumer Credit is a very broad and complex area and has become a matter of increased concern in an economy where credit purchases are the norm in the market place. This Commission has become very alert to the sensitivity of changes in the laws governing extension of credit to consumers. We are quite aware that much of the "reform" advocated by more extreme consumer protection proponents would be self defeating. Many of the changes urged upon us would at best solve isolated abuses, while increasing the costs of doing business. These costs would be passed on to all consumers. This, no matter how well intended, is not consumer protection. Rather, such proposals would be an abuse as to most all consumers.

Our recommendations are selective, and we believe will introduce a greater degree of fairness in the dealings between consumer debtors and consumer creditors.

It is a matter of concern that we must recommend increases in the authorized rate of interest on certain second mortgage secured loans and on installment loans. The economic realistics of today with a prime rate in recent months of 10% per annum must however be faced. To fail to recognize those realistics would not benefit consumers, as it would only mean consumer credit would no longer be available, or would be available in a more costly form of borrowing.

While unable to complete a sufficiently exhaustive study of several important items related to consumer credit transactions, we believe the study conducted and the recommendations made are substantial, extensive and meritorious.

For the foregoing reasons, the Commission respectfully requests the adoption of its recommendations.

Respectfully submitted,

Herbert H. Bateman, *Chairman*

Garry G. DeBruhl, *Vice-Chairman*

George S. Aldhizer, II

C. Richard Cranwell

Clive L. DuVal, II*

M. Patton Echols, Jr.*

Jerry H. Geisler

Aubrey V. Kidd*

Joseph A. Leafe

William T. Lehner

Mrs. Eleanor P. Sheppard

Jeff D. Smith*

Richard E. Speidel*

Mrs. Earl S. Vest

John P. Warner

*See next page for separate statement.

Senator Clive L. DuVal, II. I believe that Recommendation XVIII does not go far enough. In my opinion, the testimony before the Commission that persons had been denied credit solely on the basis of their sex was so substantial that the Commission should have proposed specific remedial legislation, as now exists in other states. I intend to introduce legislation at this session of the General Assembly to bar discrimination in the extension of credit solely because of race, religion or sex.

Mr. M. Patton Echols, Jr. I still believe that all interest rates should be stated as annual percentage rates in the Code of Virginia. "Add-on" interest rates are misleading to the consumer and should be eliminated even though there would be complexity in the transition. There is no magic to "add-on" and no real reason, other than historic accident, for its use today. I would therefore urge that the Code of Virginia have annual percentage rates of interest throughout.

Mr. Aubrey V. Kidd. I do not concur in Recommendation XIII of the Commission's Report concerning the fixing of loan ceilings and rates of interest of small loan companies by the State Corporation Commission.

Jeff D. Smith. I do not concur in recommendation 12 concerning the elimination of the time-price doctrine.

Richard E. Speidel. Mr. Speidel has not approved or disapproved this report as he is out of the country at the present time.

APPENDIX

SENATE JOINT RESOLUTION NO. ——

Directing the Virginia Code Commission to study the laws of the Commonwealth relating to consumer credit for the purpose of recodifying such laws into a consumer credit code in the Code of Virginia.

Whereas, at present, the laws of Virginia relating to consumer credit are presently located in several titles of the Code of Virginia; and

Whereas, the Virginia Consumer Credit Study Commission determined that there was a definite need to recodify all the statutes relating to consumer credit so as to provide for a coherent organization of such statutes in the Code; and

Whereas, such a recodification would amount to the creation of a "consumer credit code" for Virginia; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Code Commission is hereby directed to make a study and compile provisions of the Code of Virginia relating to consumer credit and to make a report which will include a recodification of those statutes into a consumer credit code within the Code of Virginia. The Commission shall conclude its study and make its report to the Governor and the General Assembly no later than December one, nineteen hundred seventy-five.

A BILL

To amend the Code of Virginia by adding a section numbered 11-9.4 relating to assignments of instruments, contracts, or other writings evidencing consumer credit obligations; defenses of consumer; limitation of defenses.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 11-9.4 as follows:

§ 11-9.4(a) Notwithstanding any other provision of law or any agreement to the contrary, any assignee or transferee, who is otherwise a bona fide purchaser or holder in due course under the Uniform Commercial Code, of the rights of a seller under any instrument, note, contract or other evidence of indebtedness created pursuant to a consumer credit sale is subject to all defenses and set-offs of the buyer against the seller arising out of such sale; provided, however, that the buyer's rights under this section may be asserted only as to amounts owing at the time the buyer's written notification of defenses or set-offs is received by the assignee and may be asserted only as to defenses and set-offs so communicated within sixty days after the initial notice of assignment in the form and content required by subsection (b) is mailed by an assignee.

(b) The notice of assignment shall be in writing and addressed to the buyer at his address as stated in the underlying contract, identify the contract, describe the goods or services, state the names of the seller and buyer, the name and address of the assignee, the amount payable by the buyer and the number, amounts and due dates of the installments, and contain or enclose a conspicuous notice as follows:

NOTICE:

1. IF THE WITHIN STATEMENT OF YOUR TRANSACTION WITH THE SELLER IS NOT CORRECT; OR

2. IF THE GOODS OR SERVICES DESCRIBED IN THIS NOTICE OR ENCLOSURE HAVE NOT BEEN DELIVERED TO YOU BY THE SELLER OR ARE NOT NOW IN YOUR POSSESSION; OR

3. IF THE SELLER HAS NOT FULLY PERFORMED ALL HIS AGREEMENTS WITH YOU; YOU MUST GIVE THE ASSIGNEE NOTIFICATION IN WRITING, WHICH HE MUST RECEIVE AT THE ADDRESS INDICATED IN THIS NOTICE OR ENCLOSURE WITHIN SIXTY DAYS FROM THE DATE OF THE MAILING OF THIS NOTICE; OTHERWISE, YOU WILL NOT BE ABLE TO ASSERT AGAINST THE ASSIGNEE ANY DEFENSE OR SET-OFF ARISING OUT OF THE SALE WHICH YOU MIGHT OTHERWISE HAVE AGAINST THE SELLER.

(c) Payments made by the buyer to the seller under any instrument, note, contract or other evidence of indebtedness created pursuant to a consumer credit sale, after assignment of the seller's rights under such evidence of indebtedness but prior to the mailing of the assignee's notice of assignment to the buyer, may be asserted as a matter of defense or set-off against a claim by an assignee with respect to the transaction in question.

