

AN ACT relating to flexible credit loans.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. SUBTITLE 12 OF KRS CHAPTER 286 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this subtitle, unless the context requires otherwise:

(1) "Commissioner" means the commissioner of the Department of Financial Institutions or the commissioner's designee;

(2) "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through ownership of voting securities by contract or otherwise, if no individual shall be deemed to control a person solely on account of being a director, officer, or employee of the person. For purposes of this subsection, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the current outstanding voting securities issued by another person is presumed to control the other person, and the commissioner may determine whether a person, in fact, controls another person;

(3) "Controlling person" means any person in control of a licensee;

(4) "Department" means the Department of Financial Institutions;

(5) "Flex loan" means a loan made pursuant to a flex loan plan;

(6) "Flex loan plan" means a written agreement between a licensee and a consumer establishing an open-end credit plan under which the licensee contemplates credit transactions from time to time that:

(a) May be unsecured;

(b) May be without a fixed maturity date or a limitation as to the length of the loan term; and

(c) Are subject to prepayment in whole or in part at any time without penalty;

(7) "Licensee" means a person licensed to offer flex loans pursuant to this subtitle;

and

(8) "Person" means an individual, group of individuals, partnership, association, corporation, or any other business, unit, or legal entity.

➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) No person shall engage in the business of making flex loans unless the person is licensed, pursuant to this subtitle, to make flex loans. A person shall be deemed to be engaged in the business of making flex loans in this state if the person induces a consumer, while located in this state, to enter into a flex loan plan in this state through the use of facsimile, telephone, Internet, or any other means.

(2) All applicants seeking a license under this subtitle shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders issued by the commissioner, or process affecting a licensee under this subtitle, may be served. A licensee shall notify the commissioner in writing of any proposed change in its designated agent for service of process at least five (5) days prior to the proposed change. The change shall not become effective until approved by the commissioner.

➔SECTION 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Any flex loan plan made with a person who is not licensed under this subtitle shall be void per public policy, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.

(2) The commissioner may void a flex loan plan when it is determined by the commissioner that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fees or other charges related to the flex loan plan.

(3) The commissioner may order restitution, refund, recovery of expenses, or direct such other affirmative action as the commissioner deems necessary against any person who violates any order issued by the commissioner or any provision of, or administrative regulation promulgated under, this subtitle.

➔SECTION 4. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) An applicant for a license to make flex loans shall meet the following requirements:

(a) A tangible net worth that comprises tangible assets, less liabilities, of not less than fifty thousand dollars (\$50,000); and

(b) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business shall be conducted, lawfully, honestly, carefully and efficiently. In determining whether these qualifications have been met, and for the purpose of investigating compliance with this subtitle, the commissioner may review and approve:

1. The relevant business records and the capital adequacy of the applicant;

2. The competence, experience, integrity, and financial ability of any person who:

a. Is a director or is a shareholder with five percent (5%) or more shares of the applicant; or

b. Owns or controls the applicant; and

3. Any record of the applicant or any person referred to in subparagraph 2. of this paragraph of any:

a. Criminal activity;

b. Fraud or other act of personal dishonesty;

c. Act, omission, or practice that constitutes a breach of a fiduciary duty; or

d. Suspension, revocation, or removal by any agency or department of the United States or any state, from participation in the conduct of any business.

(2) The commissioner shall periodically review the licensee's compliance with this section.

➔SECTION 5. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

Each application for a license shall be in a form established by the commissioner by promulgation of an administrative regulation, shall be submitted under oath, and shall include the following:

(1) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, association, or corporation, the legal name, residence, and business address of every member, officer, managing employee, and director of the applicant;

(2) The name, address, telephone number, and electronic mail address of the agent, which shall be filed with the application; and

(3) Other data and information the commissioner may require about the applicant, its directors, trustees, officers, members, managing employees, or agents.

➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Each application for a license required by Section 2 of this Act shall be accompanied by:

(a) A filing fee of five hundred dollars (\$500), which shall not be subject to refund, but which, if the license is granted, shall constitute the license fee for the first license year, or remaining part of a year;

- (b) An audited financial statement prescribed by the commissioner, including but not limited to a balance sheet, a statement of income or loss, and a statement of changes in financial position for the immediately preceding fiscal year. The statement shall be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant. For a newly created entity, the commissioner may accept only a balance sheet prepared by a certified public accountant or public accounting firm, neither of which is affiliated with the applicant, accompanied by a projected income statement demonstrating that the applicant will have adequate capital after payment of start-up costs; and
- (c) A surety bond, issued by an insurer regulated under Subtitle 9 of KRS Chapter 304 and not affiliated with the applicant, in the amount of twenty-five thousand dollars (\$25,000). In lieu of the surety bond, the applicant shall file an irrevocable letter of credit, in the amount of the surety bond, issued by any federally insured bank, savings bank, or credit union, none of which is affiliated with the applicant. The surety bond or irrevocable letter of credit shall be in a form satisfactory to the commissioner and shall be payable to the commissioner for the benefit of any person who is injured pursuant to a flex loan plan by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this subtitle by a licensee. In the case of a surety bond, the aggregate liability of the surety bond shall not exceed the principal sum of the surety bond. In the case of an irrevocable letter of credit, applicants shall obtain letters of credit for terms of not less than three (3) years and renew the letters of credit annually. If the licensee fails to pay a person or the commissioner, as required by this subtitle, then the commissioner or the affected person may

bring suit against the licensee directly, on the surety bond or irrevocable letter of credit, in Franklin Circuit Court, or in any court of competent jurisdiction. The surety bond or irrevocable letter of credit shall be maintained by the licensee for not less than three (3) years following the expiration, revocation, or surrender of the licensee's license.

(2) (a) The commissioner is authorized to require an applicant for a license to consent to a criminal history records check and to provide fingerprints with the application in a form acceptable to the commissioner. The commissioner may require such consent and fingerprints from any individual who is a director, officer, or five percent (5%) or more shareholder of the applicant or who owns or controls the applicant, as well as from any other individual associated with the applicant as is reasonably necessary to meet the purposes of this subtitle. Refusal of any person to consent to a criminal history records check or to provide fingerprints pursuant to this subsection constitutes grounds for the commissioner to deny the applicant a license.

(b) Any criminal history records check conducted pursuant to this subsection shall be conducted by the Department of Kentucky State Police, the Federal Bureau of Investigation, or both, and the results of the criminal history records check shall be forwarded to the commissioner. All costs incurred in conducting the criminal history records check shall be paid by the applicant, in addition to any other fees required by this subtitle.

➔SECTION 7. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required by Section 6 of this Act, the commissioner shall investigate to ascertain whether the requirements prescribed

by Section 4 of this Act have been satisfied. If the commissioner finds that the requirements have been satisfied, and approves the documents, the commissioner shall issue to the applicant a license to engage in the business of making flex loans in this state.

(2) A license issued pursuant to this subtitle shall remain in force and effect through the remainder of the fiscal year ending June 30 after its date of issuance unless earlier surrendered, suspended, or revoked pursuant to this subtitle.

➔SECTION 8. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may, after notice and hearing, suspend, revoke, place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the commissioner finds that the person, licensee, or a person in control of a licensee:

(a) Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(b) Does not meet, has failed to comply with, or has violated any provisions of this subtitle or any administrative regulation issued pursuant thereto, or any order of the commissioner issued pursuant thereto, or has violated any other law in the course of his or her dealings as a licensee;

(c) Has made a false statement in the application for the license or failed to give a truthful reply to a question in the application;

(d) Has demonstrated his or her incompetence or untrustworthiness to act as a licensee;

(e) Is unfit, through lack of financial responsibility or experience, to conduct the business of making flex loans plans, as the case may be;

(f) Does not conduct his or her business in accordance with the law or

conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle or any administrative regulation promulgated or order of the commissioner issued hereunder;

(g) Is insolvent;

(h) Is the subject of an administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the person, applicant, or licensee;

(i) Has made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information that the applicant or licensee possesses and which, if submitted by him or her, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;

(j) Has refused to permit an examination or investigation by the commissioner of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or records, or make any report that may be required or requested by the commissioner;

(k) Has been convicted of a felony;

(l) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;

(m) Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, any other state, or the United States, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state or any other jurisdiction under threat of administrative action;

