

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 1314

6 By: Holt

7 COMMITTEE SUBSTITUTE

8 An Act relating to consumer credit; creating the
9 Flexible Credit Act; providing short title; defining
10 terms; requiring certain license; requiring service
11 agent; stating requirements for licensure; directing
12 periodic review for compliance; providing for
13 rulemaking; stating content of certain application;
14 setting certain fees; requiring financial statement
15 and certain bond; allowing letter of credit in lieu
16 of bond; stating purpose of bond; authorizing suit
17 against bond for nonpayment; designating Oklahoma
18 County for venue of certain actions; requiring
19 criminal history records check with fingerprints;
20 providing for refusal to conduct criminal history
21 records check; designating OSBI or FBI to conduct
22 certain criminal records checks; making applicant pay
23 cost of records checks; authorizing certain
24 investigation; requiring posting of license; setting
duration of license; providing for written denial of
license; setting time to deny a license; providing
for hearing on denial of license; providing for
license renewals; allowing a supervision fee;
providing for continuation of operation pending
renewal; allowing a biennial license; making license
nontransferable; providing for change of control of a
business; providing for violations; requiring
notification of change of address or name;
authorizing certain charges, fees and interest;
setting maximum principal loan amount; allowing
certain adjustment to maximum loan amount upon
certain conditions; requiring books be kept for
certain period; prohibiting unfair practices;
requiring compliance with federal laws; prohibiting
certain conditions in loan plan; making certain

1 conditions void and unenforceable; making provisions
2 of act exclusive; authorizing promulgation of rules;
3 directing mailing of rules; providing for examination
4 of certain records for certain purpose; requiring
5 payment for certain examinations; providing exemption
6 for examination costs under supervision fee;
7 providing for suspension and revocation of license
8 under certain conditions; stating conditions;
9 allowing all licenses of a violator to be suspended
10 or revoked; setting time for notice and hearing;
11 establishing penalties for violations; allowing civil
12 penalty of certain amounts; allowing a person to be
13 barred for certain time; authorizing certain consent
14 orders; authorizing criminal actions; providing for
15 complaints; requiring written reports on certain
16 occurrences; directing filing of annual reports by
17 licensees; providing for confidentiality of certain
18 information; directing annual report be submitted to
19 Governor and legislature; providing for participation
20 in multi-state automated licensing; granting certain
21 powers and authority; construing authority under
22 multi-state licensing system; directing costs of
23 multi-state licensing system be paid by applicant and
24 licensees; providing for sharing and confidentiality
of certain information; providing certain provision
to supersede other provisions; construing certain
confidentiality; prohibiting certain governmental
units from regulating flex plan loans; providing for
codification; and providing an effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 10-100 of Title 14A, unless
21 there is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Flexible Credit
23 Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 10-100.1 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 As used in this act, unless the context requires otherwise:

5 1. "Administrator" means the Administrator of the Department of
6 Consumer Credit or the Administrator's designee;

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

18 3. "Controlling person" means any person in control of a
19 licensee;

20 4. "Department" means the Department of Consumer Credit;

21 5. "Flex loan" means a loan made pursuant to a flex loan plan;

22 6. "Flex loan plan" means a written agreement subject to this
23 subtitle between a licensee and customer establishing a credit plan

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1 under which the licensee contemplates credit transactions from time
2 to time that:

- 3 a. may be unsecured or secured by personal property,
- 4 b. shall not have a term longer than twelve (12) months,
- 5 and
- 6 c. are subject to prepayment in whole or in part at any
- 7 time without penalty;

8 7. "Licensee" means a person licensed to offer flex loans
9 pursuant to the subtitle;

10 8. "Person means an individual, group of individuals,
11 partnership, association, corporation, or any other business, unit,
12 or legal entity; and

13 9. "Default" means:

- 14 a. the failure of a customer to make a required payment
- 15 pursuant to a periodic billing statement within a
- 16 certain number of days of the due date as agreed upon
- 17 by the licensee and the customer in the flex loan
- 18 plan, provided that such a period may not exceed
- 19 sixty-one (61) days after the due date on the billing
- 20 statement, or
- 21 b. the customer's failure to otherwise perform the
- 22 obligations under the flex loan plan.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 10-100.2 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. No person shall engage in the business of making flex loans
5 unless the person is licensed to make flex loans pursuant to this
6 act. A person shall be deemed to be engaged in the business of
7 making flex loans in this state if the person induces a consumer,
8 while located in this state, to enter into a flex loan plan in this
9 state through the use of facsimile, telephone, Internet, or other
10 means. A separate license shall be required for each location from
11 which the business of making flex loans is conducted.