(d) For purposes of this section: (1) "consumer credit sale" shall mean a transaction in which credit is granted by a seller in connection with the sale or lease of goods or services, or additions, alterations or repairs to existing improvements to real property, if such seller regularly engages in

credit transactions as a seller, and such goods or services are purchases by a natural person primarily for a personal, family, or household purpose, and not for resale, and in which the amount payable under such sale does not exceed ten thousand dollars. It shall include such a sale or lease paid with the proceeds of a loan from a person other than the seller but arranged by a seller. It shall not include a sale charged to a credit card issued by an issuer other than the seller, or a sale paid by check or draft; (2) "seller" shall mean seller or lessor and "buyer" shall mean buyer or lessee; and (3) "arranged" shall include, but not by way of limitation, when the seller prepares the documents used in obtaining the loan, when the seller supplies the forms to the buyer which are used by the buyer to obtain the loan, when the person granting the loan is specifically recommended by the seller and at least two loans are thereby made in any calendar year, or when the seller receives or will receive a fee from the person granting the loan to the buyer upon the granting of the loan or the referral by the seller.

(e) Unless the evidence of indebtedness is created pursuant to a consumer credit sale, mailing of a notice of assignment shall not make the evidence of indebtedness subject to the provisions of this section.

(f) In any proceeding to enforce an obligation or instrument subject to this section, if the assignee or holder files an affidavit with the civil warrant, motion for judgment, or other pleading that the notice of assignment contemplated by this section was given and that no notification of defense was received from the buyer within the sixty-day period, or that only such notification of defenses as shall be attached to such affidavit was given, and if a copy of such affidavit shall have been served on the defendant at the time a copy of the civil warrant, motion for judgment, or other pleading is so served, the giving of such notice of assignment and non-receipt of any notification of defenses other than as attached to the affidavit shall be a rebuttable presumption in favor of such assignee or holder.

(g) Notwithstanding the foregoing, the provisions of this section shall not apply to an assignment or transfer of evidence of indebtedness taken pursuant to a consumer credit sale of a motor vehicle by a motor vehicle dealer duly licensed in this State provided that the transaction giving rise to such evidence of indebtedness is covered by a good and sufficient bond in an amount not less than twenty-five thousand dollars per year, procured by such dealer as principal, and executed by a surety company authorized to do business in this State as surety to the Commonwealth of Virginia, as trustee, in favor of any natural person purchasing a motor vehicle, parts, or service from such dealer primarily for a personal, family, or household purpose. Any such bond shall be conditioned to secure any loss or damage, including all reasonable attorney's fees incurred by the consumer, resulting from any fraud, deceit or violation of any provision of Chapter 4 of Title 59.1 by such motor vehicle dealer or any of its employees or agents, or resulting from the failure of such dealer, its employees or agents, to satisfy or perform any contractual or warranty obligation to the buyer, or the failure of the surety company to make payment under the bond. In any case in which damages are awarded to a buyer the court in which the damages are awarded shall prescribe the amount of reasonable attorney's fees which are payable under the bond.

Any such bond shall be approved by the Attorney General and filed with the Commissioner of the Division of Motor Vehicles.

(h) The remedy provided by this section shall be in addition to, and not in lieu of, any other remedy which the buyer may have under law.

2. The provisions of this act shall apply to all such assignments which occur on or after January one, nineteen hundred seventy-five.

A BILL

To amend the Code of Virginia by adding a section numbered 8.9-204.1 relating to security interest in consumer goods.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 8.9-204.1, as follows:

§ 8.9-204.1. (a) Notwithstanding any other provision of the law to the contrary, a seller may take a security interest only in the goods sold; provided, however, this section shall apply only to the sale of consumer goods as defined in § 8.9-109.

(b) This section shall not apply to a sale of consumer goods purchased pursuant to an open-end credit plan, when previously purchased consumer goods were purchased pursuant to such plan.

(c) A security interest created in violation of this section is void.

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A BILL

To amend and reenact § 8.1-208 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 11-4.1, the amended and added sections relating to default when creditor deems himself insecure; default for nonpayment

Be it enacted by the General Assembly of Virginia:

1. That § 8.1-208 of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding a section numbered 11-4.1 as follows:

§ **8.1-208. Option to accelerate at will.**—A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised. *In any transaction arising out of the sale or financing of consumer goods as defined in § 8.9-109 of this Code, the burden of proof of establishing good faith shall be on the party seeking to exercise the power.*

§ 11-4.1. Notwithstanding any provisions in a contract, other evidence of indebtedness or security agreement arising from a sale or financing of consumer goods as defined in § 8.9-109 of this Code, no acceleration of payment or repossession on account of late payment or nonpayment of an installment if payment is made within ten days of the date on which the installment was due, shall be permitted.

A BILL

To amend the Code of Virginia by adding a section numbered 11-4.2 so as to provide that refinancing of certain balloon payments required; creditor remedies barred for failure to comply.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 11-4.2 as follows:

§ 11-4.2. (a) In any transaction involving exclusively consumer goods as defined in § 8.9-109 of this Code wherein credit is extended, any installment payment, other than a down payment made prior to or contemporaneously with the execution of an agreement evidencing the transaction, which is more than ten percent greater than the regular or recurring installment payments, shall be subject to the right of the debtor to refinance such a payment or payments on the basis of an extended period of time and payments, which will allow the unpaid balance to be paid in full in as few periodic payments which are not more than ten percent greater than the regularly scheduled installment payments.

(b) Where a buyer's income is seasonal or intermittent, the parties may agree in a separate writing that one or more payments or the intervals between one or more payments be reduced or expanded in accordance with the needs of the buyer if such fluctuations in the schedule of payments are expressly arranged to coincide with the anticipated fluctuations in the buyer's income.

(c) No creditor who has refused to refinance in compliance with the provisions of this section shall be entitled to return or repossession of the goods involved in the transaction or to a judgment for the unpaid balance involved in the transaction at the time of his failure to do so.

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A BILL

To amend the Code of Virginia by adding a section numbered 6.1-364 and to amend and reenact § 54-44.1 of the Code of Virginia, relating to debt counseling.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 6.1-364 and to amend and reenact § 54-44.1 as follows:

§ 6.1-364. (a) Any person or organization licensed hereunder may operate a nonprofit debt counseling agency, subject to regulations of the State Corporation Commission. Services provided by such agency may include educational programs, advice as to budget management, negotiation with creditors on behalf of a debtor for the purpose of designing a debt liquidation plan which may involve postponement of payment or reduction of charges, administration of debt pooling plans and distribution of payments, and related advice and services. No agency licensed hereunder shall give legal guidance or perform legal services.

