

1 SB330
2 175097-1
3 By Senator Ward
4 RFD: Banking and Insurance
5 First Read: 08-MAR-16

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8 SYNOPSIS: Under existing law, lenders of \$1,000 or
9 less are licensed and regulated under the Alabama
10 Small Loan Act.

11 This bill would authorize non-bank lenders
12 to issue short-term unsecured loans, known as flex
13 loans.

14 This bill would provide for the licensure
15 and regulation of lenders of flex loans by the
16 State Banking Department.

17 This bill would establish the maximum
18 interest rate and maximum duration of a flex loan
19 and provide for fees that may be charged to a
20 customer.

21 This bill would set qualifications,
22 including financial guarantees, for lenders and
23 provide civil penalties for violations by lenders.

24 This bill would also authorize the State
25 Banking Department to enforce the provisions of
26 this act and promulgate rules.

1 A BILL
2 TO BE ENTITLED
3 AN ACT

4
5 Relating to short-term loans; to authorize non-bank
6 lenders to issue short-term unsecured loans, known as flex
7 loans; to provide for the licensure and regulation of lenders
8 of flex loans by the State Banking Department; to establish
9 the maximum interest rate and maximum duration of a flex loan
10 and provide for fees that may be charged to a customer; to set
11 qualifications, including financial guarantees, for lenders
12 and provide civil penalties for violations by lenders; and to
13 authorize the State Banking Department to enforce the
14 provisions of this act and promulgate rules.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. This act shall be known and may be cited
17 as the Flexible Credit Act.

18 Section 2. As used in this act, the following words
19 shall have the following meanings:

20 (1) CONTROL. Possession, direct or indirect, of the
21 power to direct or cause the direction of management and
22 policies of a person, whether through the ownership of
23 securities by contract or otherwise; provided that no
24 individual shall be deemed to control a person solely on
25 account of being a director, officer, or employee of the
26 person. A person who, directly or indirectly, owns, controls,
27 holds the power to vote, or holds proxies representing 25

1 percent or more of the then outstanding voting securities
2 issued by another person, is presumed to control the other
3 person. For purposes of this definition, the superintendent
4 may determine whether a person, in fact, controls another
5 person.

6 (2) CONTROLLING PERSON. Any person in control of a
7 licensee.

8 (3) DEFAULT. The occurrence of both of the
9 following:

10 a. The failure of a customer to make a required
11 payment pursuant to a period billing statement within a
12 certain number of days of the due date as agreed upon by the
13 licensee and the customer in the flex loan plan, provided that
14 such a period may not exceed 61 days after the due date on the
15 billing statement.

16 b. The customer's failure to otherwise perform the
17 obligations under the flex loan plan.

18 (4) DEPARTMENT. The State Banking Department.

19 (5) FLEX LOAN. A loan made pursuant to a flex loan
20 plan.

21 (6) FLEX LOAN PLAN. A written agreement subject to
22 this act between a licensee and a customer establishing an
23 open-end credit plan under which the licensee contemplates
24 repeated noncommercial loans for personal, family, or
25 household purposes that:

26 a. May be unsecured or secured by personal property;

1 b. May be without fixed maturities or limitations as
2 to the length of term; and

3 c. Are subject to prepayment in whole or in part at
4 any time without penalty.

5 (7) LICENSEE. A person licensed to offer flex loans
6 pursuant to this act.

7 (8) PERSON. An individual, group of individuals,
8 partnership, association, corporation, or any other business
9 unit or legal entity.

10 (9) SUPERINTENDENT. The Superintendent of the State
11 Banking Department.

12 Section 3. (a) A person may not engage in the
13 business of making flex loans unless the person is licensed to
14 make flex loans pursuant to this act. A person is deemed to be
15 engaged in the business of making flex loans in this state if
16 the person induces a consumer, while located in this state, to
17 enter into a flex loan plan in this state through the use of
18 the Internet, facsimile, telephone, or other means. A separate
19 license shall be required for each location from which the
20 business of making flex loans is conducted.

21 (b) A nonresident person may be licensed to make
22 flex loans pursuant to this act. Any nonresident person
23 seeking a license under this act shall furnish the
24 superintendent with the name and address of a resident of this
25 state upon whom notices or orders issued by the
26 superintendent, or process affecting a licensee under this
27 act, may be served. The nonresident licensee shall promptly

1 notify the superintendent in writing of every change in its
2 designated agent for service of process, and the change shall
3 not become effective until approved by the superintendent.