12 B. Any nonresident person seeking licensure under this act
13 shall furnish the Administrator of the Department of Consumer Credit
14 with the name and address of a resident of this state upon whom
15 notices or orders issued by the Administrator, or process affecting
16 a licensee under this act, may be served. A nonresident licensee
17 shall promptly notify the Administrator in writing of any change in
18 its designated agent for service of process, and the change shall
19 not become effective until approved by the Administrator.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 10-100.3 of Title 14A, unless
22 there is created a duplication in numbering, reads as follows:

23 A. An applicant for a license to make flex loans shall meet the
24 following requirements:

1 1. A tangible net worth that comprises tangible assets, less
2 liabilities, of not less than Fifty Thousand Dollars (\$50,000.00)
3 for each location; and

4 2. The financial responsibility, financial condition, business
5 experience, character, and general fitness of the applicant shall
6 reasonably warrant the belief that the applicant's business shall be
7 conducted, lawfully, honestly, carefully and efficiently. In
8 determining whether these qualifications have been met, and for the
9 purpose of investigating compliance with this subtitle, the
10 Administrator may review and approve:

- 11 a. the relevant business records and the capital adequacy of
12 the applicant,
- 13 b. the competence, experience, integrity, and financial
14 ability of any person who is a director, a shareholder
15 with ten percent (10%) or more shares of the applicant,
16 or a person who owns or controls the applicant, and
- 17 c. any record of the applicant or any person referred to in
18 this act for any criminal activity, any fraud or other
19 act of personal dishonesty, any act, omission, or
20 practice that constitutes a breach of a fiduciary duty,
21 or any suspension, revocation, or removal by any agency
22 or department of the United States or any state, from
23 participation in the conduct of any business.

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1 B. The Administrator shall periodically review the licensee's
2 compliance with subsection A of this section.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-100.4 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

6 Each application for a license shall be in a form established by
7 the Administrator of the Department of Consumer Credit by
8 promulgation of an administrative rule, including the following:

9 1. The legal name, residence and business address of the
10 applicant, and if the applicant is a partnership, association, or
11 corporation, the legal name, residence and business address of every
12 member, officer, managing employee and director of the applicant;

13 2. Every person licensed under this act shall maintain an agent
14 in this state for service of process. The name, address, telephone
15 number, and electronic mail address of the agent shall be filed with
16 the application. The Administrator shall be notified in writing by
17 the licensee at least five (5) days prior to any change in the
18 status of an agent; and

19 3. Other data and information the Administrator may require
20 about the applicant, its directors, trustees, officers, members,
21 managing employees, or agents.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 10-100.5 of Title 14A, unless
24 there is created a duplication in numbering, reads as follows:

1 A. Each application for a license required by this act shall be
2 accompanied by:

3 1. A filing fee of Five Hundred Dollars (\$500.00), which shall
4 not be subject to refund unless the license is granted and the
5 filing fee shall constitute the license fee for the first license
6 year or part thereof, unless a nonrefundable supervision fee is
7 established by the Administrator, by administrative rule promulgated
8 pursuant to this act, the nonrefundable supervision fee shall be in
9 lieu of the filing fee. The filing fee or supervision fee shall be
10 applicable to each location;

11 2. An audited financial statement including but not limited to
12 a balance sheet, a statement of income or loss, and a statement of
13 changes in financial position for the immediately preceding fiscal
14 year, prepared in accordance with generally accepted accounting
15 principles by a certified public accountant or public accounting
16 firm, neither of which is affiliated with the applicant. For a
17 newly created entity, the Administrator may accept only a balance
18 sheet prepared by a certified public accountant or public accounting
19 firm, neither of which is affiliated with the applicant, accompanied
20 by a projected income statement demonstrating that the applicant
21 will have adequate capital after payment of start-up costs; and