(b) No person or organization shall operate a debt counseling agency under the provisions of this section unless it qualifies under standards set by the State Corporation Commission and has obtained a license from the Commission. Such license shall be renewed annually. A fee not to exceed ten dollars may be charged for each license and renewal. Such license shall be subject to suspension or revocation by the Commission for violation of the provisions of this section or regulations promulgated hereunder.

(c) The State Corporation Commission shall, after reasonable notice and public hearing, promulgate regulations not inconsistent with the provisions of this section as to the licensure, powers and operation of debt counseling agencies. In addition, such provisions shall include standards for licensure, including nonprofit status and safeguards against conflicts of interests. The Commission may inspect at any time an agency licensed hereunder for the purpose of determining whether such agency is in compliance with the provisions of this section and regulations promulgated pursuant hereto.

§ 54-44.1. Furnishing advice and services for compensation in connection with certain debt pooling plans deemed practicing law.——The furnishing of advice or services for compensation to a debtor in connection with a debt pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors, *except as authorized for nonprofit agencies pursuant to the provisions of § 6.1-364,* shall be deemed to be the practice of law. Any person or agency not so authorized *or who is not a member of the Virginia State Bar* who furnished or offers to furnish such advice or service *for compensation* shall be guilty of a misdemeanor~~; provided, however, that the foregoing shall not apply to a member of the Virginia State Bar when such services are furnished pursuant to the practice of law.~~

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A BILL

To amend and reenact §§ 54-729.17 and 54-729.18, as amended, of the Code of Virginia relating to complaints about, hearings for and prohibitions against collection agencies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54-729.17 and 54-729.18, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 54-729.17. Complaints; notice and hearing.—The Board may, upon its own motion, and shall upon the sworn complaint of any client of a licensee *or upon the sworn complaint of any person claiming that a licensee has engaged in practices prohibited by this chapter,* require such licensee to *answer the complaint by sworn affidavit or to* appear before it to answer such complaint. The notice of the hearing shall be in writing and shall set forth the exact charges against the licensee and a true copy thereof shall be furnished to the licensee at least twenty days prior to the date of hearing. ~~The hearing~~ *Hearings* shall be held in accordance with provisions of the "General Administrative Agencies Act."

§ 54-729.18. Grounds for suspension, revocation, cancellation or refusal of license; notice to licensee.—The Board shall have the authority to suspend, revoke or cancel any license issued or to refuse to grant any license applied for under the provisions of this chapter when the licensee or applicant is deemed to be guilty of *any of the following prohibited practices:*

(1) Obtaining a license by false or fraudulent representation;

(2) ~~Failure~~ *Failing* to file a bond as required in § 54-729.13, and to keep same current~~.~~*;*

(3) ~~Failure~~ *Failing* to maintain a regular office or a registered agent or an attorney for service of process in this State~~:~~*;*

(4) ~~Failure~~ *Failing* to keep a complete set of records of all collections and claims handled for a client~~:~~*;*

(5) Having been convicted in any court of fraud, or convicted of or has had final judgment entered against him in any court for failure to account to a client for money or property collected by him in behalf of the client~~:~~*;*

(6) ~~Failure~~ *Failing* to report and pay to a client the net proceeds of all collections made during a calendar month within thirty days~~:~~*;* ~~or~~

(7) Violating or cooperating with others in violating any provisions of this chapter or any lawful rule or regulation promulgated by the Board~~:~~*;*

(8) Distributing any printed matter which is made to be similar or to resemble government forms or documents, or legal forms used in civil or criminal proceedings;

(9) Engaging in the dissemination of harassing communications or in harassing practices as shall be defined by the Board. In formulating such definition the Board shall consider such things as volume, frequency, time of day, mode and place involved in any communication or practice which, through the debtor or other person, may reasonably be expected to cause undue annoyance or harassment;

(10) Collecting or attempting to collect by the use of any methods contrary to the postal laws and regulations of the United States;

(11) Using any trade name, address, insignia, picture, emblem, badge, uniform, or any other means or statements that creates an impression that the licensee is connected with or is an agency of government;

(12) Advertising or publishing for sale or threatening to advertise or publish any claim of debt as a means of endeavoring to enforce payment thereof, or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under the order of a court of competent jurisdiction;

(13) Using violence or threats of physical violence while engaged in the collection of debts;

(14) Collecting or attempting to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law;

(15) Using any illegal means to collect or attempt to collect debts or to obtain information concerning debtors; or

(16) Failing to reveal in the course of any oral communication with a debtor and upon his request or on any written communication to a debtor the address of the location at which business is regularly conducted.

A certified copy of the findings and the decision of the Board shall be transmitted to the cited licensee or rejected applicant by either certified or registered mail within ten days of the adoption of its findings.

A BILL

To amend the Code of Virginia by adding in Title 6.1 a section numbered 6.1-362.1 relating to extension of credit in a closed-end installment credit plan or similar plan.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 6.1 a section numbered 6.1-362.1 as follows:

§ 6.1-362.1. (a) The time-price doctrine as heretofore recognized by the law of Virginia is hereby abrogated insofar as it relates to the sale or lease of consumer goods as defined in § 8.9-109 of this Code.

(b) Any seller of consumer goods as defined in § 8.9-109 of this Code who extends credit under a closed-end installment credit plan or arrangement may impose a service charge not to exceed two percent per month on the balance at the end of the fiscal month next preceding each successive payment. No additional charge shall be made for the extension of credit under such a plan or arrangement.

(c) Any leasor of consumer goods as defined in § 8.9-109 of this Code, whose lease agreement is in the form of a bailment or lease of such goods in which the leasee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of such goods and it is agreed that the leasee will become, or for no other consideration or for nominal consideration, has the option to become the owner of such goods, upon full compliance with his obligations and such leasor extends credit under a closed-end installment credit plan or arrangement, may impose a service charge of two percent per month on the balance at the end of the month next preceding each successive payment. No additional charge may be made for the extension of credit under such a lease.

(d) Where a service charge is made by any seller or leasor in excess of that permitted by this section, the provisions relating to usury set forth in §§ 6.1-325 and 6.1-326 shall apply.

2. This act shall be effective only as to any sale or lease executed on or after January one, nineteen hundred seventy-five.

