

Consumer Financial Regulation: Virginia

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A Q&A guide to the regulation of consumer finance in Virginia. This Q&A addresses state-specific laws governing the offering and sale of consumer financial products and services, including credit cards, residential mortgages, and consumer loans, and covers topics such as licensing, fair lending, and unfair and deceptive trade practices.

CONSUMER LENDING

1. Does your jurisdiction impose licensing requirements on financial institutions engaged in consumer lending services? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Describe the types of licenses required, such as company, branch, and individual licenses.
- Identify which types of entities are subject to the licensing requirement.
- List any exemptions from the licensing requirement, including minimum loan thresholds.

The following statutes and regulations govern the licensing of financial institutions engaged in consumer lending services in Virginia:

- Consumer Finance Companies Act (Va. Code Ann. §§ 6.2-1500 to 1543).
- Regulations of the Virginia State Corporation Commission (VSCC), Bureau of Financial Institutions (BFI), 10 Virginia Administrative Code 5-60-20 to 5-60-60.

STATE AGENCY

The BFI is responsible for enforcing these statutes and regulations.

TYPES OF LICENSES

The VSCC issues the following types of licenses:

- A license to engage in the business of making loans to individuals for personal, family, household, or other nonbusiness purposes as a consumer finance company at a single place of business (Va. Code Ann. § 6.2-1501(A)).
- A license for an additional consumer finance office (Va. Code Ann. § 6.2-1507(B)).

The VSCC also requires notice be filed if a licensee makes loans in a place of business in which another business is solicited or engaged in, or in association with, any other business (Va. Code Ann. § 6.2-1518).

COVERED ENTITIES

A person or entity must obtain a license from the VSCC if that person or entity both:

- Is in the business of making loans to individuals for personal, family, household, or other nonbusiness purposes.
- Charges, contracts for, or receives, directly or indirectly in connection with any loan, interest, charges, compensation, consideration, or expense that in the aggregate is greater than 12%.

(Va. Code Ann. § 6.2-1501(A).)

EXEMPTIONS

Persons doing business under the authority of Virginia law or of the US relating to banks, savings institutions, trust companies, building and loan associations, industrial loan associations, or credit unions are not eligible for licensure as consumer finance companies.

2. Does your jurisdiction impose any restrictions on payday lending, deferred presentment services, or other short-term, small-dollar lending activities? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Describe the key substantive provisions of the statute, including the maximum loan term, loan amount, finance charges and fees permitted by the statute.

The following statutes and regulations govern payday lending in Virginia:

- Payday Lenders Act (Va. Code Ann. §§ 6.2-1800 to 6.2-1829).
- Regulations of the Virginia State Corporation Commission's (VSCC) Bureau of Financial Institutions (BFI), 10 Virginia Administrative Code 5-200-10 to 5-200-130.

STATE AGENCY

The BFI is responsible for enforcing the statutes and regulations.

KEY SUBSTANTIVE PROVISIONS

A payday loan is defined as a small, short-maturity loan on the security of:

- A check.
- An assignment of interest in an individual's account at a depository institution.
- An assignment of income payable to an individual, other than loans based on income tax refunds.

(Va. Code Ann. § 6.2-1800.)

The key provisions governing payday lending include:

- A payday lender must obtain a license to engage in payday lending to any consumer residing in Virginia (Va. Code Ann. § 6.2-1801(a)).
- A payday loan must:
 - be in writing;
 - be signed by the borrower and the person authorized by the license to sign the dated agreement; and
 - state the principal amount of the loan, interest, and any fee charged.
 (Va. Code Ann. § 6.2-1816(1)).
- The maximum principal loan amount is \$500 (Va. Code Ann. § 6.2-1816(5)).
- The interest rate for payday loans are capped at 36% (Va. Code Ann. § 6.2-1817(A)).
- The minimum loan term is two times the borrower's pay cycle (Va. Code Ann. § 6.2-1816(1)).
- A payday lender must provide the borrower with a pamphlet explaining in plain language the rights and responsibilities of the borrower and a clear and conspicuous notice that a payday loan is intended for short-term cash needs (Va. Code Ann. § 6.2-1816(15), (16)).
- A payday lender must comply with the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 to 1692p) in collecting a payday loan (Va. Code Ann. § 6.2-1816(22)).