22 3. A surety bond, issued by an insurer regulated by the State
23 Insurance Commissioner of this state and not affiliated with the
24 applicant, in the amount of Twenty-five Thousand Dollars

1 (\$25,000.00) for each location. However, the aggregate amount of
2 the surety bond required for a single licensee shall not exceed Two
3 Hundred Thousand Dollars (\$200,000.00). In lieu of the surety bond,
4 the applicant shall file an irrevocable letter of credit, in the
5 amount of the surety bond, issued by any federally insured bank,
6 savings bank, or credit union, none of which is affiliated with the
7 applicant. The surety bond or irrevocable letter of credit shall be
8 in a form satisfactory to the Administrator and shall be payable to
9 the Department of Consumer Credit for the benefit of any person who
10 is injured pursuant to a flex loan plan by the fraud,
11 misrepresentation, breach of contract, financial failure or
12 violation of any provision of this act by a licensee. In the case
13 of a surety bond, the aggregate liability of the surety bond shall
14 not exceed the principal sum of the surety bond. In the case of an
15 irrevocable letter of credit, applicants shall obtain letters of
16 credit for terms of not less than three (3) years and renew the
17 letters of credit annually. If the licensee fails to pay a person
18 or the Administrator, as required by this act, then a person may
19 bring suit against the licensee directly on the surety bond or
20 irrevocable letter of credit in any court of competent jurisdiction,
21 or the Administrator may bring suit in the District Court of
22 Oklahoma County, which shall have exclusive venue in all matters
23 relating to this section on behalf of those persons, in either one
24 (1) or successive actions. The surety bond or irrevocable letter of

1 credit shall be maintained by the licensee for not less than three
2 (3) years following the expiration, revocation, or surrender of the
3 licensee's license.

4 B. 1. The Administrator is authorized to require an applicant
5 for a license to consent to a criminal history records check and to
6 provide fingerprints with the application in a form acceptable to
7 the Administrator. The Administrator may require such consent and
8 fingerprints from any individual who is a director, officer, or ten
9 percent (10%) or more shareholder of the applicant or who owns or
10 controls the applicant, as well as from any other individual
11 associated with the applicant as is reasonably necessary to meet the
12 purposes of this act. Refusal of any person to consent to a
13 criminal history records check or to provide fingerprints pursuant
14 to this subsection constitutes grounds for the Administrator to deny
15 the applicant a license.

16 2. Any criminal history records check conducted pursuant to
17 this subsection shall be conducted by the Oklahoma State Bureau of
18 Investigation, the Federal Bureau of Investigation, or both, and the
19 results of the criminal history records check shall be forwarded to
20 the Administrator. All costs incurred in conducting the criminal
21 history records check shall be paid by the applicant, in addition to
22 any other fees required by this act.

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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 10-100.6 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Upon the filing of an application in a form prescribed by
5 the Administrator, accompanied by the fee and documents required by
6 this act, the Administrator shall investigate to ascertain whether
7 the requirements prescribed by this act have been satisfied. If the
8 Administrator finds that the requirements have been satisfied, and
9 approves the documents, the Administrator shall issue to the
10 applicant a license to engage in the business of making flex loans
11 in this state.

12 B. The license shall be conspicuously posted in the licensee's
13 place of business at all times.

14 C. A license issued pursuant to this act shall remain in force
15 and effect through the remainder of the year ending December 31
16 after its date of issuance unless earlier surrendered, suspended or
17 revoked pursuant to this act.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 10-100.7 of Title 14A, unless
20 there is created a duplication in numbering, reads as follows:

21 A. If the Administrator determines that an applicant is not
22 qualified to receive a license, the Administrator shall notify the
23 applicant in writing that the application has been denied, stating
24 the basis for denial.

1 B. If the Administrator denies an application, or if the
2 Administrator fails to act on an application within ninety (90) days
3 after the filing of a properly completed application, the applicant
4 may make a written demand to the Administrator for a hearing before
5 the Administrator on the question of whether the license should be
6 granted.