A BILL

To amend and reenact §§ 6.1-249, 6.1-271, 6.1-277, 6.1-280, 6.1-285, 6.1-286, 6.1-287, 6.1-288, 6.1-291 and 6.1-294, as severally amended, of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 6.1-271.1, and to repeal § 6.1-272, as amended, of the Code of Virginia, the amended, added and repealed sections relating respectively to licenses for small loan companies; maximum rates of charge and size of loan ceiling for small loan companies set by State Corporation Commission; method of computing payments on small loans; advertising by small loan companies; installment payments on small loans; combining loans to obtain higher rate than permitted a single borrower; sale or assignment of wages; collection of loans made outside State; considerations by State Corporation Commission in setting rates of charge and size of loan ceiling for small loans; and rates for small loans.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-249, 6.1-271, 6.1-277, 6.1-280, 6.1-285, 6.1-286, 6.1-287, 6.1-288, 6.1-291 and 6.1-294, as severally amended, of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding a section numbered 6.1-271.1 as follows:

§ 6.1-249. Compliance with chapter; license required.—No person shall engage in the business of lending in amounts of ~~one thousand dollars~~ *the then established size of loan ceiling* or less, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, compensation, consideration or expense which in the aggregate are greater than the rate otherwise permitted by law except as provided in and authorized by this chapter and without first having obtained a license from the Commission.

§ 6.1-271. Maximum rates of charge set by Commission.—(1) *Generally.*—The Commission shall investigate from time to time the economic conditions and other factors relating to and affecting the business of making loans under this chapter, and shall ascertain all pertinent facts necessary to determine what maximum rates of charge *and amount of loan ceilings* should be permitted. Upon the basis of such ascertained facts, and subject to the restrictions, provisions and limitations imposed by this chapter, the Commission shall determine and fix by regulation or order the maximum rates of charge *and amount of loan ceilings* in connection with such loans which will induce efficiently managed commercial capital to be invested in such business in sufficient amounts to make available adequate credit facilities to individuals seeking such loans, and which will afford those engaged in such business a fair and reasonable return upon the assets~~;. provided, however, that the Commission shall not fix any such rates of charge in excess of two and one half per centum a month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars, and one and one half per centum a month on any remainder of such unpaid principal balance. Subject to such limitation as to maximum rates~~, *T*he Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge *and amount of loan ceilings,* but, before determining or redetermining any such maximum rates, *and amount of loan ceilings,* the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce

evidence with respect thereto and such notice shall also be published once each week for two consecutive weeks in some newspaper published in or having a general circulation in ~~the county, city or town in which any small loan licensee has an office~~ Richmond, Virginia. Any such changed maximum rates of charge *or amount of loan ceilings* shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower.

Any maximum rates of charge or amount of loan ceilings so determined or redetermined shall apply equally and shall be the same as to all licensees in the Commonwealth.

Whenever the Commission shall determine or redetermine and refix the maximum rate of charge, it shall determine or redetermine such rates in terms of a percent per month charge and it shall also determine or redetermine and refix the rate of charge in terms of dollars per one hundred dollars per year which shall be the approximate equivalent when calculated to maturity rounded off to the nearest whole dollars, of the maximum monthly rates of charge determine or redetermined in terms of percent per month, based on a loan repayable in twelve substantially equal consecutive monthly installments of principal and charges combined.

~~(2) *Optional method of computing charges*. In lieu of computing charges at the monthly rate upon unpaid principal balances from time to time outstanding, a licensee may, when the loan contract is repayable in substantially equal installments of principal and charges combined, compute charges in terms of dollars per one hundred dollars per year and proportionately for longer or shorter periods of time, on the original principal at the time the loan is made for the full term of the loan contract from the date of making to the date of maturity without regard to any requirement for installment payments, and such charges so computed shall be added to the principal of the loan. Whenever the Commission shall redetermine and refix the maximum monthly rate of charge, it shall also redetermine and refix the rate of charge in terms of dollars per one hundred dollars per year which shall be the approximate equivalent when calculated to maturity, rounded off to the nearest whole dollar, of the maximum monthly rates of charge redetermined and refixed pursuant to subsection (1) above based on a loan repayable in twelve substantially equal consecutive monthly installments of principal and charges combined; provided, however, that the Commission shall not fix any such rates of charge stated in terms of dollars per one hundred dollars per year in excess of seventeen dollars per one hundred dollars per year on that part of the original principal balance of any loan not in excess of three hundred dollars; and twelve dollars per one hundred dollars per year on that part of the original principal balance exceeding three hundred dollars but not exceeding one thousand dollars.~~

~~Where the charges contracted for are in terms of dollars per one hundred dollars per year, the provisions of the following subsections (a) through (g) shall apply:~~

~~(a) The charge shall be computed on the original principal at the time the loan is made for the full term of the contract from the date of making to the scheduled due date of the final installment without regard to any requirement for installment payments. When so computed, the charges shall be added to the principal of the loan and the face amount of any note or contract may, notwithstanding any other provision, exceed one thousand dollars by the amount of charges so added to the original principal amount, but if such loan contract is prepaid in full prior to maturity by cash, a new loan or otherwise, the portion of the charges originally added~~

to the principal of the loan attributable to the installment charges, shall be deemed to be applied to the unpaid installments in the order in which they are due and the acceptance or payment of charges where such charges are added to principal as authorized herein shall not be deemed to constitute payment, deduction or receipt thereof in advance nor compounding under § 6.1 277.

(b) All payments made on account, except those applied to default or deferments following the date of prepayment in full shall be rebated.

(c) The amount of charges originally added to the principal of the loan applicable to any particular monthly installment period shall be that proportion of such charges, excluding any adjustment for a first installment period of more than one month, which the balance of the contract scheduled to be outstanding during such monthly period bears to the sum of all the monthly balances originally scheduled to be outstanding.

(d) Notwithstanding the requirement for substantially equal consecutive monthly installments, a first installment period may exceed one month by as much as fifteen days and the charges for each day exceeding one month shall be one thirtieth of the charges which would be attributable to a first installment period of one month. The charges for such extra days in a first installment period may be added to the first installment and shall be excluded in computing any required rebate.

(e) If, as of an installment due date, the payment dates of all wholly unpaid installments are deferred for one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge which shall not exceed the amount of the charges originally added to principal attributable to the first of the deferred installments multiplied by the number of months in the deferment period. The deferment period is that period of time in which no scheduled payment has been made or in which no payment is required by reason of the deferment. No installment on which a default charge has been collected or on account of which any partial payment has been made, shall be deferred or included in the computation of a deferment charge unless the default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract; provided, however, that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied, and any such installment shall not then be deferred or subject to the deferment charge. The deferment charge shall be excluded in computing any required rebate; however, if a rebate of charges originally added to the principal of the loan is required during a deferment period, then the borrower shall receive a rebate of the portion of the deferment charge applicable to any unexpired full months of the deferment period. The deferment charge may be collected at the time of deferment or at any time thereafter. After a deferment has been made the installments so deferred shall fall due in the same order as provided for by the contract originally and the portion of the charges originally added to the principal of the loan attributable to any such deferred installment shall be the same as was attributable to such installment originally. The deferment agreement may also provide for the payment by the borrower of any additional cost for continuing in force the deferred maturity insurance given as security for a loan.