FOREIGN LANGUAGE DISCLOSURES

3. Must financial institutions provide disclosures in a language other than English to consumers engaged in credit transactions? If so, please:

- Define the relevant statute's key terms.
- Explain which types of credit transactions are subject to the disclosure requirement.
- List any exemptions to the foreign language disclosure requirement.

Virginia does not require financial institutions to provide disclosures in a language other than English to consumers engaged in credit transactions.

FAIR LENDING

4. Does your jurisdiction have a fair lending, human rights, civil rights, or comparable anti-discrimination statute that applies to lending or other credit transactions? If so, please:

- Identify the state agency responsible for enforcing the statute.
- Describe the statute's key substantive provisions, including the prohibited bases of discrimination.
- Describe the penalties for statutory violations.
- Describe any significant differences between the statute and any relevant federal law.

The following statutes and regulations govern anti-discriminatory practices in credit transactions in Virginia:

- Equal Credit Opportunities Act (ECOA) (Va. Code Ann. §§ 6.2-500 to 6.2-513).
- Regulation of the Virginia State Corporation Commission, Bureau of Financial Institutions (BFI), 10 Virginia Administrative Code 5-180-10.

STATE AGENCY

The BFI enforces these statutes. The Virginia Attorney General may also enforce this statute by bringing an action in the name of the Commonwealth. (Va. Code Ann. § 6.2-513.)

KEY TERMS

Key provisions include the following:

- The ECOA applies to any person applying to a creditor for an extension, renewal, or continuation of credit (Va. Code Ann. § 6.2-500).
- A creditor is prohibited from discriminating against any applicant regarding any aspect of a credit transaction based on race, color,

religion, national origin, sex, marital status, age, or an applicant's public-assistance derived income (Va. Code Ann. § 6.2-501; see Prohibited Bases of Discrimination).

- A creditor must notify a loan applicant of an action on a credit application within 30 days after receiving a completed credit application (Va. Code Ann. § 6.2-502).
- A creditor must provide a statement to the applicant containing the reason for the adverse action taken on the application (Va. Code Ann. § 6.2-503).
- Any action to remedy a violation of the ECOA must be brought within two years from the date of the occurrence of the violation (Va. Code Ann. § 6.2-505(E)).
- Liability is not incurred when an act is done or omitted in good faith in conformity with any rule, regulation, or interpretation by the VSCC or Federal Reserve Board (Va. Code Ann. § 6.2-507).
- If an act or omission constitutes a violation of the ECOA and federal law, an individual may bring an action to recover monetary damages under either state or federal law. This election does not apply to administrative actions or court actions in which monetary damages are not sought (Va. Code Ann. § 6.2-512).

PROHIBITED BASES OF DISCRIMINATION

A creditor is prohibited from discriminating against any applicant, regarding any aspect of a credit transaction, on any of the following bases:

- Race.
- Color.
- Religion.
- National origin.
- Sex or marital status.
- Age, assuming the applicant has the capacity to contract.
- All or part of the applicant's income deriving from any public assistance or social services program.

(Va. Code Ann. § 6.2-501(A).)

A creditor may:

- Make an inquiry of marital status to determine the creditor's rights and remedies applicable to the extension of credit and not to discriminate in a determination of creditworthiness
- Make an inquiry of the applicant's age or whether the applicant's income derives from any public assistance or social services program to determine the amount and probable continuance of income levels, credit history, or other relevant element of creditworthiness.
- Use any empirically derived credit system, which considers age, if the system is demonstrably and statistically sound in accordance with regulations of the VSCC, except the age of an elderly applicant may not be assigned a negative factor or value.
- Make an inquiry or consider the age of an elderly applicant when it is used by the creditor to extend credit in favor of the applicant.

(Va. Code Ann. § 6.2-501(B).)

PENALTIES FOR STATUTORY VIOLATIONS

A creditor may be liable to an aggrieved applicant for actual damages, punitive damages up to \$10,000, and attorneys' fees (Va. Code Ann. § 6.2-505(A), (B), (D)). A court may also impose equitable and declaratory relief (Va. Code Ann. § 6.2-505(C)).

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Compliance with the federal Equal Credit Opportunity Act (15 U.S.C. §§ 1691 to 1691f) constitutes compliance with the ECOA (Va. Code Ann. § 6.2-508). The federal act additionally provides that a person may not discriminate against an applicant who has in good faith exercised any right under the federal act (15 U.S.C. § 1691(a)(3)).