7 C. Any hearing on the denial of a license shall be conducted
8 pursuant to the Administrative Procedures Act, provided that the
9 burden of proof that the applicant is entitled to a license shall be
10 on the applicant. A decision of the Administrator following any
11 hearing on the denial of a license is subject to review pursuant to
12 the provisions of the Administrative Procedures Act.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 10-100.8 of Title 14A, unless
15 there is created a duplication in numbering, reads as follows:

16 A. Licenses issued pursuant to this act shall expire on
17 December 31. Each license may be renewed for the ensuing twelve-
18 month period upon application by the license holder showing
19 continued compliance with the requirements of this act, and the
20 payment to the Administrator annually, between November 1 and
21 December 31, of a license renewal fee of Five Hundred Dollars
22 (\$500.00). If a supervision fee is established pursuant to this
23 act, the Administrator shall require licensees under this act to
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1 instead pay the nonrefundable supervision fee in place of the
2 license renewal fee.

3 B. A licensee making timely and complete application for
4 renewal of its license shall be permitted to continue to operate
5 under its existing license until its application is approved or
6 denied.

7 C. The Administrator may establish, by promulgation of an
8 administrative rule, a biennial license arrangement for the filing
9 of the application for license renewal, but the license fee or
10 supervision fee, if established pursuant to authority of the act,
11 shall not be payable for more than one (1) year at a time.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 10-100.9 of Title 14A, unless
14 there is created a duplication in numbering, reads as follows:

15 A. A license issued pursuant to this act is not transferable or
16 assignable.

17 B. 1. The prior written approval of the Administrator is
18 required for the continued operation of a flex loan business
19 whenever a change in control of a licensee is proposed. The
20 Administrator may require information deemed necessary to determine
21 whether a new application is required. Reasonable and actual costs
22 incurred by the Administrator in investigating a change of control
23 request shall be paid by the person requesting approval. If the
24 person acquiring control of a licensee is already licensed under

1 this act, the person must notify the Administrator thirty (30) days
2 prior to the acquisition.

3 2. Whenever control is acquired or exercised in violation of
4 this section, the license shall be deemed revoked as of the date of
5 the unlawful acquisition of control. The licensee or its
6 controlling person shall surrender the license to the Administrator
7 on demand.

8 C. A licensee shall notify the Administrator five (5) days
9 before any change in the licensee's principal place of business,
10 branch office or name.

11 SECTION 11. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 10-100.10 of Title 14A, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Notwithstanding any other statutory limitation, a licensee
15 authorized to make flex loans under this act may charge and collect
16 interest, fees, and charges in a manner consistent with this
17 section.

18 B. A licensee may charge and collect a periodic interest rate
19 not to exceed twenty percent (20%) per month.

20 C. The maximum principal loan amount of a flex loan shall be
21 Three Thousand Dollars (\$3,000.00) and adjusted every other year by
22 the Administrator of the Department of Consumer Credit to reflect
23 the percentage changes in the Consumer Price Index published by the
24 Bureau of Labor Statistics of the Department of Labor.

1 D. Any flex loan under this act shall require payment, in the
2 form of cash, money order, debit card, or prepaid debit card, or any
3 other instrument for payment of money, whether or not negotiable,
4 including any authorization for electronic payment of money, on or
5 before the due date of each billing cycle in an amount sufficient to
6 reduce any outstanding principal balance by at least three percent
7 (3%) per calendar month.

8 E. 1. If a customer defaults under the terms of a flex loan
9 plan and the licensee refers the customer's account to an attorney,
10 including a regular salaried employee of the licensee, for
11 collection, the licensee may:

- 12 a. if the flex loan plan so provides, charge and collect
13 from the customer a reasonable attorney's fee, and
- 14 b. if the flex loan plan, or in the case of secured plans,
15 the security agreement or similar instrument, so
16 provides, recover from the customer all collection and
17 court costs, including, in the case of secured plans, all
18 costs of enforcing the security agreement or similar
19 instrument actually incurred by the licensee, including
20 those incurred on appeal.