(f) If any installment is not paid in full within seven days, Sundays and holidays included, after it is due, the licensee may charge and collect

~~at that time, or at any time thereafter, a default charge not to exceed five cents for each one dollar of such installment, but such default charge may be collected only once on any installment.~~

~~(g) If two or more full installments are in default for one full month or more at any installment due date, and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full on such installment due date. The amount remaining shall be deemed the unpaid principal balance. Thereafter the licensee may charge, collect and receive charges at monthly per centum rates not in excess of those in effect at the time the loan was made. Said charges shall be computed on the unpaid principal balances from time to time outstanding, applying all payments first to charges and the remainder, if any, to principal, until the loan is paid in full. When a contract has been adjusted as provided in this subsection, the charges shall not be subject to further rebate requirement nor shall any further default or deferment charges be made on such contract.~~

§ 6.1-271.1. Commission shall consider in execution of authority in § 6.1-271.—The Commission, in making the determinations or redeterminations set out in § 6.1-271 shall:

(a) Classify such loans according to such systems of differentiation as may reasonably distinguish such classes of loan for the purpose of maximum rates of charge regulation under the provisions of this chapter.

(b) Establish the limit of term or terms for installment payments as set forth in § 6.1-285. Such limit of terms may vary in length dependent upon the classification of loans set forth in (a) above.

(c) Include, but not be limited to, consideration of the following:

(1) The annual report required by § 6.1-301 of this chapter;

(2) The total costs of operations and other expenses of the licensees;

(3) The total cost of equity capital, borrowed funds and other assets;

(4) The net earnings of licensees in this State as compared to licensees in other states engaged in the business of making consumer loans of similar classes and types as shown on the recapitulation of reports set forth in § 6.1-301 and like reports in other states as measured by:

(i) The percent of net earnings in relation to the average total assets used and useful;

(ii) The percent of net earnings in relation to the total average net worth;

(5) The net earnings in relation to the total average net worth of licensees in this State as shown by the recapitulation of reports set forth in § 6.1-301 compared to the net earnings in relation to the average net worth employed in other businesses and industries;

(6) The Consumer Price Index (CPI) compiled by the Bureau of Labor Statistics, United States Department of Labor;

(7) Such other relevant information as the Commission may reasonably require or need for its determination of the condition of such business and the availability of such loans.

§ 6.1-277. Method of computing charges.—*(a)* When charges on loans

are calculated under the per-centum-per-month method ~~authorized by sub section (1) of § 6.1 271~~, they shall not be paid, deducted, or received in advance, nor compounded. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract shall not include any unpaid charges on the prior loan except such charges which have accrued within sixty days before the making of the new loan contract but may include any unpaid balance remaining after giving any required rebate. The inclusion of these charges shall not be made oftener than once each six months, the six months' period to be computed from the date of entering into the new loan contract; and the foregoing privilege is intended for the convenience of the borrower and is not to be construed or applied to validate a general course of dealings by a licensee with the intent and for the purpose of profit. Except where the charges are expressed and computed on a dollar-add-on basis, charges on loans shall (1) be computed and paid only as a percentage per month of the unpaid principal balance or portion thereof; (2) be so expressed in every obligation signed by the borrower, and (3) be computed on the basis of the number of days actually elapsed. For the purpose of computing charges, whether at the maximum rate or less, a month shall be that period of time from one date in a month to the corresponding date in the following month but if there is no corresponding date then to the last day of such following month and a day shall be one thirtieth of a month where computation is made for a fraction of a month.

(b) In lieu of computing charges at the monthly rate upon unpaid principal balances from time to time outstanding, a licensee may, when the loan contract is repayable in substantially equal installments of principal and charges combined, compute charges in terms of dollars per one hundred dollars per year and proportionately for longer or shorter periods of time, on the original principal at the time the loan is made for the full term of the loan contract from the date of making to the date of maturity without regard to any requirement for installment payments, and such charges so computed shall be added to the principal of the loan.

Where the charges contracted for are in terms of dollars per one hundred dollars per year, the provisions of the following subsections (a) through (g) shall apply:

(1) The charge shall be computed on the original principal at the time the loan is made for the full term of the contract from the date of making to the scheduled due date of the final installment without regard to any requirement for installment payments. When so computed, the charges shall be added to the principal of the loan and the face amount of any note or contract may, notwithstanding any other provisions, exceed the then established size of loan ceiling by the amount of charges so added to the original principal amount, but if such loan contract is prepaid in full prior to maturity by cash, a new loan or otherwise, the portion of the charges originally added to the principal of the loan attributable to the installments following the date of prepayment in full shall be rebated.

(2) All payments made on account, except those applied to default or deferment charges, shall be deemed to be applied to the unpaid installments in the order in which they are due and the acceptance or payment of charges where such charges are added to principal as authorized herein shall not be deemed to constitute payment, deduction or receipt thereof in advance nor compounding under (1) hereof.

(3) The amount of charges originally added to the principal of the loan applicable to any particular monthly installment period shall be that

proportion of such charges, excluding any adjustment for a first installment period of more than one month, which the balance of the contract scheduled to be outstanding during such monthly period bears to the sum of all the monthly balances originally scheduled to be outstanding.

(4) Notwithstanding the requirement for substantially equal consecutive monthly installments, a first installment period may exceed one month by as much as fifteen days and the charges for each day exceeding one month shall be one thirtieth of the charges which would be attributable to a first installment period of one month. The charges for such extra days in a first installment period may be added to the first installment and shall be excluded in computing any required rebate.

(5) If, as of an installment due date, the payment dates of all wholly unpaid installments are deferred for one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge which shall not exceed the amount of the charges originally added to principal attributable to the first of the deferred installments multiplied by the number of months in the deferment period. The deferment period is that period of time in which no scheduled payment has been made or in which no payment is required by reason of the deferment. No installment on which a default charge has been collected or on account of which any partial payment has been made, shall be deferred or included in the computation of a deferment charge unless the default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract; provided, however, that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied, and any such installment shall not then be deferred or subject to the deferment charge. The deferment charge shall be excluded in computing any required rebate; however, if a rebate of charges originally added to the principal of the loan is required during a deferment period, then the borrower shall receive a rebate of the portion of the deferment charge applicable to any unexpired full months of the deferment period. The deferment charge may be collected at the time of deferment or at any time thereafter. After a deferment has been made the installments so deferred shall fall due in the same order as provided for by the contract originally and the portion of the charges originally added to the principal of the loan attributable to any such deferred installment shall be the same as was attributable to such installment originally. The deferment agreement may also provide for the payment by the borrower of any additional cost for continuing in force the deferred maturity insurance given as security for a loan.