INTEREST RATE AND FEE LIMITATIONS

5. Does your jurisdiction impose restrictions on the maximum interest rate that may be charged on a loan? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Describe the key substantive provisions of the statute, including the types of loans subject to the restrictions.
- Identify any exemptions from the restrictions.
- Describe any significant differences between the statute and any federal law.

Virginia law imposes restrictions on maximum interest rates that may be charged on a loan (Va. Code Ann. § 6.2-303).

STATE AGENCY

The Virginia State Corporation Commission's, Bureau of Financial Institutions enforces the statutes governing loan interest rates.

KEY TERMS AND COVERED LOANS

Unless there is an exception, the interest rate on a loan cannot exceed 12% per year (Va. Code Ann. § 6.2-303(A); see Exemptions).

Penalties include recovery of all of the following:

- The total amount of interest paid in excess of that permitted by the applicable statute.
- Twice the total amount of interest paid during the two years immediately preceding the filing date of the action.
- Court costs and attorneys' fees.

(Va. Code Ann. § 6.2-305(A)(1) to (3).)

EXEMPTIONS

Exceptions include:

- A bank or savings institution making a loan payable in installments may impose finance charges and other charges and fees at rates and in amounts agreed to by the borrower (Va. Code Ann. § 6.2-309).
- A state bank or savings institution may take, receive, reserve, and charge on a loan any rate of interest, finance charge, or other loan charge permitted to any other lender under Virginia law (Va. Code Ann. § 6.2-310).

- A consumer finance company may charge and receive a single annual interest rate of up to 36% on a loan of up to \$2,500 (Va. Code Ann. § 6.2-1520(A)(1)).
- A payday lender may charge an amount up to 36% (Va. Code Ann. § 6.2-1817(A)).
- A motor vehicle title lender may charge and collect maximum interest of up to:
 - 22% per month on a principal amount up to \$700;
 - 18% per month on a principal amount that is between \$700 and \$1400; and
 - 15% per month on a principal amount exceeding \$1,400. (Va. Code Ann. § 6.2-2216(A).)

(Va. Code Ann. § 6.2-303(B).)

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Federal law does not impose a general interest rate limitation on loans. However, certain federal regulations may cap interest rates on particular types of loans. For example, the Federal Credit Union Act mandates that federal credit union loans may not exceed an interest rate of 15% per year (12 U.S.C. § 1757(5)(A)(vi)).

6. Does your jurisdiction limit the maximum finance charge that may be charged on a loan? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Define the relevant statute's key terms.
- Identify the types of loans subject to the statute.
- List any statutory exemptions.
- Describe any significant differences between the statute and any relevant federal law.

The following statutes specify limitations on the maximum finance charge that may be charged on certain credit sales in Virginia:

- Section 6.2-311 of the Virginia Code (closed-end installment loans).
- Section 6.2-312 of the Virginia Code (open-end credit plans).

STATE AGENCY

The Virginia State Corporation Commission's (VSCC), Bureau of Financial Institutions is responsible for enforcing statutes regarding finance charges.

KEY TERMS AND COVERED LOANS

For a closed-end installment credit plan or arrangement, key terms include the following:

- Any seller of goods or services who extends credit may impose finance charges at a rate agreed to by the seller and purchaser. Deferrals and extensions of the time for payment, if allowed by a seller of goods or services or his assignee, may be subject to a finance charge if agreed to in the original contract or at the time of the renewal or extension. No additional finance charge can be made for an extension of credit under this type of plan or arrangement. If the total finance charge on the transaction is precomputed according to the actuarial method, the finance

charge must be calculated on the assumption that all scheduled payments will be made when due.

- The debtor has the right to prepay in full on precomputed transactions and receive a rebate of the unearned finance charge determined in accordance with the Rule of 78, or other method elected by the seller if this method does not exceed the amount that results from the Rule of 78 on extensions of credit with an initial maturity of 61 months or less. For extensions of credit with an initial maturity of more than 61 months, the debtor receives a rebate computed under a method at least as favorable to the debtor as the actuarial method. The seller may also condition this rebate on receiving a minimum of \$25 in finance charges. This amount, to the extent not earned, may be withheld from the rebate required.

(Va. Code Ann. § 6.2-311.)