4 Section 4. (a) To qualify for a license to make flex
5 loans, an applicant shall meet all of the following
6 requirements:

7 (1) The applicant has a tangible net worth that
8 comprises tangible assets less liabilities of not less than
9 fifty thousand dollars (\$50,000) for each location.

10 (2) The financial responsibility, financial
11 condition, business experience, character, and general fitness
12 of the applicant reasonably warrants the belief that the
13 applicant's business will be conducted lawfully and fairly. In
14 determining whether this qualification has been met, and for
15 the purpose of investigating compliance with this act, the
16 superintendent may review and approve all of the following:

17 a. The relevant business records and the capital
18 adequacy of the applicant.

19 b. The competence, experience, integrity, and
20 financial ability of any person who is a director, officer, or
21 10 percent or more shareholder of the applicant or who owns or
22 controls the applicant.

23 c. Any record, on the part of the applicant or any
24 person referred to in paragraph b. of any criminal activity,
25 any fraud or other act of dishonesty, or any suspension,
26 removal, or administrative action by any agency or department

1 of the United States or any state, from participation in the
2 conduct of business.

3 (b) The requirements set forth in subsection (a) are
4 continuing in nature.

5 Section 5. Each application for a license shall be
6 in writing and made under oath or affirmation to the
7 superintendent, in a form prescribed by the superintendent,
8 and shall include all of the following:

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

13 (2) The location in this state where the registered
14 agent of the applicant is located; provided "registered agent
15 of the applicant" includes a person designated by the
16 applicant for accepting notices or orders from the
17 superintendent or process affecting the applicant pursuant to
18 Section 3.

19 (3) Other data and information the superintendent
20 may require with respect to the applicant and its directors,
21 trustees, officers, members, managing employees, or agents.

22 Section 6. (a) Each application for a license shall
23 be accompanied by all of the following:

24 (1) A filing fee of five hundred dollars (\$500),
25 which shall not be subject to refund but which, if the license
26 is granted, shall constitute the license fee for the first
27 license year or part thereof; provided, however, if a

1 supervision fee is established pursuant to Section 18, the
2 superintendent shall require applicants under this act to
3 instead pay the supervision fee in place of the filing fee.

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

17 (3) Evidence of a surety bond in an amount of
18 twenty-five thousand dollars (\$25,000) issued by a company
19 authorized to do business in this state, approved by the
20 superintendent, and not affiliated with the applicant for each
21 location, or in the case of a nonresident licensee, its
22 principal place of business; provided, however, in no event
23 shall the aggregate amount of the surety bond required for a
24 single licensee exceed two hundred thousand dollars
25 (\$200,000). In lieu of the surety bond, the applicant shall
26 file an irrevocable letter of credit, in the amount of the
27 surety bond, issued by any federally insured bank, savings

1 bank, or credit union, none of which is affiliated with the
2 applicant. The bond or irrevocable letter of credit shall be
3 in favor of this state to discharge unsatisfied indebtedness
4 or liability of the licensee to this state, any political
5 subdivision thereof, or to any person who may have a cause of
6 action against the lender by reason of the lender's conduct
7 under this act.

8 (b) The surety on the bond or owner of the
9 irrevocable letter of credit issued pursuant to subdivision
10 (3) of subsection (a) may cancel the bond or letter of credit
11 by giving 60 days' notice in writing to the superintendent,
12 and thereafter the surety or owner shall be relieved of
13 liability after the effective date of cancellation. The
14 superintendent shall require a new bond or irrevocable letter
15 of credit in an amount of twenty-five thousand dollars
16 (\$25,000) at any time he or she has knowledge that a
17 licensee's surety bond or irrevocable letter of credit has
18 expired, is about to expire or, in the opinion of the
19 superintendent, is insecure for any reason. The license of any
20 lender authorized to make flex loans under this act who fails
21 to post a replacement surety bond or irrevocable letter of
22 credit within 10 days from receipt of a notice from the
23 superintendent shall be cancelled immediately.

24 (c) Claimants against the licensee may bring suit
25 directly on the surety bond or irrevocable letter of credit,
26 and the Attorney General also may bring suit on behalf of
27 claimants in one or multiple actions. The surety bond or

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

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

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

26 Section 7. (a) Upon the filing of an application in
27 a form prescribed by the superintendent, accompanied by the

1 fee and documents required in Section 6, the superintendent
2 shall investigate to ascertain whether the requirements
3 prescribed by Section 4 have been satisfied. If the
4 superintendent finds that the requirements have been
5 satisfied, and approves the documents, the superintendent
6 shall issue to the applicant a license to engage in the
7 business of making flex loans in this state.