(6) If any installment is not paid in full within seven days, Sundays and holidays included, after it is due, the licensee may charge and collect at that time, or at any time thereafter, a default charge not to exceed five cents for each one dollar of such installment, but such default charge may be collected only once on any installment.

(7) If two or more full installments are in default for one full month or more at any installment due date, and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full on such installment due date. The amount remaining shall be deemed the unpaid principal balance. Thereafter the licensee may charge, collect and receive charges at monthly per centum rates not in excess of those in effect at the time the loan was made. Said charges shall be computed on the unpaid principal balances from time to

time outstanding, applying all payment first to charges and the remainder, if any, to principal, until the loan is paid in full. When a contract has been adjusted as provided in this subsection, the charges shall not be subject to further rebate requirement nor shall any further default or deferment charges be made on such contract.

§ 6.1-280. Advertising.—No licensee or other person subject to this chapter shall 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 in the amount or of the value of ~~one thousand dollars or less~~ *the then established size of loan ceiling*. 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, and it 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.

§ 6.1-285. Installment payments.—No licensee shall enter into any contract of loan under this chapter providing for installment payments extending more than ~~twenty one~~ *the number of* calendar months from the scheduled date of making the contract *pursuant to the provisions of § 6.1-271.1(b)*. ~~for loans of six hundred dollars or less in principal amount, and thirty one calendar months from the date of making the contract for loans in excess of six hundred dollars in principal amount, and~~ Every contract shall provide for repayment of the amount loaned in substantially equal installments, either of principal or of principal and charges in the aggregate, at approximately equal periodic intervals of time. But nothing contained in this chapter shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

§ 6.1-286. Limitation on borrower's or surety's indebtedness.—No licensee shall permit any person, as borrower, or as endorser, guarantor or surety for any borrower, or otherwise, or any husband and wife, jointly or severally, to become obligated, directly or contingently, or both, (a) to the licensee at any time in a sum of more than ~~one thousand dollars~~ *the then established size of loan ceiling,* in principal ~~nor (b) under more~~ than one contract of loan at the same time for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this chapter; provided, however, if a licensee purchases all, or substantially all, the loan contracts of another licensee and has at the time of the purchase loan contracts with one or more of the borrowers whose loans are purchased, the purchaser shall be entitled to collect the principal and charges according to the terms of each loan contract, but the purchaser shall not refinance or make a new loan to any such borrower except in accordance with the provisions of this chapter.

If two or more licensees are under the same ownership, or under common control, then such of their offices as are located in the same political subdivision of the State, or within five miles of each other, shall be treated as one licensee for the purpose of this section.

§ 6.1-287. Combining to obtain higher rate than permitted a single borrower.—No licensee shall combine or conspire with another licensee to cause the same person, or a husband and wife, to borrow less than ~~one thousand dollars~~ *the then established size of loan ceiling* from each of them for the purpose of requiring the payment of a higher rate of charge than would be permitted if one of said licensees had loaned all, or as much

as ~~one thousand dollars~~ *the then established size of loan ceiling*, of, the amounts borrowed from both licensees.

§ 6.1-288. **Wage purchases.**—The payment of ~~one thousand dollars~~ *the then established size of loan ceiling*, or less in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan of money secured by the sale, assignment or order, and the amount by which the compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid shall for the purpose of this chapter be deemed interest or charges upon the loan from the date of the payment to the date the compensation is payable, which amount shall not, in any case, be more than is sufficient to yield, to the licensee making the loan, interest on his investment at the rate of ten per centum per annum. Such transaction shall in all other respects be governed by and subject to the provisions of this chapter.

§ 6.1-291. **Collection of loans made outside State.**—No loan made outside this State in the amount of ~~one thousand dollars~~ *the then established size of loan ceiling* or less for which the greater rates of interest, consideration or charges, than is permitted by the law applicable to such loan in the state in which the loan was made, has been charged, contracted for, or received shall be collected in this State and every person in anywise participating in an effort to enforce the collection of such loan in this State shall be subject to the provisions of this chapter.

§ 6.1-294. **Investigations generally.**—For the purpose of discovering violations of this chapter or securing information lawfully required under it, the Commission or its duly authorized representative may at any time investigate the loans, books and records of any person who is engaged, or appears to the Commission to be engaged, in the business of making small loans as defined and described in, and required to be licensed and supervised under, this chapter, particularly in § 6.1-249, or who advertises for, solicits, or holds himself out as willing to make, loans in amounts of ~~one thousand dollars~~ *the then established size of loan ceiling* or less, or who ~~the Commission~~ has reason to believe is violating any provision of this chapter, whether such person shall act or claim to act under or without the authority of this chapter, or as principal, agent, broker or otherwise. In furtherance of the investigation the Commission through its duly authorized representatives shall have and be given free access to the offices, places of business, books, papers, accounts, records, files, safes, and vaults of all such persons, and shall have authority to require attendance of witnesses and to examine under oath any person whose testimony may be required relative to any such loans or business or to the subject matter of the investigation, examination or hearing.

2. § 6.1-272, as amended, of the Code of Virginia is repealed.

3. The State Corporation Commission shall promulgate rules and regulations pursuant to this act prior to September one, nineteen hundred seventy-four and hold a public hearing thereon. Such rules and regulations shall be effective on or after October one, nineteen hundred seventy-four.

4. This act shall be effective on October one, nineteen hundred seventy-four except as to the enacting clause numbered three which shall be effective on July one, nineteen hundred seventy-four.