- (n) Has employed or contracted with a person who has failed to license or has had a license, registration, or claim of exemption denied, revoked, suspended, conditioned, restricted, or probated in this Commonwealth or another state;
- (o) Has failed to pay any required fee or costs imposed by the commissioner under this subtitle;
- (p) Has abandoned an application or renewal application by failing to provide the commissioner any information required under this subtitle, or requested by the commissioner, to complete an application;
- (q) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
- (r) Has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 et seq.;
- (s) Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;
- (t) Has violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103; or
- (u) No longer meets the requirements under this subtitle to hold a license.
- (2) (a) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.
- (b) If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make a written demand to the commissioner for a hearing before the commissioner on the question of

whether the license should be granted.

- (c) Any hearing on the denial of a license shall be conducted pursuant to KRS Chapter 13B, provided that the burden of proof that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of a license is subject to review pursuant of KRS Chapter 13B.
- (d) Any person who has had a license denied by the commissioner, if that denial has not been altered by any review under paragraph (c) of this subsection, shall not be eligible to apply for a license under this subtitle until after expiration of one (1) year from the date of denial.
- (3) Any person who has had a license revoked by the commissioner shall not be eligible to apply for a license under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.
- (4) Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.
- (5) The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration. Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.
- (6) The commissioner may notify the Department of Revenue, which may institute an

action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.

(7) The commissioner may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction against any person, where the commissioner has reason to believe from evidence satisfactory to the commissioner that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court and the court may assess a civil penalty.

(8) A hearing may be requested by a licensee who has had any action taken against its license pursuant to subsection (1) of this section. Written notice of any hearing shall be given at least twenty (20) days prior to the date of the hearing pursuant to KRS 13B.050 and the hearing shall be conducted in accordance KRS 13B.080.

➔SECTION 9. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Licenses issued pursuant to this subtitle shall expire on June 30. Each license may be renewed for the ensuing twelve (12) month period upon application by the license holder showing continued compliance with the requirements of Sections 4, 5, and 6 of this Act, and the payment to the commissioner annually, between May 1 and June 30, of a license renewal fee of five hundred dollars (\$500).

(2) A licensee making timely and complete application for renewal of its license shall

be permitted to continue to operate under its existing license until its application for renewal is approved or denied.

(3) The commissioner may establish, by promulgation of an administrative regulation, a biennial license arrangement for the filing of the application for license renewal, but the license fee shall not be payable for more than one (1) year at a time.

➔SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) A license issued pursuant to this subtitle is not transferable or assignable.

(2) (a) The prior written approval of the commissioner is required for the continued operation of a flex loan business whenever a change in control of a licensee is proposed. The commissioner may require any information deemed necessary to determine whether a new application is required. Reasonable and actual costs incurred by the commissioner in investigating a change of control request shall be paid by the person requesting approval. If the person acquiring control of a licensee is already licensed under this subtitle, the person must notify the commissioner thirty (30) days prior to the acquisition.

(b) Whenever control is acquired or exercised in violation of this section, the license shall be deemed revoked as of the date of the unlawful acquisition of control. The licensee or its controlling person shall surrender the license to the commissioner on demand.

(3) A licensee shall notify the department fifteen (15) days before any change in the licensee's principal place of business, branch office, or name.

➔SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other statutory limitation, a licensee authorized to make flex

loans under this subtitle may charge and collect interest, fees, and charges in a manner consistent with this section.

(2) A licensee may charge and collect a periodic interest rate not to exceed twenty-four percent (24%) per annum.

(3) (a) In addition to the periodic interest rate authorized under subsection (2) of this section, a licensee may also charge and collect a customary fee, on a daily, monthly, or other periodic basis, to defray the ordinary costs of opening, administering, and terminating a flex loan plan, including but not limited to costs associated with:

1. Underwriting and documenting the account;
2. Securing and maintaining account information;
3. Validating customer information;
4. Offering phone access to accounts;
5. Processing account transactions;
6. Responding to customer inquiries;
7. Providing periodic billing statements; and
8. All other services or activities conducted by the licensee under the flex loan plan.

(b) The customary fee shall not be deemed interest for any purpose of law.

