

February 25, 2025

The Honorable Glenn Youngkin
Governor, State of Virginia
P.O. Box 1475
Richmond, VA 23218

RE: VETO REQUEST – VIRGINIA SB 1252

Dear Governor Youngkin,

The American Financial Services Association (“AFSA”)¹ writes to express our grave concerns with SB 1252, which would institute a 12% rate cap for all loans and other forms of consumer credit in the state. SB 1252 would leave Virginia consumers worse off and cut off access to credit for those most in need. Additionally, the bill's broad but also vague anti-evasion provisions risk stifling legitimate lending practices and create uncertainty for responsible lenders. We respectfully ask you to veto SB 1252.

Confusion

We are frankly confused about who this bill would apply to if enacted. Our industry is struggling with different interpretations, and though early in the process we were led to believe that as long as a financial institution is lawfully licensed in the state, they may continue business as usual, that is now contradicted by differing interpretations. When a bill is written in a way that experienced outside counsel interprets far differently, our alarm bells go off.

Earlier today we were contacted by a member who is a large financial institution. They asked SIX different law firms across the country with deep expertise in consumer credit how this would apply to their company. All six firms—this is not hyperbole—could not tell them whether SB 1252 applied to their core businesses or not, because the language is too vague to give a definitive answer.

If Virginia intends to institute a 12% rate cap across the board, we struggle to understand why. Even secured loans in this rate and inflationary environment are often over 12% APR and some of our members in the subprime space have their own cost of funds near 9%—and that’s before

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans. AFSA’s members include state-licensed creditors, as well as state-chartered and national banks. AFSA does not represent credit unions.

anything else happens—such as checking credit scores, paying employees, underwriting, sending out statements, reporting performance back to credit bureaus, complying with hundreds of laws, etc.

For small dollar and even larger dollar traditional installment lending, the U.S. Federal Reserve (under President Obama) said that creditors can't break even until over \$2500 on a 36% APR loan. So a rate of 12% says to us that Virginia does not want traditional (non-payday) installment lending in the state, or any subprime consumers (which is approximately half the state of Virginia) to qualify for auto financing.

Additionally, some of the language in this bill is so confusing that it seems inconsistent and leads us to wonder if there was an error in the drafting or amendment process, because certain language seems to be placed on top of, rather than integrated into, other language.

Our industry's confusion is exacerbated by the extreme danger, should we make an error or misunderstand the Virginia General Assembly's intent: the bill voids any contract made in violation of its provisions, meaning that lenders who unintentionally run afoul of the bill's vague and confusing restrictions would be unable to collect on their loans—an outcome that could severely damage legitimate, well-intended businesses operating in the state.

Access to Credit

The finance charge on any specific loan is largely a combination of the individual borrower's risk profile (*i.e.* the likelihood the loan will be repaid in full at the end of the term), and, importantly, the fixed costs (*i.e.*, overhead) for the lender. Because smaller loans generate a lower return with the same fixed costs, the finance charge must necessarily be higher in order to recoup the cost of making the loan and break even, before any profit is made. If rates are arbitrarily capped at 12%, many loans—especially small dollar loans—will be stuck well below the breakeven point and lenders will no longer be able to provide these loans to consumers who need them. While wealthier or more sophisticated borrowers among Virginia's elite may be able to find sources of credit or afford larger loan sizes, lower income individuals and individuals with moderate credit scores will likely be left in credit deserts.

Virginia's Elite

Because our members report to credit bureaus, they help thousands of Virginia adults graduate out of subprime credit scores each year—so we deeply understand the effects of this bill. This will have a ripple effect in those communities where unregulated lenders will operate and proliferate, debt costs will increase as will overall debt loads, and long-term wealth will decline when people lose access to both affordable credit and means to improve their credit scores. Elite borrowers will remain unaffected.

Concerns with the “Anti-Evasion” Provisions

SB 1252 contains broad and overreaching anti-evasion language that could have significant unintended consequences. The bill seeks to prevent lenders from structuring loans in ways that circumvent the 12% cap, but the provisions prohibit various common and lawful lending structures, such as loans that involve collateral, associated sales, or third-party arrangements, even when such practices are essential for mitigating risk and ensuring access to credit for consumers with lower credit scores.

Moreover, the bill’s attempt to regulate “out-of-state” banks who engage with Virginia consumers will certainly lead to legal challenges and practical enforcement issues. This could, at least temporarily, push borrowers into less regulated, higher-risk financial products entirely outside Virginia oversight.

Strike-all Alternative

Virginia already has a very low rate cap. Over the years many of our small-dollar state licensed lenders have either surrendered their licenses altogether or modified their business model in Virginia to offer only larger loans. As outlined above, this is because the break-even point for 36% unsecured lending necessitates larger dollar loans.

We respectfully urge you to consider proposing a strike-all amendment that leaves state rates as is, and creates a study commission to fully examine the cost of unsecured, nominally secured, and secured lending in an inflationary environment.

Conclusion

We respectfully once again ask you to veto SB 1252. Thank you for your consideration of our concerns. If you have any questions or would like to discuss this further, please do not hesitate to contact me or Elora Rayhan at erayhan@afsamail.org or (805) 501-8873.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Fagre Arlowe", is written in a cursive style.

Danielle Fagre Arlowe
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