A BILL

To amend and reenact §§ 6.1-320 and 6.1-330 as amended, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-321.1; the amended and added sections relating to the rate of interest allowed to banks and brokers in certain transactions and to interest charges on loans secured by mortgages or deeds of trust, other than first mortgages or deeds of trust, on certain real property and broker's charges on loans secured by junior mortgages.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-320 and 6.1-330, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 6.1-320. Rate allowed to banks, brokers, etc.—Any bank, or any broker duly licensed to transact business as a stockbroker or as a broker dealing in options and futures under the provisions of Title 58, may loan money or discount bonds, bills, notes or other paper at a rate not exceeding one half of one per centum for thirty days, and may charge a minimum loan or discount fee of five dollars on loans or discounts, which minimum fee may not be charged on a renewal except after the passage of ninety days after the last imposition of such minimum charge, and may receive such interest in advance; provided, however, that any bank may charge in advance the legal rate of ~~interest~~ *seven percent per annum* upon the entire amount of any loan payable ~~in~~ weekly, monthly or other periodical installments, and any note evidencing such an installment loan may provide that the entire unpaid balance thereof, at the option of the holder, shall become due and payable upon default in payment of any stipulated installment, without impairing the negotiability of such note, if otherwise negotiable; and provided, further that any bank may charge a rate not exceeding one per centum per month on daily balances, or on maximum calendar or fiscal monthly balances, under a written contract for revolving credit on any plan which permits an obligor to avail himself of the credit so established, and may also charge as a service fee a sum not exceeding twenty-five cents for each check, draft or other order on the credit so established; and provided, further, that agricultural credit corporations or associations organized under the laws of this State may charge interest or discount on loans made for agricultural purposes at a rate not exceeding one and one-half per centum per annum in excess of the rate charged such agricultural credit corporations or associations by federal intermediate credit banks, at the time such loans are made, or said agricultural credit corporations or associations may in their discretion charge the rate of interest prescribed by § 6.1-318 and in either case, such agricultural credit corporations or associations may charge a minimum loan or discount fee of five dollars on loans or discounts for thirty days or more and may receive such interest or discount in either case in advance.

§ 6.1-321.1. Broker's charges on loans secured by junior mortgages.—(a) Where a loan is made by any lender licensed by and under the supervision of the State Corporation Commission or the federal government and the lender has authority to charge in advance on the entire amount of the loan the rate of seven per cent interest per annum, plus an investigation fee as authorized by statute, if such loan is secured in whole or in part by a mortgage or deed of trust, other than a first deed of trust, on residential real estate improved by the construction thereon of houses consisting of four or less family dwelling units, a broker's or finder's fee may be paid by the lender from the interest or investigation fee permitted

under this title or may be paid by the borrower if the total interest, investigation fees, broker's fees, finder's fees and commissions do not exceed the amount of interest and investigation fee permitted by statute. Such broker's or finder's fees, commissions fees and charges shall be considered in determining whether the contract for the loan or forbearance of money or other thing is lawful within the meaning of this title and under the provisions of § 6.1-325 and § 6.1-326.

(b) Late charges in the amount specified in § 6.1-2.2 may be made. Upon default the borrower may be subject to court costs, attorney's fees, trustee's commission and other expenses of collection as otherwise permitted by law.

§ 6.1-330. Interest and charges on loans secured by mortgages or deeds of trust, other than first mortgages or deeds of trust, on certain real property; borrower may anticipate payment of debt.—(a) No person, copartnership, association, trust, corporation, or other similar legal entity shall directly or indirectly charge, take or receive for a loan secured in whole or in part by a mortgage or deed of trust other than a first mortgage or deed of trust, on residential real estate improved by the construction thereon of housing consisting of four or less family dwelling units, an amount in excess of seven per centum interest per annum. Such interest may be charged in advance upon the entire amount of the loan, and such loans may be repaid in weekly, monthly or other periodical installments, with the privilege to the lender to declare the entire unpaid balance due and payable in the event of default in the payment of any installment for a period of thirty days; and the lender may also charge an investigation fee not exceeding two per centum of the amount of the loan. As used in this section the phrase "charge in advance" when applied to installment loans means that interest may be added to the principal amount of the loan but may not be deducted from it. These provisions shall apply whether payable directly to the lender or to a third party in connection with such loan. Provided, further, that the said rates of charge shall not be made more often than once each eighteen months by a renewal or additional loan. The borrower shall have the right to anticipate payment of his debt in whole or in part at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the generally named Rule of 78 as illustrated in § 6.1-330.5.

(b) In addition to the investigation fees and interest permitted by subsection (a) hereof, any such lender may also require the borrower to pay the actual cost of title examination, title insurance, recording fees, surveys, attorneys' fees, and appraisal fees. No other charges of any kind shall be ~~made~~ *imposed on or be payable* by *the borrower either to* the lender or any other party in connection with such loan*; provided, however, late charges in the amount specified in § 6.1-2.2 may be made and, upon default, the borrower may be subject to court costs, attorney's fees, trustee's commission and other expenses of collection as otherwise permitted by law.* Broker's or finder's fees may be paid by the lender from the interest or investigation fee permitted hereunder or may be paid by the borrower if the total interest, investigation fees, broker's fees, finder's fees or commissions do not exceed the amount of interest and investigation fee permitted hereunder.

A BILL

To amend the Code of Virginia by adding in Title 6.1 a section numbered 6.1-324.1, relating to oral or written communications of interest rates.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 6.1 a section numbered 6.1-324.1 as follows:

§ 6.1-324.1. (a) Any bank, savings and loan association or other legal entity regularly engaged in loaning money or extending consumer credit as defined in 15 United States Code shall quote the cost of such credit to a prospective debtor or borrower in terms of an annual percentage rate and not solely in terms of an add-on or discount rate, in any oral or written communication or advertisement and in oral response to an inquiry from a potential debtor or borrower concerning the cost of such credit. Computation of the annual percentage rate pursuant to the provisions of 15 *United States Code Annotated* § 1606 shall be deemed to be in compliance with this section with respect to such computation.

(b) Any such bank, savings and loan association or other legal entity which makes a loan or extends credit in violation of the provisions of this section shall be liable to the debtor or borrower for twice the amount of the finance charges, but in no event less than one hundred dollars or more than one thousand dollars, if an action to enforce such penalty is commenced within one year from the date of the alleged violation. No penalty shall be assessable or recoverable where a penalty is properly assessable under the provision of 15 *United States Code Annotated* § 1640.

A BILL

To amend and reenact § 6.1-195.34, as amended, of the Code of Virginia, relating to the investment of assets of a savings and loan association.

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-195.34, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 6.1-195.34. Investment of assets.—The assets of an association may be invested in the following ways and in such ways only:

(a) In real estate and in equipment necessary for the conduct of its business and in real estate to be held for its future accommodation. Such association may invest in an office building or buildings and appurtenances for the transaction of such association's business, or for the transaction of such business and for rental, provided that no such investment may be made without the prior approval of the Commission if the total amount of the investment exceeds the aggregate amount of the association's general reserve and surplus. In the case of stock associations, the capital stock account, to the extent that the capital has not been impaired, shall be treated as a part of general reserve.

(b) In obligations of or obligations guaranteed as to principal and interest by the United States or any agency thereof, or of the State of Virginia or any of its political subdivisions.

(c) In stock or obligations of the Federal Home Loan Banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation; in stock or obligations of the Federal National Mortgage Association, the Government National Mortgage Association or any successor or successors thereto; in certificates of deposit, time deposits, savings accounts, or demend deposits of banks insured by the Federal Deposit Insurance Corporation; and, to the extent of not more than fifteen percent of its total assets, in savings accounts of other insured State or federal associations.