(4) The maximum principal loan amount of a flex loan shall be four thousand dollars (\$4,000). The maximum principal loan amount of the flex loan shall be increased biannually by the department to correspond with the cumulative increase in the cost of living as measured increases by the unadjusted Consumer Price Index for All Urban Consumers.

(5) Any flex loan plan made under this subtitle shall require monthly payments by the due date of each billing cycle in an amount sufficient to reduce the outstanding principal balance by at least five percent (5%) each calendar month.

Payments may be in the form of cash, money order, debit card or prepaid debit card, or any other commercially reasonable instrument for payment of money, including any authorization for the electronic transfer of funds.

(6) (a) If a customer defaults under the terms of a flex loan plan and the licensee refers the customer's account to an attorney, including a regular salaried employee of the licensee, for collection, the licensee may:

1. If the flex loan plan so provides, charge and collect from the customer a reasonable attorney's fee; and

2. If the flex loan plan or similar instrument governing the loan, so provides, recover from the customer all collection and court costs, including all costs of enforcing the agreement, actually incurred by the licensee, including those incurred on appeal.

(b) A licensee may charge and collect interest following a judgment in favor of the licensee at the periodic rate permitted by this section.

(7) If a check is returned to a licensee from a payor financial institution due to insufficient funds, no licensee shall have the authority to assess a handling charge against the maker or drawer of the returned check.

(8) A licensee shall not engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business.

(9) A licensee shall not use any device or agreement, including agreements with affiliated licensees, with the intent to obtain greater charges than otherwise would be authorized by this subtitle.

(10) A licensee shall comply with any state or federal law, rule, or regulation applicable to any business authorized or conducted under this subtitle, including but not limited to the federal Truth in Lending Act, 15 U.S.C. sec. 1601 et seq., the federal Equal Credit Opportunity Act, 15 U.S.C. secs. 1691-1691f, and the federal Fair Debt Collection Practices Act, 15 U.S.C. sec. 1692 et seq.

(11) (a) No flex loan plan subject to this subtitle shall:

1. Provide that the law of a jurisdiction other than this state applies;
2. Provide that the customer consents to the jurisdiction of another state or foreign country;
3. Establish venue; or
4. Waive any provision of this subtitle.

(b) Any provision described in paragraph (a) of this subsection that is contained in a flex loan plan subject to this subtitle shall be void and not enforceable as a matter of public policy.

➔SECTION 12. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) A licensee shall provide each prospective customer, before consummation of a flex loan plan, with a written explanation, in clear, understandable language, of the interest, fees, and charges to be charged by the licensee. The style, content and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the customer may prepay the unpaid balance in whole or in part at any time without penalty. The commissioner may promulgate administrative regulations establishing additional requirements in order to ensure complete and accurate disclosure of the interest, fees, and charges to be charged by a licensee under a flex loan plan.

(2) The account-opening statement for any flex loan plan shall include, along with other state or federal law requirements:

(a) A next-business-day customer's right of rescission for any requested draw under the flex loan plan; and

(b) A notice informing the customer that complaints may be made to the department, including the department's telephone number and address.

(3) The account-opening statement for any flex loan plan shall not require or

provide the licensee the authority to require the customer to draw the full amount of credit available under a flex loan plan at any time.

(4) A licensee shall provide customers with a periodic billing statement in compliance with federal truth-in-lending laws.

➔SECTION 13. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Each licensee shall keep and use in its business any books, accounts and records the commissioner may require to effectuate this subtitle and the administrative regulations promulgated pursuant to this subtitle. Every licensee shall preserve the books, accounts and records for at least two (2) years. Any licensee, after receiving the prior written approval of the commissioner, may maintain records at a location within or outside this state.

(2) Records required to be preserved under this section may be maintained in an electronic retrievable format, or other similar form of medium, provided it is readily accessible to examination, investigation, and inspection by the commissioner.

➔SECTION 14. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The business of making flex loans in accordance with this subtitle shall not be subject to or controlled by any other statute governing the imposition of interest, fees, or loan charges. A licensee shall not have the powers enumerated in this subtitle without first complying with the law regulating the particular transaction involved, but licensees legally exercising any of the powers set forth in this subtitle shall not be deemed in violation of KRS 360.010 or any other usury laws.