Under an open-end credit plan, a seller or lender extending credit may impose on credit extended under the plan, finance charges and other charges and fees at the rates as agreed to by the creditor and the obligor. Under the plan, a finance charge is imposed on the obligor if the unpaid balance is not paid in full prior to the next billing date, which must be at least 25 days later than the prior billing date. (Va. Code Ann. § 6.2-312.)

EXEMPTIONS

A bank or savings institution making a loan payable in installments, an open end credit plan, or a loan payable in installments to finance the purchase of a motor vehicle may impose finance charges and other charges and fees at the rates and in the amounts and manner agreed to by the borrower (Va. Code Ann. §§ 6.2-309, 6.2-310, 6.2-313, and 6.2-314).

A credit union engaged in extending credit under an open-end credit plan may impose finance charges and other charges and fees at the rates and in the amounts and manner as agreed to by the credit union and the obligor if a finance charge is imposed on the obligor under the plan (Va. Code Ann. § 6.2-318).

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Federal law does not impose a general limitation on the maximum finance charges that may be charged on a loan.

7. Does your jurisdiction limit the maximum amount of fees that may be charged on a loan? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Define the relevant statute's key terms.
- Identify the types of loans subject to the statute.
- List any statutory exemptions.
- Describe any significant differences between the statute and any relevant federal law.

The following statutes impose limitations on the maximum fees that may be charged on a loan in Virginia:

- Section 6.2-1520(B), (C) of the Virginia Code Annotated (consumer finance companies).

- Section 6.2-1817(B), (C) of the Virginia Code Annotated (payday lending).
- Section 6.2-2216(D), (G) of the Virginia Code Annotated (motor vehicle title loans).

STATE AGENCY

The Virginia State Corporation Commission's (VSCC), Bureau of Financial Institutions is responsible for enforcing statutes regarding loan fees.

KEY TERMS AND COVERED LOANS

Key terms include:

- A consumer finance company may impose a late charge of up to 5% for borrower's failure to make a timely payment of any installment due. The amount of the late charge must be specified in the loan contract. A "timely payment" means a payment made by the date fixed for payment or within a period of seven calendar days after the fixed date. (Va. Code Ann. § 6.2-1520(B).)
- A consumer finance company may impose a processing fee. The fee is deemed to constitute interest charged and cannot exceed 35% of the annual interest rate for a loan amount of up to \$2,500. (Va. Code Ann. § 6.2-1520(C).)
- A payday lender may charge a loan fee of up to 20% of the amount of the loan proceeds advanced to the borrower and a verification fee not to exceed \$5 (Va. Code Ann. § 6.2-1817(B), (C)).
- A borrower is not liable for fees incurred in connection with the storage of a motor vehicle securing a title loan following the vehicle's repossession by the licensee or its agent, or the voluntary surrender of possession of the vehicle by the borrower to the licensee. A motor vehicle title lender may not charge, contract for, collect, receive, recover, or require a borrower to pay any other fee, charge, or amount except for:
 - a licensee's actual cost of perfecting its security interest in a motor vehicle securing the borrower's obligations under a loan agreement; and
 - reasonable costs of repossession and sale of the motor vehicle.
 (Va. Code Ann. § 6.2-2216(D).)
- A motor vehicle title lender may charge a late fee of up to 5% in any amount due under the loan agreement (Va. Code Ann. § 6.2-2216(G)).

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Federal law does not impose a general limitation on the amount of fees that may be charged on a loan.

UNFAIR AND DECEPTIVE PRACTICES

8. Does your jurisdiction prohibit financial institutions from engaging in unfair, deceptive, or abusive acts or practices? If so, please:

- Identify the state agency responsible for enforcing the relevant statute and describe any key agency guidance regarding the statute.
- Define the relevant statute's key terms.
- Describe the penalties for statutory violations.
- Describe any significant differences between the statute and relevant federal law.

The Virginia Consumer Protection Act (VCPA) (Va. Code Ann. §§ 59.1-196 to 59.1-207) prohibits certain fraudulent acts or practices committed by a supplier in connection with a consumer transaction. The VCPA expressly excludes banks, savings institutions, credit unions, small loan companies, and mortgage lenders, leaving only a small part of the credit industry covered by the statute (Va. Code § 59.1-199(D)).

