

Payday Pre\$\$

Regulatory News for Virginia Payday Lender Licensees
State Corporation Commission-Bureau of Financial Institutions



Volume 1

A Note from the Commissioner, E. J. Face, Jr.



I hope you enjoy reading the first issue of the Bureau's newsletter specifically directed to the payday lending industry. The purpose of the newsletter is to provide a forum whereby the Bureau can keep all interested parties informed as to our regulatory activities, procedures, policies, concerns, etc.

We welcome any comments, suggestions and (mild) criticisms. Please feel free to copy or reprint all or portions of this or any other newsletter. Our goal is to reach as many interested parties as possible. We do ask that information be copied or reprinted in whole and not taken out of context. My thanks to Deputy Commissioner Susan Hancock and her staff for coordinating and preparing the newsletter.

The Payday Pre\$\$ is published by the Bureau of Financial Institutions and is part of its efforts to improve communication with the companies we regulate. It is distributed to Virginia payday lender licensees and other interested parties. It is the licensee's responsibility as a Virginia payday lender licensee to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, Virginia 23218-0640 or via e-mail at: nwalker@scc.state.va.us.

Special thanks to Commissioner Face, Deputy Commissioner Hancock, Todd Rose and Jane Owen for their contributions to this issue!

New Regulation 10 VAC 5-200-100 **Other Business in Payday Lending Office**

A copy of this new regulation was mailed to the main offices of all licensed payday lenders on June 16, 2004. The regulation, which went into effect on June 15, 2004, states that payday lender licensees must obtain approval from the Commission before conducting an "other business." The business of check cashing by registered check cashers is not subject to the regulation. The other business may be approved only if it is financial in nature, which is defined as a business that "...primarily deals with the offering of debt, money or credit, or services directly related thereto." The selling of insurance or the enrolling of borrowers under group insurance policies is prohibited in payday lending offices.

Licensees must file a written application and pay a \$300 fee for each request for other business approval. The Commission may impose conditions on the business if the Commission deems them necessary and in the public interest. Each licensed location is encouraged to maintain a copy of the Commission approval for each other business conducted from their location.

Licensees who obtained Commission approval for a non-financial other business prior to June 15, 2004 may continue to engage in such other business *only at those locations where such business was conducted as of June 15, 2004.*

PL Law Changes Effective July 1, 2004

Section 6.1-453 of the Code of Virginia titled “Retention of books, accounts and records” was recently amended. The change requires payday lender licensees to retain copies of the checks given to a licensee as security for loans.

Changes were also made to §6.1-459 (1) (v) . The changes, which went into effect on July 1, 2004, are typed in *italics* below. The changes clarify that after maturity, interest can accrue *on the amount advanced* at a rate of no greater than 6% per year. Section 6.1-459 (17) was also changed and now reads, “A borrower shall be permitted to make partial payments, in increments of not less than \$5, on the loan at any time *prior to maturity* without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan. *Upon repayment of the loan in full, the licensee shall mark the original loan agreement with the word “paid” or “canceled,” return it to the borrower and retain a copy in its records.*” Please note that the statement that requires licensees to accept partial prepayments prior to maturity does not prohibit companies from accepting partial payments **after** maturity subject to applicable laws and regulations, licensees can determine their own post-maturity payment policies and procedures.

The revised statutes can be found on the Bureau’s web site: www.state.va.us/scc/division/banking/adminrules

Bureau Issues Position on Additional Security

On February 24, 2004, the Bureau issued Administrative Letter BFI-AL-1801 titled “Prohibition on Additional Security for Payday Loans.” It is the Bureau’s position that a payday lender licensee is prohibited from requiring or accepting from a borrower any pre-authorization to debit or transfer funds out of the borrower’s deposit account (i.e., via EFT, ACH or other means) in order to collect any amount that will or may become due on a payday loan (including the amount of the check and charges permitted under §6.1-461 of the Code of Virginia).

It is the Bureau’s view that accepting an authorization of this nature in advance of amounts becoming due constitutes impermissible additional security, in violation of §6.1-459 (10) of the Code of Virginia and 10 VAC 5-200-70 C.

Payday lender licensees should also be aware that §6.1-459 (10) prohibits them from taking or accepting any form of assignment of income as security for a payday loan, including an interest in a refund of federal, State or local income taxes that is due to a borrower.

Invoices are Coming!

Be on the lookout for annual fee invoices in mid-September. Section 6.1-457 of the Code of Virginia allows the Commission to collect annual fees from licensees to defray the cost of examination, supervision and regulation by the Bureau of Financial Institutions. By law, invoices must be mailed by September 15, and payment is due on or before October 15 of each year.

