

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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AT RICHMOND, AUGUST 4, 2009

CLERK'S OFFICE

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DOCUMENT CONTROL

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. BFI-2009-00344

Ex Parte: In the matter of adopting
rules for the conduct of other business
in payday lending offices

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 6.1-458 of the Code of Virginia provides that the Commission shall promulgate such rules and regulations as it deems appropriate to effect the purposes of the Payday Loan Act ("Act"), § 6.1-444 et seq. of the Code of Virginia. The regulations issued by the Commission pursuant to the Act are set forth in Title 10 of the Virginia Administrative Code.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to the regulation set forth at 10 VAC 5-200-100 of the Virginia Administrative Code, entitled "Other business in payday lending offices." The impetus for the proposed amendments was legislation enacted during the 2009 session of the Virginia General Assembly. Chapters 784 and 860 of the 2009 Acts of Assembly provide in pertinent part that licensed payday lenders are generally prohibited from engaging in the extension of credit under an open-end credit or similar plan described in § 6.1-330.78 of the Code of Virginia, and third parties are generally prohibited from engaging in the extension of credit under an open-end credit



or similar plan described in § 6.1-330.78 at any office, suite, room, or place of business where a licensed payday lender conducts the business of making payday loans. The legislation does not prohibit an extension of credit under an open-end credit or similar plan if it is secured by a security interest in a motor vehicle.

Since the legislation enacted by the General Assembly impacts § 6.1-463 of the Code of Virginia and 10 VAC 5-200-100, the Bureau is proposing that the Commission modify its other business regulation by establishing a set of uniform conditions that would be applicable to licensed payday lenders and third parties making open-end loans secured by a security interest in a motor vehicle from one or more payday lending offices. The Bureau is also proposing that the Commission incorporate into its regulation the conditions that have been attached to other types of businesses that may be conducted from payday lending offices, such as acting as an agent of a money transmitter or providing tax preparation services. The conditions identified in the proposed regulation are derived from Commission orders approving the conduct of other business in payday lending offices. If adopted by the Commission, the conditions in the regulation would generally supersede the conditions set forth in the approval orders that were entered by the Commission prior to the effective date of the amended regulation.

Apart from setting forth by regulation the conditions applicable to the conduct of other business in payday lending offices, the Bureau is also proposing to amend 10 VAC 5-200-100 by specifying additional findings that the Commission would need to make before approving an application to conduct other business in a licensee's payday lending offices. The Bureau is also proposing to expressly provide that failure to comply with applicable laws or conditions may result in revocation of a licensee's other business authority, fines, suspension or revocation of a payday lender's license, or other appropriate enforcement action.

While interested persons may submit comments on any aspect of the proposed regulation, commenters addressing the provisions relating to open-end loans secured by a security interest in a motor vehicle are specifically requested to submit comments on (i) whether a licensee or third party making such loans should be required to record its security interest with the Department of Motor Vehicles, and (ii) whether a licensee or third party should be prohibited from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien.

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of December 1, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation entitled "Other business in payday lending offices," which amends 10 VAC 5-200-100, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before October 30, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118 and shall refer to Case No. BFI-2009-00344. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website, <http://www.scc.virginia.gov/case>.

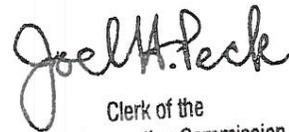
(3) If no written request for a hearing on the proposed regulation is filed on or before October 30, 2009, the Commission, upon consideration of any comments submitted in support of

or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, <http://www.scc.virginia.gov/case>.

AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall mail a copy of this Order, together with the proposed regulation, to all licensed payday lenders and other interested parties designated by the Bureau.

A True Copy
Teste:


Clerk of the
State Corporation Commission

OTHER BUSINESS IN PAYDAY LENDING OFFICES

10VAC5-200-100. Other business in payday lending offices.

A. This section governs the conduct of any business other than payday lending where a licensed payday lending business is conducted. As used in this section, the term "other business operator" refers to a licensed payday lender or third party, including an affiliate of the licensed payday lender, who conducts or wants to conduct other business from one or more payday lending offices.