Additionally, Section 6.2-1524(B) of the Virginia Code prohibits consumer finance companies from advertising, displaying, distributing, or broadcasting, in any manner, any false, misleading, or deceptive statement or representation about the rates, terms, or conditions for loans made by consumer finance companies.

STATE AGENCY

The Virginia Attorney General is responsible for enforcing the VCPA. The Virginia State Corporation Commission's (VSCC) Bureau of Financial Institutions is responsible for enforcing Section 6.2-1524(D) of the Virginia Code Annotated.

KEY TERMS

The key provisions of the VCPA include:

- The statute applies to "suppliers," which is defined as a:
 - seller, lessor, or licensor who advertises, solicits, or engages in consumer transactions; or
 - manufacturer, distributor, or licensor who advertises and sells, leases, or licenses goods or services to be resold, leased, or sublicensed by others in consumer transactions.
 (Va. Code Ann. § 59.1-198.)
- A supplier is prohibited from committing fraudulent acts including, for example:
 - using deception, fraud, false pretense, or misrepresentation in connection with a consumer transaction;

- violating the Payday Lending Act and Debt Collection Practices Act.

(Va. Code Ann. § 59.1-200.)

Additionally, Section 6.2-1524(B) of the Virginia Code specifies that the VSCC may:

- Require that charges or rates of charge, if stated by a licensee, be specified fully and clearly in a manner it deems necessary to prevent misunderstanding by prospective borrowers.
- Permit or require licensees to refer in their advertising that their business is under state supervision or subject to conditions imposed by the state to prevent false, misleading, or deceptive impression.

PENALTIES

Under the VCPA, the Virginia Attorney General may bring an action on behalf of the people of the Commonwealth to:

- Enjoin the unlawful acts or practices (Va. Code Ann. § 59.1-201.1).
- Obtain restitution of any moneys or property (real, personal, or mixed, tangible or intangible), which may have been acquired from a person by means of any unlawful act or practice (Va. Code Ann. § 59.1-205).

Additionally, any individual who suffers a loss may initiate an action to recover the greater of actual damages, or \$500. For willful violations, a court may increase the amount of recoverable damages up to the greater of three times the actual damages sustained or \$1,000. However, any person who accepts a cure offer under the VCPA may not initiate or maintain any action arising under another statute or common law if that action is substantially based on the same allegations of the VCPA action. Attorneys' fees and court costs may be awarded in addition to damages. (Va. Code Ann. § 59.1-204(A), (B).)

An individual violating the statutes governing consumer finance companies (Va. Code Ann. §§ 6.2-1500 to 6.2-1543), including licensing requirements, is guilty of a Class 2 misdemeanor (Va. Code Ann. § 6.2-1540). The VSCC may impose a civil penalty of up to \$10,000 on any licensee who has violated these statutes either knowingly or without the exercise of due care to prevent the violation (Va. Code Ann. § 6.2-1543).

SIGNIFICANT DIFFERENCES FROM FEDERAL LAW

Unlike the VCPA, which excludes banks, savings institutions, credit unions, and mortgage lenders from its purview, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. §§ 5491 to 5603) does not exclude banks and financial institutions from being subject to consumer financial regulations.

Specifically, the Dodd-Frank Act created the Consumer Financial Protection Bureau (CFPB) which supervises banks, credit unions, and other financial companies, and enforces federal consumer financial laws. The Dodd-Frank Act also provided the CFPB with the authority to supervise and examine many non-bank financial service providers previously unsupervised at the federal level, such as mortgage companies, payday lenders, private education lenders, larger debt collectors, and consumer reporting companies.

DEBT COLLECTION

9. Does your jurisdiction have a statute governing debt collection activities? If so, please:

- Identify the key agency responsible for enforcing the statute.
- Describe the key substantive provision of the statute.
- Describe any significant differences between the statute and any relevant federal law, including the Fair Debt Collection Practices Act.

Virginia does not have a general debt collection statute. However, Section 6.2-1816(22) of the Virginia Code requires that payday lenders comply with the federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 to 1692p) regardless of whether the payday lender is collecting the debt in its own name.

10. Please describe any circumstances under which financial institutions or collection agencies in your jurisdiction are prohibited from collecting a debt from a consumer.

In an action to collect debt from a consumer, a court cannot enter default judgment against a defendant who does not make an appearance if the defendant is in military service (Va. Code Ann. § 8.01-15.2).