➔SECTION 15. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may promulgate administrative regulations in accordance

with KRS Chapter 13A, for the enforcement of this subtitle. A copy of any administrative regulation by the commissioner shall be mailed to the principal place of business of each license holder at least thirty (30) days before the date it takes effect.

(2) To ensure compliance with this subtitle, the commissioner may examine the relevant business books and records of any licensee. Further, for the purposes of discovering violations of this subtitle and determining whether persons are subject to this subtitle, the commissioner may examine or investigate persons licensed under this subtitle and persons reasonably suspected by the commissioner of conducting business that requires a license under this subtitle by exercising authority that includes, but is not limited to the power to:

(a) Subpoena witnesses;

(b) Administer oaths;

(c) Examine an individual under oath; and

(d) Compel the production of books and records that may be relevant to the examination or investigation.

(3) If any person fails to testify or to comply with a subpoena from the commissioner under this section, the commissioner may petition any court of competent jurisdiction for enforcement.

(4) The license of any licensee under this subtitle who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(5) A licensee or unlicensed person subject to the licensing requirements of this subtitle, that is examined or investigated in accordance with this subtitle, shall pay to the commissioner the reasonable and actual expenses of the investigation or examination. The expenses shall be payable in addition to all other fees, taxes and costs required by law.

➔SECTION 16. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) After notice and opportunity for a hearing, if the commissioner finds that a person has not met, failed to comply with, or violated this subtitle, or any administrative regulation promulgated pursuant to this subtitle, the commissioner may take the following actions or any combination of such actions:

(a) Order the person to cease and desist violating the subtitle or any administrative regulation promulgated pursuant to this subtitle;

(b) Require the refund of any fees collected by the person in violation of this subtitle; or

(c) Order the person to pay to the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this subtitle or for each day that a violation occurs or continues.

(2) The commissioner, after notice and opportunity for a hearing, may censure, suspend for a period not to exceed twelve (12) months, or bar a person from any position of employment, management or control of a licensee, if the commissioner finds that the:

(a) Censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this subtitle, administrative regulation, or any rule or order of the commissioner; or

(b) Person has been:

1. Convicted or pled guilty to, or pled nolo contendere to, any crime; or

2. Held liable in any civil action by final judgment, or any administrative judgment by any public agency, if the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business of making flex loans pursuant to this subtitle.

(3) Persons suspended or barred under subsection (2) of this section are prohibited from participating in any business activity of a licensee and from engaging in any business activity on the premises where a licensee is conducting its business. This paragraph shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensee.

➔SECTION 17. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may enter into a consent order at any time with any person to resolve any matter arising under this subtitle. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained in the order. A consent order need not constitute an admission by any person that any provision of this subtitle, or any administrative regulation or order promulgated or issued under this subtitle, has been violated, nor need it constitute a finding by the commissioner that the person has violated this subtitle, or any administrative regulation or order issued under this subtitle.

(2) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties concerning matters encompassed by the consent order.

(3) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this subtitle without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.

➔SECTION 18. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Any person aggrieved by the conduct of a licensee under this subtitle in

connection with the licensee's regulated activities may file a written complaint with the commissioner, who may investigate the complaint.

(2) In the course of the investigation of the complaint, the commissioner may:

(a) Subpoena witnesses;

(b) Administer oaths;

(c) Examine any individual under oath or affirmation; and

(d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.

(3) If any person fails to comply with a subpoena of the commissioner under this subtitle or to testify concerning any matter about which the person may be interrogated under this subtitle, the commissioner may petition any court of competent jurisdiction for enforcement.

(4) The license of any licensee under this subtitle who fails to comply with a subpoena of the commissioner may be suspended pending compliance with the subpoena.

(5) The commissioner shall have exclusive administrative power to investigate and enforce any and all complaints relating to the business of making flex loans filed by any person that are not criminal in nature.

➔SECTION 19. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

Within fifteen (15) days of the occurrence of any one (1) of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the activities of the licensee in this state:

(1) The filing for bankruptcy or reorganization by the licensee;

(2) Revocation or suspension proceedings instituted against the licensee by any state or governmental authority;

(3) The denial of the opportunity to engage in the business of making loans by any

state or governmental authority;

(4) Any felony indictment of the licensee or any of its directors, officers or principals;

(5) Any felony conviction of the licensee or any of its directors, officers or principals;
and

(6) Other events that the commissioner may determine and identify by administrative regulation.

