

## Virginia's AG Actively Pursuing "Predatory" Lenders

February 26, 2018 | Catherine M. Brennan

In advising online lenders, there are a few states where we urge caution, depending on the theory of lending used by the lender. One of the states where we urge caution is Virginia. Virginia Attorney General Mark Herring, in office since January 2014, revamped his Consumer Protection Section<sup>[i]</sup> in March 2017 to include a new Predatory Lending Unit ("PLU"). This effort had been in the works for several years. In 2015, during a field hearing held by the Consumer Financial Protection Bureau in Richmond, Herring said he would create this unit.<sup>[ii]</sup> The goal of the PLU is to "investigate and prosecute suspected violations of state and federal consumer lending statutes, including laws concerning payday loans, title loans, consumer finance loans, mortgage loans, mortgage servicing, and foreclosure rescue services."<sup>[iii]</sup> Before Attorney General Herring dedicated this unit, his participation in fighting predatory lending mostly consisted of participation in nationwide settlements.<sup>[iv]</sup> Since then, Herring has announced several settlements with various financial services companies, including the following:

- A settlement with a Virginia Beach open-end credit lender that allegedly violated Virginia's consumer finance statutes by imposing illegal charges on borrowers who received open-end credit loans during the statutorily required, finance charge-free grace period. Herring also alleged that the lender violated the Virginia Consumer Protection Act by misrepresenting on its website that it did not perform credit checks to determine a consumer's eligibility for a loan, and by obtaining judgments in Virginia Beach General District Court against hundreds of consumers without a legal basis for that venue.<sup>[v]</sup>
- A slew of settlements with pawnbrokers for various violations of Virginia's pawnbroker statutes and the Virginia Consumer Protection Act.<sup>[vi]</sup>
- A lawsuit against a title lender that originated open-end loans. Herring claims that the lender failed to comply with Virginia law governing open-end credit plan lenders by charging a \$100 origination fee during the statutorily required, finance charge-free grace period, and that it engaged in a pattern of repeat transactions and "rollover" loan conduct with some borrowers more akin to a payday loan than an open-end credit extension.<sup>[vii]</sup>
- A settlement with an online lender that offered closed-end installment loans over the Internet and advertised on its website that it was licensed by Virginia's Bureau of Financial Institutions ("BFI"). The lender allegedly charged Virginia consumers 29.9% APR, but was never licensed by the BFI and did not qualify for any exception to Virginia's general usury limit of 12% APR.<sup>[viii]</sup>
- A settlement with an online lender that offered short-term loans with periodic interest rates as high as 160% to Virginians in the form of open-end cash advances. The settlement resolves allegations that the lender violated Virginia's consumer lending laws by imposing a \$50 origination fee on borrowers who received open-end credit loans during the statutorily required, finance charge-free grace period. It also resolves allegations that the lender misrepresented on its website that it was licensed to conduct lending activity in Virginia.<sup>[ix]</sup> and
- A settlement with an online lender that offered closed-end installment loans over the Internet and allegedly made false claims that it was licensed in Virginia to do so. The lender also allegedly charged an unlawful \$15 check processing fee for payments made by check on closed-end installment loans.<sup>[x]</sup>

Depending on the model of lending used to operate in Virginia, lenders could run afoul of this extremely active attorney general. Thus, we urge caution and suggest lenders consider the following before conducting business in the state: (1) Who is your customer and would they be viewed as particularly vulnerable such that the attorney general would want to protect them? (2) What are the rates you want to impose? (3) What is your theory of lending in the state? and (4) Do you need licenses to engage in the activity? As Virginia is the 12th most populous state in the United States, it is probably not feasible to simply avoid the state altogether, but with some careful attention at the inception of business, you may be able to avoid scrutiny down the road from this "aspiring governor." However, given the aggressive attention the Virginia attorney general is paying to this space, you can also do everything right and still find yourself on the receiving end of one of his inquiries or actions.

<sup>[i]</sup> See <https://www.oag.state.va.us/divisions/civil-litigation/consumer-protection-section>.

<sup>[ii]</sup> Virginia Attorney General Press Release, "Attorney General Herring Launching Effort to Combat Predatory Lending," (March 26, 2015), available at <https://www.oag.state.va.us/media-center/news-releases/480-march-26-2015-herring-launching-effort-to-combat-predatory-lending>; Virginia Attorney General Press Release, "OAG Completes Reorganization and Expansion of Consumer Protection Operation," (November 21, 2016), available at <https://www.oag.state.va.us/media-center/news-releases/842-november-21-2016-oag-completes-reorganization-and-expansion-of-consumer-protection-operation>.

<sup>[iii]</sup> Virginia Attorney General Press Release, "Herring Warns Virginians About Dangers of Predatory Loans," (March 7, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/901-march-7-2017-herring-warns-virginians-about-dangers-of-predatory-loans-w-video>.