8 (b) The license shall be kept conspicuously posted
9 in the place of business of the licensee, or in the case of a
10 nonresident licensee, its principal place of business.

11 (c) A license issued pursuant to this act shall
12 remain in force and effective through the remainder of the
13 year ending December 31 after its date of issuance unless
14 earlier surrendered, suspended, or revoked pursuant to this
15 act.

16 Section 8. (a) If the superintendent determines that
17 an applicant is not qualified to receive a license, the
18 superintendent shall notify the applicant in writing that the
19 application has been denied, stating the basis for denial.

20 (b) If the superintendent denies an application, or
21 if the superintendent fails to act on an application within 90
22 days after the filing of a properly completed application, the
23 applicant may make a written demand to the superintendent for
24 a hearing before the superintendent on the question of whether
25 the license should be granted.

26 (c) Any hearing on the denial of a license shall be
27 conducted pursuant to the Administrative Procedure Act. In the

1 hearing, the burden of proving that the applicant is entitled
2 to a license shall be on the applicant. A decision of the
3 superintendent following any hearing on the denial of a
4 license is subject to review under the Administrative
5 Procedure Act.

6 Section 9. (a) Licenses issued pursuant to this act
7 shall expire on December 31. Each license may be renewed for
8 the ensuing 12-month period upon application by the license
9 holder showing continued compliance with the requirements of
10 Section 4 and the payment to the superintendent annually,
11 between November 1 and December 31, of a license renewal fee
12 of five hundred dollars (\$500). If a supervision fee is
13 established pursuant to Section 18, the superintendent shall
14 require licensees under this act to instead pay the
15 supervision fee in place of the license renewal fee.

16 (b) A licensee making timely and complete
17 application for renewal of its license shall be permitted to
18 continue to operate under its existing license until its
19 application is approved or denied.

20 (c) The superintendent may establish a biennial
21 license arrangement for the filing of the application for
22 license renewal, but in no case shall the license fee or
23 supervision fee, if established pursuant to Section 18, be
24 payable for more than one year at a time.

25 Section 10. (a) A license issued pursuant to this
26 act is not transferable or assignable.

1 (b) (1) The prior written approval of the
2 superintendent is required for the continued operation of a
3 flex loan business whenever a change in control of a licensee
4 is proposed. The superintendent may require information deemed
5 necessary to determine whether a new application is required.
6 Reasonable and actual costs incurred by the superintendent in
7 investigating a change of control request shall be paid by the
8 person requesting approval.

9 (2) Whenever control is acquired or exercised in
10 violation of this section, the license shall be deemed revoked
11 as of the date of the unlawful acquisition of control. The
12 licensee or its controlling person shall surrender the license
13 to the superintendent on demand.

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

17 Section 11. (a) Notwithstanding any other statutory
18 limitation, a licensee authorized to make flex loans under
19 this act may charge and collect interest, fees, and charges in
20 a manner consistent with this section.

21 (b) A licensee may charge and collect a periodic
22 interest rate not to exceed 36 percent per annum.

23 (c) (1) In addition to the periodic interest rate
24 authorized under subsection (b), a licensee may also charge
25 and collect a customary fee to defray the ordinary costs of
26 opening, administering, and terminating a flex loan plan,

1 including, but not limited to, costs associated with any of
2 the following:

- 3 a. Underwriting and documenting the account.
- 4 b. Securing and maintaining account information.
- 5 c. Validating customer information.
- 6 d. Offering electronic and phone access to accounts.
- 7 e. Processing account transactions.
- 8 f. Responding to customer inquiries.
- 9 g. Providing periodic billing statements.
- 10 h. Inspecting, verifying, and protecting collateral
11 and establishing, perfecting, and releasing the security
12 interest.
- 13 i. Other services or activities conducted by the
14 licensee under the flex loan plan.

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

17 (d) No flex loan plan under this act shall have an
18 outstanding principal balance in excess of two thousand
19 dollars (\$2,000) at any time.

20 (e) Any flex loan plan under this act shall require
21 payment on or before the due date of each billing cycle in an
22 amount sufficient to reduce any outstanding principal balance
23 by at least three percent per calendar month.

24 (f) (1) In the event a customer defaults under the
25 terms of a flex loan plan and the licensee refers the
26 customer's account to an attorney, including a regular

1 salaried employee of the licensee, for collection, the
2 licensee may:

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

5 b. If the flex loan plan, or in the case of secured
6 plans, the security agreement or similar instrument, so
7 provides, recover from the customer all collection and court
8 costs, including, in the case of secured plans, all costs of
9 enforcing the security agreement or similar instrument
10 actually incurred by the licensee, including those incurred on
11 appeal.