→SECTION 20. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) Each licensee shall file an annual report with the commissioner on the date of the renewal application required in Section 9 of this Act containing the following information:

(a) The names and addresses of persons owning a controlling interest in each licensee;

(b) The location of all places of business operated by the licensee and the nature of the business conducted at each location;

(c) The names and addresses of all affiliated entities regulated under this title doing business in this state;

(d) A financial statement, including but not limited to a balance sheet, statement of income or loss, and statement of changes in financial position, for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm, neither of which is affiliated with the licensee; and

(e) If the licensee is a corporation, the names and addresses of its officers and directors; if the licensee is a partnership, the names and addresses of the partners; or if the licensee is a limited liability company, the names and addresses of the board of governors or managers of the limited liability

company.

- (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed, but may not be required.
- (3) The reports shall be filed in a form that may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the licensee.
- (4) The information submitted by licensees pursuant to this section shall be afforded the same degree of confidentiality by the department and the commissioner as is applicable to reports filed by industrial loan and thrift companies pursuant to KRS 286.9-104.
- (5) The commissioner shall prepare and submit to the governor and general assembly, annually, an analysis and recapitulation of the reports for the preceding calendar year for the purpose of reflecting the general results of operations under this subtitle.

➔SECTION 21. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) (a) In addition to any other powers conferred upon the commissioner by law, the commissioner is authorized to require persons subject to this subtitle to be licensed through a multi-state automated licensing system. Pursuant to this authority, the commissioner may:
1. Promulgate administrative regulations that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system;
 2. Establish relationships or enter into agreements that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system. The agreements may include but are not limited to operating agreements, information sharing agreements, interstate cooperative agreements and technology licensing

agreements;

3. Require that applications for licensing under this subtitle and renewals of such licenses be filed with a multi-state automated licensing system;

4. Require that any fees required to be paid under this subtitle be paid through a multi-state automated licensing system;

5. Establish deadlines for transitioning licensees to a multi-state automated licensing system. The commissioner has the authority to deny any applications or renewal applications not filed with a multi-state automated licensing system after such deadlines have passed, notwithstanding any dates established elsewhere in this subtitle. However, the commissioner shall provide reasonable notice of any transition deadlines to licensees; and

6. Take such further actions as are reasonably necessary to give effect to this section.

(b) Nothing in this section shall authorize the commissioner to require a person who is not subject to this subtitle to submit information to, or to participate in, a multi-state automated licensing system that is operated, or participated in, pursuant to this subtitle.

(c) Notwithstanding this section, the commissioner retains full authority and discretion to license persons under this subtitle and to enforce this subtitle to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

(d) Applicants for and holders of licenses issued under this subtitle shall pay all costs associated with submitting an application to or transitioning a license to a multi-state automated licensing system, as well as all costs required by a multi-state automated licensing system for maintaining and renewing any

license issued by the commissioner on a multi-state automated licensing system.

(2) The commissioner is authorized to use a multi-state automated licensing system as an agent for channeling information, whether criminal or noncriminal in nature, and whether derived from or distributed to the United States Department of Justice or any other state or federal governmental agency, or any other source, that the commissioner is authorized to request from, or distribute to, under this subtitle.

➔SECTION 22. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall, on or before October 1, 2016, implement a common database with real-time access through an Internet connection for flex loan licensees as provided in this subtitle unless implementing the database by that date would be financially impracticable for the commissioner to design and operate a database or because a contract with a qualified third-party provider has not been entered into. The database shall be accessible to the department and the flex loan licensee to verify whether any flex loans are outstanding for a particular person. A flex loan licensee shall accurately and promptly submit such data before entering into each flex loan in such format as the commissioner may require by rule or order, including the customer's name, Social Security number or employment authorization alien number, address, driver's license number, amount of the flex loan, date of flex loan, date that the completed flex loan is closed, and any additional information required by the commissioner. The commissioner may adopt rules to administer and enforce the provisions of this subtitle and to ensure that the database is used by flex loan licensees in accordance with this subtitle.