21 2. A licensee may charge and collect interest following default
22 of the customer or judgment in favor of the licensee at the periodic
23 rate permitted by this section.

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1 3. Disposition of property after default shall occur in a
2 commercially reasonable manner in accordance with law.

3 F. If a check is returned to a licensee from a payor financial
4 institution due to insufficient funds, no licensee shall have the
5 authority to assess a handling charge against the maker or drawer of
6 the returned check.

7 SECTION 12. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 10-100.11 of Title 14A, unless
9 there is created a duplication in numbering, reads as follows:

10 A. A licensee shall provide each prospective customer, before
11 consummation of a flex loan plan, a written explanation, in clear,
12 understandable language, of the interest, fees, and charges to be
13 charged by the licensee. The style, content and method of executing
14 the required written explanation shall comply with federal truth-in-
15 lending laws and shall contain a statement that the customer may
16 prepay the unpaid balance in whole or in part at any time without
17 penalty. The Administrator may promulgate administrative rules
18 establishing additional requirements in order to assure complete and
19 accurate disclosure of the interest, fees, and charges to be charged
20 by a licensee under a flex loan plan.

21 B. The account-opening statement for any flex loan plan shall
22 include, along with other state or federal law requirements:

23 1. A next-business-day customer's right of rescission for any
24 requested draw under the flex loan plan; and

1 2. A notice informing the customer that complaints may be made
2 to the Administrator, including the Administrator's telephone number
3 and address.

4 C. The account-opening statement for any flex loan plan shall
5 not require or provide the licensee the authority to require the
6 customer to draw the full amount of credit available under a flex
7 loan plan at any time.

8 D. A licensee shall provide customers with a periodic billing
9 statement in compliance with federal truth-in-lending laws.

10 SECTION 13. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 10-100.12 of Title 14A, unless
12 there is created a duplication in numbering, reads as follows:

13 A. Each licensee shall keep and use in its business any books,
14 accounts and records the Administrator may require to effectuate
15 this act and the rules promulgated thereto. Every licensee shall
16 preserve the books, accounts and records for at least two (2) years.
17 Any licensee, after receiving the prior written approval of the
18 Administrator, may maintain records at a location within or outside
19 this state.

20 B. A licensee shall not engage in unfair or deceptive acts,
21 practices or advertising in the conduct of the licensed business.

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

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

7 E. 1. No flex loan plan subject to this act shall:

8 a. provide that the law of a jurisdiction other than this
9 state applies,

10 b. provide that the customer consents to the jurisdiction of
11 another state or foreign country,

12 c. establish venue, or

13 d. waive any provision of this act.

14 2. Any provision described in this section that is contained in
15 a flex loan plan subject to this act shall be void and not
16 enforceable as a matter of public policy.

17 SECTION 14. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 10-100.13 of Title 14A, unless
19 there is created a duplication in numbering, reads as follows:

20 The business of making flex loans in accordance with this act
21 shall not be subject to or controlled by any other statute governing
22 the imposition of interest, fees, or loan charges. A licensee shall
23 not have the powers enumerated in this act without first complying
24 with the law regulating the particular transaction involved, but

1 licensees legally exercising any of the powers set forth in this act
2 shall not be deemed in violation of any other provision of law.

3 SECTION 15. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-100.14 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

6 A. The Administrator may promulgate administrative rules in
7 accordance with the Administrative Procedures Act, for the
8 enforcement of this act. A copy of any administrative rules by the
9 Administrator shall be mailed to the principal place of business of
10 each license holder at least thirty (30) days before the date it
11 takes effect.

12 B. To assure compliance with this act, the Administrator may
13 examine the relevant business, books and records of any licensee.
14 Further, for the purposes of discovering violations of this act and
15 determining whether persons are subject to this act, the
16 Administrator may examine or investigate persons licensed under this
17 act and persons reasonably suspected by the Administrator of
18 conducting business that requires a license under this act by
19 exercising authority that includes, but is not limited to, the power
20 to summon witnesses and examine them under oath or affirmation, and
21 to compel the production of books and records that may be relevant
22 to the examination or investigation.