<sup>[iv]</sup> Virginia Attorney General Press Release, "CashCall to Refund Millions to Virginia Consumers Over Illegal Online Lending Scheme," (January 31, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/877-january-31-2017-cashcall-to-refund-millions-to-va-consumers-over-illegal-online-lending-scheme>; Virginia Attorney General Press Release, "Attorney General Herring Reaches \$470 Million Joint State-Federal Settlement with HSBC to Address Mortgage Loan Origination, Servicing, and Foreclosure Abuses," (February 5, 2016), available at <https://www.oag.state.va.us/media-center/news-releases/694-february-5-2016-herring-joins-470-million-settlement-over-hsbc-mortgage-foreclosure-practices>; Virginia Attorney General Press Release, "CashCall Borrowers Begin Receiving Settlement Payments Totaling Over Nine Million Dollars," (September 6, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/1026-september-6-2017-cashcall-borrowers-to-begin-receiving-settlement-payments-totaling-over-nine-million-dollars>; Virginia Attorney General Press Release, "Herring, State AGs and Mortgage Regulators Reach \$45 Million Settlement with PHH Mortgage Corporation," (January 3, 2018), available at <https://www.oag.state.va.us/media-center/news-releases/1107-january-3-2018-herring-state-ags-and-mortgage-regulators-reach-45-million-settlement-with-phh-mortgage-corporation>. We found only two "predatory lending" actions that Herring filed on his own before he committed to combating it. See Virginia Attorney General Press Release, "Herring Announces Settlement Valued at \$4 Million with Online Lender," (December 15, 2015), available at <https://www.oag.state.va.us/media-center/news-releases/671-december-18-2015-herring-announces-settlement-valued-at-4-million-with-online-lender>; and Virginia Attorney General Press Release, "Attorney General Herring Sues Fredericksburg Pawnshop for Illegal Loans," (July 21, 2015), available at <https://www.oag.state.va.us/media-center/news-releases/586-july-21-2015-attorney-general-herring-sues-fredericksburg-pawnshop-for-illegal-loans>.

<sup>[v]</sup> Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Virginia Beach Open-End Credit Lender," (July 25, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/992-july-25-2017-ag-herring-reaches-settlement-with-virginia-beach-open-end-credit-lender>.

<sup>[vi]</sup> Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Fredericksburg-Area Pawnbroker," (May 9, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/945-may-9-2017-attorney-general-herring-reaches-settlement-with-fredericksburg-area-pawnbroker>; Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Stafford-Area Pawnbroker," (August 1, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/997-august-1-2017-attorney-general-herring-reaches-settlement-with-stafford-area-pawnbroker>; Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Two Fredericksburg-Area Pawnbrokers," (March 10, 2017), available at <https://www.oag.state.va.us/media-center/news-releases/904-march-10-2017-herring-reaches-settlements-with-two-fredericksburg-area-pawnbrokers>; Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Dixie Pawn, Incorporated," (June 12, 2017), available at <https://www.oag.state.va.us/2-uncategorised/968-june-12-2017-attorney-general-herring-reaches-settlement-with-dixie-pawn-incorporated>; "Attorney General Herring Reaches Settlement with



Manassas-Area Pawnbroker," (September 11, 2017), available at

<https://www.oag.state.va.us/media-center/news-releases/1030-september-11-2017-attorney-general-herring-reaches-settlement-with-manassas-park-area-pawnbroker>.

[vii] Virginia Attorney General Press Release, "Attorney General Herring Sues Allied Title Lending, LLC for Making Open-End Credit Loans to Violate Consumer Statutes," (September 13, 2017), available at

<https://www.oag.state.va.us/media-center/news-releases/1032-september-13-2017-attorney-general-herring-sues-allied-title-lending-llc-for-making-open-end-credit-loans-alleged-to-violate-consumer-statutes>.

[viii] Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Internet Lender," (October 25, 2017), available at

<https://www.oag.state.va.us/media-center/news-releases/1072-october-25-2017-ag-herring-reaches-settlement-with-internet-lender>.

[ix] Virginia Attorney General Press Release, "Attorney General Herring Reaches Settlement with Open-End Credit Plan Internet Lender Worth More Than \$3 Million," (November 30, 2017), available at

<https://www.oag.state.va.us/media-center/news-releases/1092-november-30-2017-ag-herring-reaches-settlement-with-open-end-credit-plan-internet-lender-worth-more-than-3-million>.

[x] Virginia Attorney General Press Release, "Virginia Consumers to Receive \$2.7 Million in Relief from Settlement with Internet Lender," (February 7, 2018), available at

<https://www.oag.state.va.us/media-center/news-releases/1122-february-7-2018-virginia-consumers-to-receive-2-7-million-in-relief-from-settlement-with-internet-lender>.

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