(2) The commissioner shall impose a fee of one dollar (\$1) per loan for data required

to be submitted by a licensee, which fee may be charged to the customer.

(3) The commissioner may operate the database described in subsection (1) of this section or may select and contract with a third-party provider to operate the database. If the commissioner contracts with a third-party provider for the operation of the database, all of the following apply:

(a) The commissioner shall ensure that the third-party provider selected as the database provider operates the database pursuant to the provisions of this subtitle;

(b) The commissioner shall consider cost of service and ability to meet all the requirements of this subtitle in selecting a third-party provider as the database provider;

(c) In selecting a third-party provider to act as the database provider, the commissioner shall give strong consideration to the third-party provider's ability to prevent fraud, abuse, and other unlawful activities and provide additional tools for the administration and enforcement of this subtitle;

(d) The third-party provider shall use the data collected under this subtitle only as prescribed in this subtitle and the contract with the department and for no other purpose;

(e) If the third-party provider violates this subtitle, the commissioner may terminate the contract and the third-party provider may be barred from becoming a party to any other state contracts;

(f) A person injured by the third-party provider's violation of this subtitle may maintain a civil cause of action against the third-party provider and may recover actual damages plus reasonable attorney's fees and court costs; and

(g) The commissioner may require that the third-party provider collect the fee assessed in subsection (2) of this section from the licensee. The third-party provider shall remit the fee collected from the licensee to the commissioner

no later than the first day of each month. The third-party provider shall deposit any fee collected in a separate escrow account in a federally insured financial institution and shall hold the fee deposited in trust for the Commonwealth of Kentucky.

(4) The database described in subsection (1) of this section shall allow a licensee accessing the database to do all of the following:

(a) Verify whether a customer has any open flex loans with any licensee that have not been closed;

(b) Provide information necessary to ensure licensee compliance with any requirements imposed by the United States Treasury Office of Foreign Assets Control and United States Treasury Financial Crimes Enforcement Network; and

(c) Track and monitor the number of customers who notify a licensee of violations of this subtitle, the number of times a licensee agreed that a violation occurred, the number of times that a licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the commissioner requires by rule or order.

(5) While operating the database, the database provider shall do all of the following:

(a) Establish and maintain a process for responding to flex loan verification requests due to technical difficulties occurring with the database that prevent the licensee from accessing the database through the Internet;

(b) Comply with any applicable federal and state provisions to prevent identity theft;

(c) Provide accurate and secure receipt, transmission, and storage of customer data; and

(d) Meet the requirements of this subtitle.

(6) When the database provider receives notification that a flex loan has been closed,

the database provider shall designate the flex loan as closed in the database immediately, but in no event after 11:59 p.m. on the day the commissioner or database provider receives notification.

(7) The database provider shall automatically designate a flex loan as closed in the database five (5) days after the flex loan maturity date unless a licensee reports to the database provider before that time that the loan remains open because of the customer's failure to make payment; that the loan is open because the customer's payment instrument is in the process of clearing the banking system; or that the loan remains open because the customer's payment instrument is being returned to the licensee for insufficient funds, a closed account, or a stop payment order; or because of any other factors determined by the commissioner. If a licensee reports the status of a loan as open in a timely manner, the loan remains an open loan until it is closed and the database provider is notified that the flex loan is closed.

(8) If a licensee stops providing flex loans, the database provider shall designate all open loans with that licensee as closed in the database sixty (60) days after the date the licensee stops offering flex loans, unless the licensee reports to the database provider before the expiration of the sixty (60) day period which of its loans remain open and the specific reason each loan remains open. The licensee shall also provide to the commissioner a reasonably acceptable plan that outlines how the licensee will continue to update the database after it stops offering flex loans. The commissioner shall promptly approve or disapprove the plan and immediately notify the licensee of the commissioner's decision. If the plan is disapproved, the licensee may submit a new plan or may submit a modified plan for the licensee to follow. If at any time the commissioner reasonably determines that a licensee that has stopped offering flex loans is not updating the database in accordance with its approved plan, the commissioner shall immediately close or

instruct the database provider to immediately close all remaining open loans of that licensee.