12 c. Refer the borrower to an approved consumer credit
13 counseling agency in coordination with any rule adopted under
14 Section 26, and may offer concessions with regard to interest
15 rate, repayment schedule, and other terms as agreed.

16 (2) A licensee may charge and collect interest
17 following default of the customer or judgment in favor of the
18 licensee at the periodic rate permitted by this section.

19 (3) Disposition of property after default shall
20 occur in a commercially reasonable manner.

21 (g) If a check is returned to a licensee from a
22 payer financial institution due to insufficient funds, the
23 licensee may not assess a handling charge against the maker or
24 drawer of the returned check.

25 Section 12. (a) A licensee shall provide each
26 prospective customer, before consummation of a flex loan plan,
27 a written explanation, in clear, understandable language, of

1 the interest, fees, and charges to be charged by the licensee.
2 The style, content, and method of executing the required
3 written explanation shall comply with federal truth-in-lending
4 laws and shall contain a statement that the customer may
5 prepay the unpaid balance in whole or in part at any time
6 without penalty. The superintendent may promulgate rules
7 establishing additional requirements in order to assure
8 complete and accurate disclosure of the interest, fees, and
9 charges to be charged by a licensee under a flex loan plan.

10 (b) The account-opening statement for any flex loan
11 plan shall include, along with other state or federal law
12 requirements, both of the following:

13 (1) A next-business-day customer's right of
14 rescission for any requested draw under the flex loan plan.

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

18 (c) The account-opening statement for any flex loan
19 plan shall not require or provide the licensee the authority
20 to require the customer to draw the full amount of credit
21 available under a flex loan plan at any time.

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

25 Section 13. (a) Each licensee shall keep and use in
26 its business any books, accounts, and records the
27 superintendent may require to effectuate this act and the

1 rules promulgated pursuant to this act. Every licensee shall
2 preserve the books, accounts, and records for at least two
3 years. Any licensee, after receiving the prior written
4 approval of the superintendent, may maintain records at a
5 location within or outside this state.

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

9 (c) (1) A customer may not have outstanding more than
10 one flex loan plan under this act at any one time. Each
11 licensee shall inquire of any customer seeking a flex loan
12 plan under this act regarding the customer's outstanding flex
13 loan plans. The superintendent, by rule, may require a
14 licensee to confirm whether a customer has an outstanding flex
15 loan by use of credit bureau agents or a third party private
16 database, if available.

17 (2) If the customer represents in writing that the
18 customer has no outstanding flex loan plans, a licensee may
19 offer the customer a flex loan plan.

20 (3) If the customer represents in writing that the
21 customer has one or more outstanding flex loan plans, a
22 licensee shall not offer a flex loan plan to the customer
23 until the customer represents to the licensee in writing that
24 the customer qualifies to open a new flex loan plan in
25 accordance with this subsection.

26 (4) Each licensee may rely on a written
27 representation of a customer regarding the existence of any

1 outstanding indebtedness with any other lender other than the
2 licensee receiving the representation.

3 (d) A licensee may not use any device or agreement,
4 including agreements with affiliated licensees, with the
5 intent to obtain greater charges than otherwise would be
6 authorized by this act.

7 (e) A licensee shall comply with any state or
8 federal law, rule, or regulation applicable to any business
9 authorized or conducted under this act, including, but not
10 limited to, the federal Truth in Lending Act, compiled in 15
11 U.S.C. §1601 et seq., the federal Equal Credit Opportunity
12 Act, compiled in 15 U.S.C. §§ 1691-1691f, and the federal Fair
13 Debt Collection Practices Act, compiled in 15 U.S.C. § 1692 et
14 seq.

15 (f) (1) A flex loan plan subject to this act may not:

16 a. Provide that the law of a jurisdiction other than
17 this state applies.

18 b. Provide that the customer consents to the
19 jurisdiction of another state or foreign country.

20 c. Fix venue.

21 d. Waive any provision of this act.

22 (2) Any provision described in subdivision (1) that
23 is contained in a flex loan plan subject to this act is void
24 as a matter of public policy.

25 Section 14. The business of making flex loans in
26 accordance with this act is not subject to or controlled by
27 any other statute governing the imposition of interest, fees,

1 or loan charges, including, but not limited to, Chapter 8 of
2 Title 8 of the Code of Alabama 1975.