Annual fees are based on the number of offices operated by each licensee as of December 31 (\$300 per office) and the number of payday loans made during the previous year (\$.18 per loan). The assessments are calculated using information provided in the annual report.

The annual fee is separate from any reimbursement for expenses the Bureau will require when examinations are conducted at locations outside of the Commonwealth of Virginia (Ref. §6.1-457B).

Failure to pay the annual fee by the due date can result in the suspension or revocation of the payday lending license issued by the Commission, pursuant to §6.1-464 or fines pursuant to §6.1-467.



Orientation for Payday Lender Licensees



The Bureau's second orientation for payday lenders is scheduled for Friday, October 29, 2004. Attendance at the orientation is mandatory for those companies who did not attend the previous orientation on March 21, 2003. Please mark your calendar and make arrangements for the person responsible for your company's compliance policy to attend. Licensees who attended previously may attend this session if space is available and if you register with our office by October 25, 2004. Bureau staff will provide attendees with information concerning laws, regulations and administrative letters, as well as information concerning licensing, consumer complaints, examination procedures and common violations found.

Registration packets will be sent in early October to payday lending companies licensed after January 14, 2003 and will include a registration form (to be completed and faxed to the Bureau), program agenda, information on hotels in the area, directions to the Commission and accessible parking areas. Due to limited seating, we may need to limit the number of attendees to one representative from each company.

Please contact Carol Foster or Jane Harris at (804) 371-9701 if you have questions concerning the orientation.



Go to www.state.va.us/scc/division/banking for links to the statutes, regulations, Administrative Letters, list of licensed payday lenders, application forms, Consumer Guide to Payday Lending and this newsletter.

Payday Lending Statistics

The State Corporation Commission, through its Bureau of Financial Institutions (the Bureau), began regulating the payday loan industry on July 1, 2002 pursuant to Chapter 18, Title 6.1 of the Code of Virginia (Payday Loan Act) and specific regulations promulgated thereunder (10VAC5-200-10 et seq.) Regulation includes the investigation of applications for licenses, examination of licensees, investigation of complaints, promulgation of regulations, issuance of cease and desist orders, and enforcement (imposition of fines and suspension or revocation of licenses).

Since July 1, 2002, the Bureau received and investigated 97 applications for payday loan licenses, 358 applications for additional offices, 31 applications for relocating existing offices, and 59 applications for permission to conduct other business in payday loan offices, for a total of 545 applications. The Commission denied two applications for payday loan licenses, three applicants withdrew their applications, and three applications were returned for completion.



At the end of December 2002 there were 49 licensed payday lenders in Virginia operating 377 offices statewide, increasing to 69 licensees and 596 offices at the end of December 2003. As of September 8, 2004, there were 74 payday lenders with 615 offices operating in Virginia. Since the law went into effect, six payday lenders have surrendered their licenses.

Sixty-seven examinations of licensed payday lending companies have been completed as of September 8, 2004. These examinations included visits by Bureau staff to each licensed office of the payday lender, totaling more than 500 offices around the Commonwealth.

The largest concentration of payday lending offices is in the Tidewater metropolitan area, followed by the Richmond metro area. Currently, there are 219 payday loan offices in the Tidewater metropolitan area, 90 in the Richmond metro area, 45 in the Northern Virginia metro area, 33 in the Roanoke metro area, 31 in the Lynchburg metro area and 48 in Southside Virginia (South Boston to Martinsville).

Please Distribute!

We receive numerous phone calls from branch personnel with questions regarding changes in the laws, regulations and/or items clarified in issues of this newsletter. We often refer callers to sections of the law, regulations, or the newsletter, but we are told that they did not receive a copy. Payday lender licensees should be aware that mailings from the Bureau are sent only to the main office. Branches are not included in the Bureau's mailing list and do not receive mailings from the Bureau. It is the responsibility of main office personnel to distribute this



information to all affected branches and employees. Additional copies of the law books may be obtained by contacting the publisher, LexisNexis Matthew Bender & Company at 1-800-446-3410. The 2004 Edition of the Laws of Virginia Related to Non-Depository Financial Institutions is also available on disk from the publisher. Copies of Virginia Regulations, Administrative Rulings and issues of this newsletter are available on our web site (see address on page 3) and may be copied or reprinted for distribution to others. We do ask, however, that information be copied or reprinted in their entirety, to alleviate the potential for items to be taken out of context. PLEASE MAKE SURE ALL PERSONNEL ARE PROVIDED THE OPPORTUNITY TO STAY CURRENT WITH ALL REGULATORY ISSUES SINCE FAILURE TO DO SO COULD RESULT IN VIOLATIONS OF LAW AND THE POSSIBILITY OF REGULATORY ACTION.



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IMPORTANT REGULATORY INFORMATION ENCLOSED!