



2009 Virginia Legislative Update

With three exceptions (**SB 1291**, **SB 1470** and **HB 2164**), the following bills will be effective July 1, 2009. As always, I selected the following bills based on my judgment as to those that would be of most interest to providers of consumer financial services. Accordingly, this summary, which to a great extent tracks the description of bills prepared by the Virginia Legislative Information System, discusses only some of the many bills that will become part of the Code of Virginia in July.

Please let me know if you have any questions about the following bills or any other actions taken by this year's Session of the General Assembly.

Mortgage Lending

HB 1776 amends the Mortgage Lender and Broker Act (the "ML&B Act") to make it a prohibited practice for a mortgage broker to fail to use reasonable skill, care and diligence in exercising the broker's duty. This duty, as created by this bill, requires a broker to make reasonable efforts to secure a mortgage loan considering the applicant's circumstances and loan characteristics. This includes but is not limited to the product type, rates, charges and repayment terms of the loan. A borrower who suffers a loss as a result of a breach of this duty may sue the broker in a private cause of action to recover actual damages. The borrower may also be awarded attorney's fees and court costs. **SB 1020** is identical.

HB 2262 provides that no person in the business of originating residential mortgage loans shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction and authorizes the Attorney General to investigate any such violations. The Attorney General may bring an action in circuit court to enjoin any such violations. If a person is found to have committed a willful violation, the Attorney General may recover a civil penalty of not more than \$2,500 per violation. The Attorney General may also recover damages, restitution on behalf of borrowers, other costs and expenses, and attorney fees. The bill does not create a private right of action in favor of any person aggrieved by a violation. **SB 1170** is identical.

HB 2030 eliminates the requirement that went into effect last year that licensees under the ML&B Act must conduct background checks on certain employees and ensure that "covered" employees are properly trained in applicable state and federal mortgage lending laws and regulations. This repeal must be considered, however, in the context of the following bill.

HB 2031 enacts the Virginia version of the federal S.A.F.E. Act. In essence, mortgage loan originators ("MLOs") who are employees of licensees under the ML&B

Act must obtain a license from the Bureau of Financial Institutions by July 1, 2010. Initial (20 hours) and annual (7 hours) training is required, and MLOs will have to pass a test to become eligible for licensing. The Act includes requirements for bonding, background checks, payment of annual fees, license suspension and revocation, and fines. **SB 1171** is identical.

HB 2568 expands the disclosure that the provisions of CRESPA may not be varied by agreement and that rights conferred by CRESPA may not be waived. The bill also says that the seller may not require the use of a particular settlement agent as a condition to the sale of the property and makes technical changes to the disclosure regarding the choice of settlement agent.

SB 938 shifts the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authorities responsible for regulating their settlement agents. Such authorities may also terminate the registration of a settlement agent who fails to maintain a license, fails to renew his registration or fails to comply with certain financial responsibility requirements.

SB 888 prohibits settlement agents and real estate attorneys from facilitating an assignment to a third party of their client's right to the \$500 penalty in the event the lender fails to release the deed of trust within 90 days after payment of underlying obligation.

SB 959 provides that attorney fees shall be awarded to a creditor in an action where a gift, deed, conveyance, assignment, or transfer of or charge upon the estate of a debtor, suit commenced or decree, judgment, or execution suffered or obtained, or bond or other writing is declared void. The award of attorney fees shall be paid out of the proceeds of a resulting judicial sale, if any, but shall not affect a prior lien creditor not represented by the attorney. The bill is a recommendation of the Boyd-Graves Conference.

SB 960 clarifies the language allowing the acceptance of credit cards by clerks to make it clear that the convenience fee collected is to be collected from the person presenting the card as payment and not the credit card issuer. The bill also changes the language calling this fee a service charge to a reasonable convenience fee to mirror the language used in credit contracts.

SB 1157 deals with recordation and grantor taxes and changes from a Class 2 to a Class 1 misdemeanor the criminal penalty for knowingly misrepresenting the consideration for the interest in the conveyed property. The bill also provides for a

penalty equal to 100% of the tax due on the understated consideration if the understatement was made with the intent to evade the tax. This bill is identical to **HB 2135**.

