

HOUSE BILL 1757

By Sexton

AN ACT to amend Tennessee Code Annotated, Title 45,
relative to the Flexible Credit Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, is amended by adding the following language as a new, appropriately designated chapter.

45-12-101. This chapter shall be known and may be cited as the “Flexible Credit Act.”

45-12-102. As used in this chapter, “commissioner” means the commissioner of financial institutions or the commissioner’s designee.

45-12-103.

(a) No person, firm, or corporation shall engage in the business of making loans under this chapter unless such person, firm, or corporation:

(1) Has obtained a certificate of registration under the Industrial Loan and Thrift Companies Act, compiled in chapter 5 of this title;

(2) Has provided notice to the commissioner in accordance with this chapter;

(3) At the time notice is provided, has a net worth of at least two million dollars (\$2,000,000) and has had its principal place of business in this state for at least three (3) consecutive years; and

(4) Has provided to the commissioner a copy of an audited financial statement, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year.

(b) The commissioner shall maintain a list of persons, firms, and corporations authorized to make loans under this chapter.

45-12-104. A person, firm, or corporation meeting the qualifications set forth in this chapter shall be authorized to make loans under this chapter by providing notice, not less than thirty (30) days prior to making any loan under this chapter, to the commissioner of its intent to make such loans and stating an effective date. A person, firm, or corporation shall provide such notice on a form prescribed by the commissioner, complete with all information required by the commissioner.

45-12-105. Notwithstanding any other statutory limitation, a lender authorized to make loans under this chapter may make a loan under an open-end credit plan which is a plan under which a registrant contemplates repeated loans that may be secured by real or personal property or both, without fixed maturities or limitation as to the length of term, and that are subject to prepayment at any time at a periodic interest rate not to exceed twenty-four percent (24%) per annum.

45-12-106.

(a) Notwithstanding any other statutory limitation, a lender authorized to make loans under this chapter may charge borrowers fees and charges, in addition to interest, in a manner consistent with this section.

(b) A lender may charge and collect additional types of fees and charges that are agreed upon between the lender and the borrower, in amounts that are specified in or determined in accordance with the agreement between the lender and the borrower. The additional fees and charges may include, but are not limited to, the following:

(1) A monthly, annual, or other periodic charge or a one-time charge for the privileges or services made available to the borrower under the plan;

(2) Transaction charges for each purchase or cash advance under the plan;

(3) A minimum charge for each monthly, annual, or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness;

(4) A late payment or delinquency charge;

(5) Fees incident to the application for, or the opening, administration, and termination of a plan, which in the case of secured plans, may include, but not be limited to, fees and charges relative to the inspection, verification, and protection of the collateral and the establishment, perfection, enforcement, and release of the security interest;

(6) Returned payment charges;

(7) Charges for providing sales slips, invoices, checks, duplicate periodic statements, or other documents;

(8) Stop payment fees;

(9) Charges for exceeding a predetermined credit limit or for initiating a transaction that, if consummated, would result in an outstanding balance in excess of the credit limit; and

(10) Other fees and charges that may be agreed upon between the lender and the borrower.

(c)

(1) In the event a borrower defaults under the terms of a plan and the lender refers the borrower's account to an attorney, including a regular salaried employee of the lender, for collection, the lender may:

(A) If the agreement governing the open-end plan so provides, charge and collect from the borrower a reasonable attorney's fee; and

(B) If the agreement governing the plan, or in the case of secured plans, the security agreement or similar instrument, so provides, recover from the borrower all court and other collection costs including, in the case of secured plans, all costs of enforcing the security agreement or similar instrument, actually incurred by the lender, including those incurred on appeal.

(2) Lenders may charge and collect interest charges following default of the borrower or judgment in favor of the lender at the rates permitted by this chapter.

(d) The fees and charges authorized by this section are not interest for purposes of this title or any other state law.

45-12-107. In addition to the obligations described in § 45-5-503, a lender authorized to make loans under this chapter shall submit to the commissioner by July 31 of each year an audited financial statement, including balance sheet, statement of income or loss, and statement of changes in financial position, summaries of the types of loans made, and other statistical information that may reasonably be required by the commissioner, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this chapter.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.