1. Pursuant to § 6.1-463 of the Code of Virginia, a licensee shall not conduct the business of making payday loans at any office, suite, room, or place of business where any other business is solicited or conducted except a registered check cashing business or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. Notwithstanding any provision of this section or order entered by the commission prior to December 1, 2009, the following other businesses shall not be conducted from any office, suite, room, or place of business where a licensed payday lending business is conducted:

a. Selling insurance or enrolling borrowers under group insurance policies.

b. Making loans under an open-end credit or similar plan as described in § 6.1-330.78 of the Code of Virginia, unless the loans are secured by a security interest in a motor vehicle, as this term is defined in § 46.2-100 of the Code of Virginia.

3. Pursuant to § 6.1-439 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter 17 (§ 6.1-432 et seq.) of Title 6.1 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed payday lending business is conducted, unless the person is licensed under, and the loans are made in accordance with, the Act.

B. Upon the filing of a written application, provision of any information relating to the application as the Commissioner of Financial Institutions may require, and payment of the fee required by law, and subject to approval by the commission and the imposition of such conditions as the commission deems necessary and in the public interest, other business may be conducted in a location where a licensed payday lending business is conducted if the commission determines finds that such (i) the proposed other business is financial in nature, except the selling of insurance or the enrolling of borrowers under group insurance policies; (ii) the proposed other business is in the public interest; (iii) the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; and (iv) the applicant has been operating its payday lending business in accordance with the Act and this chapter. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

C. ~~Nothing contained herein shall apply to any nonfinancial~~ Nonfinancial other business may be conducted pursuant to any order of the commission entered on or before June 15, 2004. However, this subsection shall not be construed to authorize any

person to begin engaging in such other business at payday lending locations where such other business was not conducted as of June 15, 2004.

D. Written evidence of commission approval of each other business conducted by ~~any payday lender licensee~~ an other business operator should be maintained at each location where such other business is conducted.

E. Except as otherwise provided in subsection N of this section, all approved other businesses in payday lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's payday lending offices.

2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service

from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's payday lending business and in a different location within the licensee's payday lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

F. If a licensee (i) received commission authority for an other business operator to conduct open-end credit business from the licensee's payday lending offices, or (ii) receives commission authority for an other business operator to conduct open-end auto title lending business from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. Any loan made by the other business operator pursuant to an open-end credit agreement shall be secured by a security interest in a motor vehicle, as defined in § 46.2-100.

2. The licensee shall not make a payday loan to a person if (i) the person has an outstanding open-end loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.

3. The other business operator shall not make an open-end loan to a person pursuant to an open-end credit agreement if (i) the person has an outstanding

payday loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the licensee.

4. The other business operator and the licensee shall not make an open-end loan and a payday loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a payday loan or open-end credit plan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.

G. If a licensee received or receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's payday lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

H. If a licensee received or receives commission authority for an other business operator to conduct the business of (i) tax preparation and electronic tax filing services, or (ii) facilitating third party tax preparation and electronic tax filing services, from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, arrange, or broker a payday loan that is secured by an interest in a borrower's tax refund, or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 12 of Title 6.1 of the Code of Virginia.

I. If a licensee received or receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a payday loan transaction.

2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a payday loan contemporaneously or in response to a single request for a loan or credit.

3. The licensee shall not make, arrange, or broker a payday loan that is secured by an interest in a borrower's tax refund, or in whole or in part by (i) any other

assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.

4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 12 of Title 6.1 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a payday loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.

J. If a licensee received or receives commission authority for an other business operator to conduct a consumer finance business from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a payday loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

2. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding payday loan from the licensee, or (ii)

on the same day the person repaid or satisfied in full a payday loan from the licensee.

3. The licensee and other business operator shall not make a payday loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a payday loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.

K. If a licensee received or receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's payday lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a payday loan from the licensee.

L. The commission may impose any additional conditions upon the conduct of other business in payday lending offices that it deems necessary and in the public interest.

M. Except as otherwise provided in subsection N of this section, the conditions set forth or referred to in subsections E through L of this section shall supersede the conditions set forth in the commission's approval orders entered prior to December 1, 2009.

N. If prior to December 1, 2009 a licensee received commission authority for an other business operator to conduct a business not identified in subsections F through K of this

section, the conditions that were imposed by the commission at the time of the approval shall remain in full force and effect.

O. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in the revocation of the authority to conduct other business, fines, license suspension, license revocation, or other appropriate enforcement action.