SB 1169 amends the Virginia Consumer Protection Act to allow a cause of action as a result of a fraudulent foreclosure rescue. The bill says that the supplier of the rescue service may not charge or receive a fee prior to the full performance of the agreed-upon services. It also clarifies that the existing prohibition on mandatory arbitration applies only to transactions involving foreclosure rescue services.

SB 1291, which contains an emergency clause and was effective March 16, 2009, deals with the enforcement of deeds of trust. Legislation enacted in 2008 reduced the time (in some cases) in which a deed of trust may be enforced from 20 years to 10 years after maturity of the underlying obligation. This bill addresses circumstances where the limitations period may be longer.

SB 1546 provides that when written notice of proposed sale in execution of a deed of trust is given as provided by general law, there shall be a rebuttable presumption that the lienholder has complied with any requirement to provide notice of default contained in a deed of trust.

Payday Loans

SB 1470 prohibits with one exception licensed payday lenders from extending credit under open-end credit plans. Third parties are prohibited from making such loans at a payday lender's place of business. The prohibition does not apply if the line of credit is secured by a lien on a motor vehicle. If a licensed payday lender relinquishes its license after April 8, 2009 and then makes open-end loans, it may not be re-licensed to make payday loans for a period of 10 years. **HB 1709** is identical.

This bill has an emergency clause and was effective on April 8, 2009, the date of the reconvened session. The General Assembly accepted the Governor's recommendation to add an emergency clause on that date, and the bill was enrolled on April 14. Unlike the normal rule for emergency bills, the bill was effective on April 8 even though the Governor has not signed the bill.

Consumer Protection

HB 1884 provides that a consumer reporting agency's duty, effective July 1, 2009, to place a security freeze on a consumer's credit report within one business day after receiving such a request will apply only if the consumer's request is made

electronically at an address designated by the consumer reporting agency to receive such requests. For requests not made electronically at such address, the current obligation that the freeze will be imposed within three business days after receiving the consumer's request will continue to apply.

SB 910 prohibits callers from using an automatic dialing-announcing device to make a commercial telephone solicitation unless the subscriber has requested, consented to, permitted, or authorized receipt of the message or unless the message is preceded by a live operator who obtains the subscriber's consent before the message is delivered. The measure also requires automatic dialing-announcing devices or other devices that disseminate a prerecorded or synthesized voice message to the number called to disconnect within five seconds after termination of the telephone call. An automatic dialing-announcing device selects and dials telephone numbers and disseminates a prerecorded or synthesized voice message to the telephone number called. A violation of these requirements is a prohibited practice under the Consumer Protection Act. The existing prohibition on using recorded solicitation calls is repealed.

SB 954 provides that it is a prohibited practice under the Virginia Consumer Protection Act to sell, offer for sale, or manufacture for sale a children's product the supplier knows or has reason to know was recalled by the United States Consumer Product Safety Commission. There exists a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the Commission. The prohibition does not apply to children's products that are used, second-hand, or "seconds". "Children's product" is defined as a consumer product designed or intended primarily for children 12 years of age or younger. **HB 2039** is identical.

Banking

HB 1964 authorizes a bank, savings institution, bank holding company, savings and loan holding company, or multiple or diversified savings and loan holding company organized as a stock corporation to reclassify or convert a portion of its issued and outstanding shares of common stock into a class or series of preferred stock for the purpose of ceasing to be, or avoiding the status of, an institution that is required to file periodic reports under provisions of the Securities Exchange Act of 1934, if authorized by its articles of incorporation and the reclassified or converted shares continue to be part of the equity capital of the corporation. Such a reclassification or conversion is exempt from appraisal rights provisions of the Stock Corporation Act if the institution's directors recommend the approval, the shareholders approve the amendment, all

shares are reclassified or converted on the same terms, and articles of amendment are filed. **SB 884** is identical.