(9) The response to an inquiry to the database provider by a licensee shall state only that a person is eligible or ineligible for a new flex loan and describe the reason for that determination. Only the person seeking the flex loan may make a direct inquiry to the database provider to request a more detailed explanation of a particular loan that was the basis for the ineligibility determination. Any information regarding any person's flex loan history is confidential; is not subject to public inspection; is not a public record subject to the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is not subject to discovery, subpoena, or other compulsory process, except in an administrative or legal action arising under this subtitle; and shall not be disclosed to any person other than the commissioner.

(10) The commissioner may access the database provided under subsection (1) of this section only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person.

(11) The commissioner shall investigate violations of and enforce this subtitle. The commissioner shall not delegate his or her responsibilities under this subsection to any third-party provider.

(12) (a) The commissioner shall make a determination that the database is fully operational and shall send written notification to each licensee subject to the provisions of this subtitle:

1. That the database has been implemented; and
2. Of the exact date that the database shall be considered operational for the data entry requirement established in paragraph (b) of this subsection.

(b) A licensee shall promptly and accurately enter into the database all flex loans undertaken by the licensee upon receipt of the written notification established in paragraph (a) of this subsection.

(13) The commissioner may, by rule or order, do all of the following:

(a) Require that data be retained in the database only as required to ensure licensee compliance with this subtitle;

(b) Require that customer's flex loan data in the database are archived within three hundred sixty-five (365) days after the customer's flex loan is closed unless needed for a pending enforcement or legal action;

(c) Require that any identifying customer information is deleted from the database when data are archived; and

(d) Require that data in the database concerning a customer's flex loan is deleted from the database three (3) years after the customer's flex loan is closed or, if any administrative, legal, or law enforcement action is pending, three (3) years after the administrative, legal, or law enforcement action is completed, whichever is later.

(14) The commissioner may maintain access to data archived under subsection (13) of this section for examination, investigation, or legislative or policy review.

(15) A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database, if the licensee accurately and promptly submits such data as required before entering into a flex loan with a customer.

(16) The commissioner may use the database to administer and enforce this subtitle.

(17) The commissioner may require a database provider to file a report by March 1 of each year containing the following information:

(a) The total number and dollar amount of flex loans entered into in the

calendar year ending December 31 of the previous year;

(b) The total number and dollar amount of flex loans outstanding as of December 31 of the previous year;

(c) The total dollar amount of fees collected for flex loans as of December 31 of the previous year;

(d) The minimum, maximum, and average dollar amount of flex loans entered into, the total dollar amount of the net charge-offs and write-offs, and the net recoveries of licensees as of December 31 of the previous year;

(e) The average flex loan amount, the average number of flex loans, and the average aggregate flex loan amount entered into per customer as of December 31 of the previous year;

(f) The average number of days a customer was engaged in a flex loan for the previous year; and

(g) An estimate of the average total fees paid per customer for flex loans for the previous year.

(18) Enforcement of this section shall be effective ninety (90) days after the database implementation date established by the commissioner as set forth in subsection (12) of this section.

➔SECTION 23. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to a multi-state automated licensing system, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to such information or material, shall continue to apply to the information or material after the

- information or material has been disclosed to a multi-state automated licensing system. The information or material may be shared with all state and federal regulatory officials with consumer credit oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law, including the protection available under KRS 61.871 to 61.884;
- (2) For purposes of subsection (1) of this section, the commissioner is authorized to enter into agreements or sharing agreements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the commissioner;
- (3) Information or material that is subject to a privilege or confidential under subsection (1) of this section shall not be subject to:
- (a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or any agency of the federal government or the respective state; or
- (b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by a multi-state automated licensing system applicable to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part, in the discretion of such person;
- (4) This section shall supersede any inconsistent provisions of KRS 61.871 to 61.884 pertaining to the records open to public inspection; and
- (5) This section shall not apply with respect to information or material relating to publicly adjudicated disciplinary and enforcement actions against persons subject to this subtitle that is included in a multi-state automated licensing system for access by the public.

➔SECTION 24. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

Local government units, including but not limited to cities and counties, shall have no authority to regulate flex plan loans.

➔SECTION 25. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

This subtitle shall be known and may be cited as the "Flexible Credit Act".