11. Please describe any statute of limitations for collecting unpaid debts, including credit card debt.

Generally, the statute of limitations for collecting unpaid debts when a written contract exists, including credit card debt, is five years (Va. Code Ann. § 8.01-246(2)). The statute of limitations for collecting unpaid debts regarding an unwritten contract is three years (Va. Code Ann. § 8.01-246(4)). The five-year statute of limitations for written contracts also applies to credit card agreements that consist of a series of documents if:

- At least one of the documents referencing and incorporating the other documents is signed by the cardholder.
- The documents contain all essential terms of the agreement.

(See Opinion of Attorney General to The Honorable Bill Janis, Member, House of Delegates, 10-128.)

The limitations period for notes is six years (Va. Code Ann. § 8.3A-118).

GIFT CARDS AND PREPAID CARDS

12. Does your jurisdiction impose any restrictions on the offering of gifts cards, gift certificates, or other general-use prepaid cards? If so, please describe the key substantive provisions, including any provisions governing expiration dates, fees, or disclosures.

Virginia law imposes restrictions on the offering of gifts cards, gift certificates, or other general-use prepaid cards (Va. Code Ann. §§ 59.1-530 to 59.1-532). Additionally, Virginia's unclaimed property laws address gift certificates and credit balances (Va. Code Ann. § 55-210.8:1).

A "gift certificate" is defined as a certificate, electronic card, or other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of an equal value. A "credit balance" is defined as intangible property resulting from or attributable to the sale of goods or services, which includes, for example, an overpayment, credit memo, refund, discount, rebate, unidentified remittance, or deposit. (Va. Code Ann. § 55-210.2.)

Key provisions include:

- Each gift certificate issued that has an expiration date must include either a written statement of the expiration date or a telephone number or address where the holder can obtain expiration information (Va. Code Ann. § 59.1-531(A)).
- Each gift certificate that diminishes in value over time must include a telephone number or address where the holder may obtain this information (Va. Code Ann. § 59.1-531(B)).
- A violation of this statute is a prohibited practice under Section 59.1-200 of the Virginia Consumer Protection Act and is subject to enforcement provisions, including individual actions for damages (Va. Code Ann. § 59.1-204) and actions by the Attorney General for civil penalties (Va. Code Ann. § 59.1-206) (Va. Code Ann. § 59.1-532).

ANCILLARY CREDIT PRODUCTS

13. Does your jurisdiction regulate any ancillary credit products offered by financial institutions, such as debt cancellation or guaranteed asset protection, as insurance products? If so, please:

- Identify the state agency responsible for regulation of these credit products.
- Describe the key substantive provisions of the relevant regulation.

The following statutes govern certain ancillary credit products offered by financial institutions as insurance products in Virginia:

- Sections 38.2-3717 to 38.2-3738 of the Virginia Code (credit insurance).
- Sections 38.2-1800 to 38.2-1813 of the Virginia Code (licensing of limited line credit insurance agents).
- Regulations of the Virginia State Corporation Commission (VSCC), Bureau of Insurance (BOI), 14 Virginia Administrative Code 5-100-10 to 5-100-80.

STATE AGENCY

The VSCC's BOI is responsible for administering laws relating to credit insurance.

KEY SUBSTANTIVE PROVISIONS

The key provisions of Virginia law relating to ancillary credit products include:

- A person who sells, solicits, or negotiates individual or group policies of credit life insurance must obtain a license as a life and annuities insurance agent or limited lines credit insurance agent.

- A person who sells, solicits, or negotiates individual or group policies of credit accident and sickness insurance must be licensed as either a health agent or a limited lines credit insurance agent (Va. Code Ann. § 38.2-3734).
- If an indebtedness is repayable in substantially equal installments, the amount of credit life insurance must not exceed the actual amount of unpaid indebtedness (Va. Code Ann. § 38.2-3720(A)(1)).
- The amount of credit life insurance on an indebtedness of any debtor cannot exceed \$70,000 with any one insurance company (Va. Code Ann. § 38.2-3720(D)).
- Any person who willfully violates these statutes will be punished for each violation by a penalty of up to \$5,000 (Va. Code Ann. § 38.2-218(A)).
- Credit life insurance rates are determined according to the formula specified in Section 38.2-3726 of the Virginia Code.