23 C. 1. A licensee or unlicensed person subject to the licensing
24 requirements of this act, that is examined or investigated in

1 accordance with this act, shall pay to the Administrator the
2 reasonable and actual expenses of the investigation or examination.
3 The expenses shall be payable in addition to all other fees, taxes
4 and costs required by law.

5 2. If a supervision fee is established pursuant to this act,
6 then licensees who pay the supervision fee will no longer be
7 required to pay examination expenses pursuant to this subsection for
8 examinations that occur after payment of the supervision fee.

9 SECTION 16. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 10-100.15 of Title 14A, unless
11 there is created a duplication in numbering, reads as follows:

12 A. The Administrator may, after notice and hearing, suspend or
13 revoke any license if the Administrator finds that the licensee has
14 knowingly or through lack of due care:

15 1. Failed to pay any fees, expenses, or costs imposed by the
16 Administrator under the authority of this act;

17 2. Has committed any fraud, engaged in any dishonest activities
18 or made any misrepresentations;

19 3. Has violated any provision of this act, any administrative
20 rule promulgated pursuant to this act, or any other law in the
21 course of the licensee's dealings as a licensee;

22 4. Has made a false statement in the application for the
23 license or failed to give a true reply to a question in the
24 application; or

1 5. Has demonstrated incompetency or untrustworthiness to act as
2 a licensee.

3 B. If the reason for revocation or suspension of a licensee's
4 license at any one (1) location is of general application to all
5 locations operated by a licensee, the Administrator may revoke or
6 suspend all licenses issued to a licensee.

7 C. A hearing shall be held on written notice given at least
8 twenty (20) days prior to the date of the hearing and shall be
9 conducted in accordance Administrative Procedures Act.

10 SECTION 17. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 10-100.16 of Title 14A, unless
12 there is created a duplication in numbering, reads as follows:

13 After notice and opportunity for a hearing, if the Administrator
14 finds that a person has violated this act, or any administrative
15 rule promulgated thereto, the Administrator may take the following
16 actions or any combination of such actions:

17 1. Order the person to cease and desist violating the act or
18 any administrative rule promulgated pursuant thereto;

19 2. Require the refund of any fees collected by the person in
20 violation of this act; or

21 3. Order the person to pay to the Department of Consumer Credit
22 a civil penalty of not more than One Thousand Dollars (\$1,000.00)
23 for each transaction in violation of this act or for each day that a
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1 violation occurs or continues. Such civil penalty shall be
2 deposited to the credit of the General Revenue Fund.

3 SECTION 18. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-100.17 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

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

10 1. Censure, suspension, or bar is in the public interest and
11 that the person has committed or caused a violation of this
12 subtitle, administrative regulation, or any rule or order of the
13 Administrator; or

14 2. Person has been:

15 a. convicted or pled guilty to, or pled nolo contendere to,
16 any crime, or

17 b. held liable in any civil action by final judgment or any
18 administrative judgment by any public agency, if the
19 criminal, civil or administrative judgment involved any
20 offense reasonably related to the qualifications,
21 functions or duties of a person engaged in the business
22 of making flex loans pursuant to this subtitle.

23 B. Persons suspended or barred under this section are
24 prohibited from participating in any business activity of a licensee

1 and from engaging in any business activity on the premises where a
2 licensee is conducting its business. This subsection shall not be
3 construed to prohibit suspended or barred persons from having their
4 personal transactions processed by a licensee.

5 SECTION 19. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 10-100.18 of Title 14A, unless
7 there is created a duplication in numbering, reads as follows:

8 A. The Administrator may enter into a consent order at any time
9 with any person to resolve any matter arising under this act. A
10 consent order shall be signed by the person to whom it is issued, or
11 a duly authorized representative, and shall indicate agreement to
12 the terms contained in the order. A consent order need not
13 constitute an admission by any person that any provision of this
14 act, or any administrative rule or order promulgated or issued under
15 this act has been violated, nor need it constitute a finding by the
16 Administrator that the person has violated this act, or any
17 administrative rule, or order issued under this act.

18 B. Notwithstanding the issuance of a consent order, the
19 Administrator may seek civil or criminal penalties concerning
20 matters encompassed by the consent order.