HB 2127 authorizes banks to establish deposit accounts for minors. Minors will be the sole owner and may make deposits and withdrawals in such accounts. A bank may act with respect to such an account on the minor's order. A parent or guardian may not withdraw funds from such an account without written permission of the minor. The measure modernizes archaic provisions and adopts the language in a similar provision applicable to such accounts at savings institutions.

Privacy; Identity Theft

HB 1884 provides that a consumer reporting agency's duty, effective July 1, 2009, to place a security freeze on a consumer's credit report within one business day after receiving such a request will apply only if the consumer's request is made electronically at an address designated by the consumer reporting agency to receive such requests. For requests not made electronically at such address, the current obligation that the freeze will be imposed within three business days after receiving the consumer's request will continue to apply.

HB 2427 provides that the first five digits of a social security number contained in a public record shall be confidential and exempt from disclosure under the Freedom of Information Act. The bill allows the release of a social security number under certain limited circumstances, including proper judicial order, to federal, state or local law-enforcement or correctional personnel; by one agency to another agency in Virginia or to an agency in another state, district, or territory of the United States; and to any data subject exercising his rights under the Government Data Collection and Dissemination Practices Act. The bill provides for penalties for violation.

HB 1587 provides that, with the exception of identification cards issued to employees of the Department of State Police and certain other law enforcement officers, the Commonwealth will not comply with any provision of the federal REAL ID Act that it determines would compromise the economic privacy, biometric data, or biometric samples of any resident of the Commonwealth. This bill is identical to **SB 1431**.

Uniform Commercial Code

HB 2454 provides that a financing statement sufficiently provides the name of the individual debtor if it provides the individual's name shown on the individual's driver's

license or identification card issued by the individual's state of residence. **SB 1100** is identical.

Power of Attorney

SB 855 establishes in the Code of Virginia the Uniform Power of Attorney Act that was adopted in 2006 by the National Conference of Commissioners on Uniform State Laws. The Act has default rules that can be modified if the principal desires. Powers of attorney will be durable unless drafted to expire upon a specified date or event. The Act addresses creation and use, good faith reliance, limitations of agent's powers, refusal to recognize, judicial review, notification of resignation, and other matters. The Act contains an optional statutory form.

Insurance

HB 1887 authorizes the cancellation of a policy insuring an owner-occupied dwelling on grounds that the property secured by the policy has been sold pursuant to foreclosure of a deed of trust encumbering the property.

HB 1971 recognizes the 2001 CSO Male Composite Ultimate Mortality Table for use in determining the minimum standard of valuation for credit life insurance reserves, and the 1985 Commissioners' Individual Disability Table A in determining the standard for valuation of reserves for credit accident and sickness plans. The measure also specifies the interest rate and method to be used in determining the minimum standard of valuation. In addition, for credit life and disability contracts in the aggregate, insurers are required to establish an additional reserve liability if the net premium refund liability exceeds the aggregate recorded contract reserve.

HB 1972 requires that a disclosure notice be provided to debtors on credit property, credit involuntary unemployment credit life, and credit accident and sickness insurance policies. No insurance contract upon a debtor paid by a single premium shall be made unless the debtor is provided with a notice disclosing the right to a refund of premium if the insurance is terminated prior to its scheduled maturity date or the insured debt is terminated or paid off early, and of the debtor's obligation to notify the insurer of certain events. The minimum amount of a refund is increased from \$1 to \$5. Policies and certificates are required to include a notice advising the debtor of his rights and the insurer's obligations regarding premium refunds. The State Corporation Commission shall not approve a form for credit property or credit involuntary unemployment insurance paid by a single premium unless the policy or certificate states that the unearned premium refund will be calculated on a pro rata basis.

HB 2467 requires that life insurance policies, annuity contracts, and certificates issued in connection with group life insurance policies or group annuity contracts specify the means by which face amount adjustments will be made, and benefits payable upon death will be adjusted, when they will be used to fund preneed funeral contracts. The measure also required insurers proposing to issue life insurance policies or annuity contracts for purposes of funding preneed funeral contracts to disclose clearly their intended purpose and market when the forms are submitted for State Corporation Commission approval.