(d) In the purchase of stock or membership in industrial development corporations and in loans to such corporations to the extent provided by law at any time that the general reserves, surplus and undivided profits of the association aggregate a sum in excess of five per centum of its withdrawable accounts.

(e) In the purchase of stock and other securities or obligations of a service corporation or corporations in accordance with rules and regulations promulgated by the Commissioner which are now in effect and as they may be hereafter amended. Such investment shall not exceed one per centum of the assets of the association unless the Commissioner, with the approval of the Commission, shall find that additional such investment is required in order to allow service corporations in which State associations own all or part of the capital stock to be comparable with those owned by federal associations. Provided, however, that the Commissioner may not allow such investments in excess of five percent of an association's assets. Stock in a Federal Home Loan Bank shall not be considered stock of a service corporation within the meaning of this section.

(f) In such stock, securities and other obligations as may be approved from time to time by the Commissioner.

(g) In loans fully secured by savings accounts of the association.

(h) In loans secured by first liens on improved real estate. Except as

hereinafter provided, no such loans shall exceed ~~forty five~~ *fifty-five* thousand dollars on each home or combination of home and business property securing the same. No such loan shall exceed ninety per centum of the value of the real estate up to fifty thousand dollars as appraised by a competent appraiser. Provided, that loans insured or guaranteed by a federal agency may be made on such terms as are acceptable to the insuring or guaranteeing agency and provided further that an association may fully participate in such other housing programs which have been approved for investment by federal associations as may be permitted from time to time by the Commissioner. At least sixty per centum of the assets shall be invested in loans under this subsection, unless, because of exceptional conditions in the real estate market, the Commission permits an association to deviate from this requirement.

Every such loan shall provide that the borrower shall make regular periodic payments of principal and interest, in equal or unequal amounts, the first payment being due not later than eighteen months from the date of the first advance in the case of a loan made for the purpose of financing the construction of a home or a combination home and business structure and sixty days from the date of the loan in the case of other loans, until the mortgage indebtedness and the disbursements, if any, made by the association for the payment of taxes, insurance premiums, and other items, together with interest thereon, have been fully paid; provided, however, that the loan contract shall not require any subsequent periodic payment of principal to be greater than any previous periodic payment of principal. No such loan shall be for a longer term than thirty years. Loans insured or guaranteed by a federal agency may be repayable upon such terms as are acceptable to such agency. The association may compute, charge, and collect interest on monthly balances by computing the same on the preceding monthly balance and adding such interest to that balance and adding advances for taxes, insurance and other lawful charges accruing since the preceding balance, and subtracting payments made by borrower.

An association may make a loan in excess of forty-five thousand dollars under this subsection provided that it is included in the twenty per centum of assets limitation of subsection (k) of this section to the extent of such excess for so long as the principal amount of such loan exceeds forty-five thousand dollars.

(i) Up to twenty per centum of the assets may be invested in secured or unsecured loans for maintenance, repair, alteration, modernization, landscaping, improvement, furnishing, and equipment of improved real estate or other improved real estate. Such loans shall be payable monthly and shall not be for a term longer than eight years and shall not exceed ten thousand dollars; provided, that any such loan that is accepted for insurance under the provisions of the National Housing Act or for insurance or guarantee under the provisions of the Serviceman's Readjustment Act of 1944 or Chapter 37 of Title 38, United States Code, may be made for such amount and repayable upon such terms and within such periods as are acceptable to the insuring or guaranteeing agency.

An association may charge and collect in advance ~~the legal rate of interest~~ *seven percent per annum* upon the entire amount of the loan.

(j) Up to five per centum of the assets may be invested in loans on mobile homes, provided that such loan must be secured by a first lien on such mobile home, and the mobile home must be maintained as a residence of the borrower or a relative of the borrower, and the mobile home must be located in a park or on other real estate within the association's regular

lending area. Such loans shall be payable monthly, and shall not be for a term longer than twelve years on new homes and eight years on used homes.

An association may charge and collect in advance the legal rate of interest upon the entire amount of such loan.

(k) Up to twenty per centum of the assets may be invested in other loans secured by a first lien on improved real estate or other improved real estate. No such loans shall be for a term longer than thirty years nor in excess of seventy-five per centum of the value of the real estate as appraised by a competent appraiser, except that such loans may be made not in excess of eighty per centum of the value of the real estate as appraised by a competent appraiser if it is real estate upon which is located or will within twelve months be located one or more single family dwellings or dwelling units for not more than four families in the aggregate.

(l) Up to five per centum of the assets may be invested in other loans secured by a first lien on unimproved real estate.

(m) Up to five per centum of the assets may be invested in loans, obligations, and advances of credit made for the payment of expenses of college or university education. Such loans may be secured, partly secured, or unsecured, and the association may require a comaker or comakers, insurance, guarantee under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of college or university education. For the purpose of this section, the term "college or university education" means education at an institution which provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for a full credit towards such a degree.

(n) Any loan made under the provisions of this section for the purpose of construction may be combined into a single loan with the permanent financing, and the term of the permanent financing should be considered to begin at the end of the term allowed for construction, provided, that the construction loan is not for a term more than thirty-six months.

(o) The Commissioner, with the approval of the Commission, may by regulation change any of the above categories of investments as to the amount, duration or terms thereof and in addition may by regulation adopt other categories of loans or investments which may be made and he may place such limitations upon the same as he may deem necessary. It is the purpose of this subsection that the Commissioner, with the approval of the Commission, allow such investments under such terms and conditions as he may deem necessary to permit a State association to have powers comparable with those allowed to federal associations. Such regulations shall be effective upon their adoption and shall continue in effect until amended by the Commissioner or revoked by action of the General Assembly of Virginia. Any investment made by an association which was in compliance with the law or regulations of the Commissioner in existence at the time such investment was made will remain a legal investment even though the power to make such investments in the future is amended by regulation.

A BILL

To amend the Code of Virginia by adding a section numbered 6.1-319.2, so as to provide for interest to be charged by lenders on loans secured by savings account or certificates.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 6.1-319.2 as follows:

§ 6.1-319.2. Notwithstanding the provisions of § 6.1-319, any bank, savings and loan association or other lending institution licensed and supervised by this State or the federal government may charge a rate of interest on any loans secured in full solely by a passbook savings account, a savings certificate, a certificate of deposit or any other evidence of savings account which is not in excess of three percent above the rate of interest paid to the depositor on such account or certificate.