21 C. In cases involving extraordinary circumstances requiring
22 immediate action, the Administrator may take any enforcement action
23 authorized by this act without providing the opportunity for a prior
24 hearing, but shall promptly afford a subsequent hearing upon an

1 application to rescind the action taken that is filed with the
2 Administrator within twenty (20) days after receipt of the notice of
3 the Administrator's emergency action.

4 SECTION 20. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 10-100.19 of Title 14A, unless
6 there is created a duplication in numbering, reads as follows:

7 A. Any person aggrieved by the conduct of a licensee under this
8 act in connection with the licensee's regulated activities may file
9 a written complaint with the Administrator who may investigate the
10 complaint.

11 B. In the course of the investigation of the complaint, the
12 Administrator may:

- 13 1. Subpoena witnesses;
- 14 2. Administer oaths;
- 15 3. Examine any individual under oath or affirmation; and
- 16 4. Compel the production of records, books, papers, contracts
17 or other documents relevant to the investigation.

18 C. If any person fails to comply with a subpoena of the
19 Administrator under this act or to testify concerning any matter
20 about which the person may be interrogated under this act, the
21 Administrator may petition any court of competent jurisdiction for
22 enforcement.

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1 D. The license of any licensee under this act who fails to
2 comply with a subpoena of the Administrator may be suspended pending
3 compliance with the subpoena.

4 E. The Administrator shall have exclusive administrative power
5 to investigate and enforce any and all complaints relating to the
6 business of making flex loans filed by any person that are not
7 criminal in nature.

8 SECTION 21. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 10-100.20 of Title 14A, unless
10 there is created a duplication in numbering, reads as follows:

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

- 15 1. The filing for bankruptcy or reorganization by the licensee;
- 16 2. Revocation or suspension proceedings instituted against the
17 licensee by any state or governmental authority;
- 18 3. The denial of the opportunity to engage in the business of
19 making loans by any state or governmental authority;
- 20 4. Any felony indictment of the licensee or any of its
21 directors, officers or principals;
- 22 5. Any felony conviction of the licensee or any of its
23 directors, officers or principals; and

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1 6. Other events that the Administrator may determine and
2 identify by administrative regulation.

3 SECTION 22. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-100.21 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

6 A. Each licensee shall file an annual report with the
7 Administrator on the date of the renewal application required in
8 Section 9 of this act, containing the following information:

9 1. The names and addresses of persons owning a controlling
10 interest in each licensee;

11 2. The location of all places of business operated by the
12 licensee and the nature of the business conducted at each location;

13 3. The names and addresses of all affiliated entities regulated
14 under this title doing business in this state;

15 4. An audited financial statement, including, but not limited
16 to, a balance sheet, statement of income or loss, and statement of
17 changes in financial position, for the immediately preceding fiscal
18 year end, prepared in accordance with generally accepted accounting
19 principles by a certified public accountant or public accounting
20 firm, neither of which is affiliated with the licensee; and

21 5. If the licensee is a corporation, the names and addresses of
22 its officers and directors; if the licensee is a partnership, the
23 names and addresses of the partners; or if the licensee is a limited
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1 liability company, the names and addresses of the board of governors
2 or managers of the limited liability company.

3 B. If the licensee holds two (2) or more licenses or is
4 affiliated with other licensees a composite report may be filed, but
5 may not be required.

6 C. The reports shall be filed in a form that may reasonably be
7 required by the Administrator and shall be sworn to by a responsible
8 officer of the licensee.

9 D. The information submitted by licensees pursuant to this
10 section shall be afforded the same degree of confidentiality by the
11 Department of Consumer Credit and the Administrator as is applicable
12 to reports filed by loan and thrift companies pursuant to law.

13 E. The Administrator shall prepare and submit to the governor
14 and legislature, annually, an analysis and recapitulation of the
15 reports for the preceding calendar year for the purpose of
16 reflecting the general results of operations under this subtitle.