MONEY TRANSMISSION

14. Does your jurisdiction impose licensing requirements on entities engaged in money transmission services? If so, please:

- Identify the state agency responsible for enforcing the relevant statute.
- Identify which types of entities are subject to the licensing requirement.
- Describe the criteria the entity must meet to apply for a license, including any minimum net worth, security or permissible investment requirements.

The following statutes and regulations govern the licensing of persons or entities engaged in money transmission services, whether or not the person has a location in the Commonwealth of Virginia:

- Sections 6.2-1901 to 6.2-1921 of the Virginia Code.
- Regulations of the Virginia State Corporation Commission (VSCC), Bureau of Financial Institutions (BFI), 10 Virginia Administrative Code 5-120-10 to 5-120-100.

STATE AGENCY

The BFI is responsible for enforcing statutes and regulations relating to the licensing of money transmitters and sellers of money orders.

COVERED ENTITIES

Any person engaging in the business of selling money orders or money transmission, whether or not the person has a location in Virginia, must obtain a license. However, the licensing requirement does not apply to any:

- Bank, trust company, savings institution, or credit union operating under the laws of the US or any state or territory of the US
- Person providing money transmission services as an agent of one or more banks, trust companies, savings institutions, or credit unions operating under the laws of the US or any state or territory of the US.
- Private security services business, licensed under Virginia law, which transports or offers to transport money. (Va. Code Ann. §§ 6.2-1901 and 6.2-1902.)

APPLICATION CRITERIA

An applicant for a money transmitter license must:

- Submit an application on the form provided by the Commissioner of the BFI, specifying the entity's name and address, a description of the manner in which and the locations at which it proposes to do business, and any additional relevant information as the Commissioner requires (Va. Code Ann. § 6.2-1903(A)).
- Submit any audited financial statements as the Commissioner may require and an application fee of \$1,000 (Va. Code Ann. § 6.2-1903(B)).
- Submit a surety bond in an amount determined by the Commissioner between \$25,000 and up to \$1 million, or an alternative security device in an amount between \$25,000 and up to \$1 million (Va. Code Ann. § 6.2-1904).

A money transmitter licensee must:

- Maintain a net worth of between \$200,000 and \$1 million, as determined by the VSCC (Va. Code Ann. § 6.2-1906).
- Pay an annual renewal fee of \$750 to the VSCC (Va. Code Ann. § 6.2-1905(A)).
- Pay an annual assessment as calculated by the VSCC (Va. Code Ann. § 6.2-1905(B)).
- File an annual report with the VSCC concerning the licensee's business, including audited financial statements (Va. Code Ann. § 6.2-1905(D)).

STATE LAW PREEMPTION

15. Has a federal court or federal agency evaluated any statute of your jurisdiction to determine whether the statute is preempted by a federal consumer financial law? If so, please describe the holding of each federal court or federal agency decision.

Federal courts have evaluated claims under several Virginia statutes to determine whether they are preempted by federal consumer financial law. These courts have held the following:

- The federal Home Owners' Loan Act preempted mortgagors' claims brought under Virginia state law arising out of a transaction for a modification to a residential mortgage loan and subsequent foreclosure sale (see *McFadden v. Fannie Mae*, No. 7:11-cv-335 (W.D. Va. Jan. 9, 2012) *aff'd.* by 525 Fed. Appx. 223 (2013)).
- The federal Fair Credit Reporting Act preempted a consumer's claim brought under Virginia state law alleging that a bank's published reports to the consumer reporting agencies defamed the consumer. (see *Saunders v. Equifax Info. Servs., L.L.C.*, NO. 3:05CV731 (E.D. Va. Oct. 3, 2006)).
- Federal consumer protection laws, including the Equal Credit Opportunity Act, the Credit Repair Organization Act, and the Fair Credit Reporting Act preempt claims under the Virginia Consumer Protection Act (VCPA) if a party's VCPA claim "arises from the same nucleus of facts" as the federal claims (see *Stith v. Thorne*, 2006 WL 5444366, at *12 (E.D. Va. Oct. 30, 2006)).
- The federal Truth in Lending Act preempted a consumer's claims under the VCPA (see *Graham v. RRR, LLC*, 202 F. Supp. 2d 483 (E.D. Va. 2002)).

The VCPA specifically provides that provisions of the VCPA do not apply to those aspects of a consumer transaction that are regulated by the Federal Consumer Credit Protection Act (Va. Code Ann. § 59.1-199(C)).

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