Motor Vehicles

HB 1722 provides that a person who purchases in another state a vehicle repossessed in that state, may sell that vehicle in Virginia without obtaining a Virginia title, provided the person who purchased the vehicle in another state has in his possession an affidavit of repossession or similar document, approved by the state in which the vehicle was purchased, attesting to the lawful repossession. This bill is identical to SB 1415.

HB 2164 provides new standards and procedures for mechanics' liens relating to motor vehicles. This bill will be effective October 1, 2009.

HB 2233 provides that DMV may require certain filings or submissions be made electronically, including any required monthly updates from insurance companies and requests for refunds of certain fuel.

Money Order Sales and Transmission

HB 1886 expands the existing authority of the State Corporation Commission to regulate money order sellers and money transmitters. The measure includes provisions that, among other things, mandate examinations of licensees every three years; increase the license application fee from %500 to \$1,000; require annual renewal of licenses with a \$750 license renewal fee and an assessment to defray examination and supervision costs; increase minimum net worth requirements from \$1000,000 to \$200,000; establish procedures for license revocation; authorize the Commission to issue cease and desist orders; establish requirements for agreements between a licensee and its authorized delegates; increase the maximum penalty that the Commission may assess for violations from \$1,000 to \$2,500; establish record retention requirements; establish additional reporting requirements; and require licensees to maintain permissible investments that have a market value of not less than the aggregate dollar amount of all of its outstanding money orders and money transmission

transactions. The measure also requires licensees to conduct a due diligence review of all new authorized delegates and to implement and maintain a risk-based supervision program to monitor its authorized delegates. Finally, the measure regulates the type of investments that licensees are required to maintain.

Corporations

HB 2434 allows a corporation, the stock of which is held by no more than five persons and is not publicly offered or planned to be publicly offered, to be represented by an officer pro se before the general district courts if (i) the amount in controversy is \$2,500 or less, and (ii) the officer has the unanimous consent of all the shareholders to do so.

Homestead Exemption

HB 2559 increases the homestead exemption from \$5,000 to \$10,000 for householders who are 65 years of age or older.

HB 2560 increases the additional homestead exemption for veterans from \$2,000 to \$10,000.

Miscellaneous

HB 2112 provides that local school boards must establish educational objectives in financial literacy for middle and high schools. The Governor recommended a change to this bill, which was adopted by the General Assembly at its reconvened session on April 8.

SB 1495 provides that good cause for leaving employment exists if an employee voluntarily leaves a job to accompany the employee's spouse, who is on active duty in the military or naval services of the United States, to a new military-related assignment established pursuant to a permanent change of duty order from which the employee's place of employment is not reasonably accessible. The measure applies only if the state to which the spouse is transferred has a similar provision, unless the transfer involves members of the Virginia National Guard relocated within the Commonwealth. Benefits paid to qualifying claimants shall be charged against the pool rather than against the claimant's employer.

HB 1683 provides that a party may recover against the drawer of a check, draft, or order the face amount of the check and other costs and fees if payment was refused because the drawer placed a stop-payment order on the check in bad faith. Currently,

the law only allows for recovery if payment was refused because of lack of funds or credit.

SB 1264 authorizes employers to pay wages and salaries to an employee hired after January 1, 2010 by credit to a prepaid debit card or card account, without the employee's affirmative consent, if the employee fails to designate a financial institution to which payment could be made by electronic automated fund transfer and the employer arranges for the card or card account to be issued through a network system through which the employee will have the ability to make at least one free withdrawal or transfer per pay period using such card at a participating financial institution. Currently, payment via prepaid debit card or card account requires the affirmative consent of the employee, though such consent is not required if the employee has not designated a financial institution to which payment by electronic automated fund transfer could be made and the employee is employed at an amusement park.

HB 2515 increases the maximum tax rate that may be assessed on uninsured or self-insured employers from 0.25 percent to 0.5 percent. The revenues from the tax fund workers' compensation benefits that are awarded against such employers from the uninsured employer's fund. The measure sunsets on July 1, 2012.