17 SECTION 23. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 10-100.22 of Title 14A, unless
19 there is created a duplication in numbering, reads as follows:

20 A. In addition to any other powers conferred upon the
21 Administrator of the Department of Consumer Credit by law, the
22 Administrator is authorized to require persons subject to this act
23 to be licensed through a multi-state automated licensing system.
24 Pursuant to this authority, the Administrator may:

1 1. Promulgate administrative rules that are reasonably
2 necessary for participation in, transition to, or operation of a
3 multi-state automated licensing system;

4 2. Establish relationships or enter into agreements that are
5 reasonably necessary for participation in, transition to, or
6 operation of a multi-state automated licensing system. The
7 agreements may include, but are not limited to, operating
8 agreements, information sharing agreements, interstate cooperative
9 agreements and technology licensing agreements;

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

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

15 5. Establish deadlines for transitioning licensees to a multi-
16 state automated licensing system. The Administrator has the
17 authority to deny any applications or renewal applications not filed
18 with a multi-state automated licensing system after such deadlines
19 have passed, notwithstanding any dates established elsewhere in this
20 act; provided, however, the Administrator shall provide reasonable
21 notice of any transition deadlines to licensees; and

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

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1 B. Nothing in this section shall authorize the Administrator to
2 require a person who is not subject to this act to submit
3 information to, or to participate in, a multi-state automated
4 licensing system that is operated, or participated in, pursuant to
5 this act.

6 C. Notwithstanding this section, the Administrator retains full
7 authority and discretion to license persons under this act and to
8 enforce this act to its fullest extent. Nothing in this section
9 shall be deemed to be a reduction or derogation of that authority
10 and discretion.

11 D. Applicants for and holders of licenses issued under this act
12 shall pay all costs associated with submitting an application to or
13 transitioning a license to a multi-state automated licensing system,
14 as well as all costs required by a multi-state automated licensing
15 system for maintaining and renewing any license issued by the
16 Administrator on a multi-state automated licensing system.

17 SECTION 24. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 10-100.23 of Title 14A, unless
19 there is created a duplication in numbering, reads as follows:

20 The Administrator of the Department of Consumer Credit is
21 authorized to use a multi-state automated licensing system as an
22 agent for channeling information, whether criminal or noncriminal in
23 nature, whether derived from or distributed to the United States
24 Department of Justice or any other state or federal governmental

1 agency, or any other source, that the Administrator is authorized to
2 request from, or distribute to, under this act.

3 SECTION 25. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-100.24 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

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

8 A. The requirements under any federal or state law regarding
9 the privacy or confidentiality of any information or material
10 provided to a multi-state automated licensing system, and any
11 privilege arising under federal or state law, including the rules of
12 any federal or state court with respect to such information or
13 material, shall continue to apply to the information or material
14 after the information or material has been disclosed to a multi-
15 state automated licensing system. The information or material may
16 be shared with all state and federal regulatory officials with
17 consumer credit oversight authority without the loss of privilege or
18 the loss of confidentiality protections provided by federal or state
19 law, including the protection available under state law.

20 B. For purposes of this section, the Administrator is
21 authorized to enter into agreements or sharing agreements with other
22 governmental agencies, the Conference of State Bank Supervisors, or
23 other associations representing governmental agencies as established
24 by rule or order of the Administrator.

1 C. Information or material that is subject to a privilege or
2 confidential under this section shall not be subject to:

3 1. Disclosure under any federal or state law governing the
4 disclosure to the public of information held by an officer or any
5 agency of the federal government or the respective state; or

6 2. Subpoena, discovery, or admission into evidence in any
7 private civil action or administrative process, unless with respect
8 to any privilege held by a multi-state automated licensing system
9 applicable to such information or material, the person to whom such
10 information or material pertains waives that privilege, in whole or
11 in part, in the discretion of such person.

12 D. This section shall supersede any inconsistent provisions of
13 law pertaining to the records open to public inspection.

14 E. This section shall not apply with respect to information or
15 material relating to publicly adjudicated disciplinary and
16 enforcement actions against persons subject to this act that is
17 included in a multi-state automated licensing system for access by
18 the public.

19 SECTION 26. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 10-100.25 of Title 14A, unless
21 there is created a duplication in numbering, reads as follows:

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

1 SECTION 27. This act shall become effective November 1, 2016.

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