3 Section 15. (a) The superintendent may promulgate
4 rules for the enforcement of this act. A copy of any rule
5 adopted by the superintendent shall be mailed to the principal
6 place of business of each license holder at least 30 days
7 before the date it takes effect.

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

20 (c) (1) A licensee or unlicensed person subject to
21 the licensing requirements of this act, that is examined or
22 investigated in accordance with this act, shall pay to the
23 superintendent the reasonable and actual expenses of the
24 investigation or examination. The expenses shall be payable in
25 addition to all other fees, taxes, and costs required by law.

26 (2) If a supervision fee is established pursuant to
27 Section 18, then licensees who pay the supervision fee are not

1 required to pay examination expenses pursuant to this
2 subsection for examinations that occur after payment of the
3 supervision fee.

4 Section 16. (a) The superintendent, after notice and
5 a hearing, may suspend or revoke any license if the
6 superintendent finds that the licensee has knowingly or
7 through lack of due care done any of the following:

8 (1) Failed to pay any fees, expenses, or costs
9 imposed by the superintendent under the authority of this act.

10 (2) Committed any fraud, engaged in any dishonest
11 activities, or made any misrepresentations.

12 (3) Violated any provision of this act, any rule
13 issued pursuant to this act, or any other law in the course of
14 the licensee's dealings as a licensee.

15 (4) Made a false statement in the application for
16 the license or failed to give a true reply to a question in
17 the application.

18 (5) Demonstrated incompetency or untrustworthiness
19 to act as a licensee.

20 (b) If the reason for revocation or suspension of a
21 licensee's license at any one location is of general
22 application to all locations operated by a licensee, the
23 superintendent may revoke or suspend all licenses issued to a
24 licensee.

25 (c) A hearing shall be held on written notice given
26 at least 20 days prior to the date of the hearing and shall be
27 conducted in accordance with the Administrative Procedure Act.

1 Section 17. If, after notice and opportunity for a
2 hearing, the superintendent finds that a person has violated
3 this act or any rule issued pursuant to this act the
4 superintendent may take any of the following actions or any
5 combination of such actions:

6 (1) Order the person to cease and desist violating
7 the act or any rule promulgated pursuant to this act.

8 (2) Require the refund of any fees collected by the
9 person in violation of this act.

10 (3) Order the person to pay to the superintendent a
11 civil penalty of not more than one thousand dollars (\$1,000)
12 for each transaction in violation of this act or for each day
13 that a violation occurs or continues.

14 Section 18. (a) The superintendent, after notice and
15 opportunity for a hearing, may censure, suspend for a period
16 not to exceed 12 months, or bar a person from any position of
17 employment, management, or control of a licensee, if the
18 superintendent finds that the censure, suspension, or bar is
19 in the public interest and that the person has committed or
20 caused a violation of this act or any rule or order of the
21 superintendent, or finds that the person has either been:

22 (1) Convicted or pled guilty to, or pled nolo
23 contendere to, any crime.

24 (2) Held liable in any civil action by final
25 judgment, or any administrative judgment by any public agency,
26 if the criminal, civil, or administrative judgment involved
27 any offense reasonably related to the qualifications,

1 functions, or duties of a person engaged in the business of
2 making flex loans pursuant to this act.

3 (b) In connection with a censure or following a
4 suspension, the superintendent may impose additional
5 conditions and compliance responsibilities, the costs of which
6 shall be paid by the licensee in the form of an additional
7 supervision fee.

8 (c) Persons suspended or barred under this section
9 are prohibited from participating in any business activity of
10 a licensee and from engaging in any business activity on the
11 premises where a licensee is conducting its business within
12 Alabama. This subsection shall not be construed to prohibit
13 suspended or barred persons from having their personal
14 transactions processed by a licensee.

15 Section 19. (a) The superintendent may enter into a
16 consent order at any time with any person to resolve any
17 matter arising under this act. A consent order shall be signed
18 by the person to whom it is issued, or a duly authorized
19 representative, and shall indicate agreement to the terms
20 contained in the order. A consent order need not constitute an
21 admission by any person that any provision of this act, or any
22 rule or order promulgated or issued under this act has been
23 violated, nor need it constitute a finding by the
24 superintendent that the person has violated this act, or any
25 rule or order promulgated or issued under this act.

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

4 (c) In cases involving extraordinary circumstances
5 requiring immediate action, the superintendent may take any
6 enforcement action authorized by this act without providing
7 the opportunity for a prior hearing, but shall promptly afford
8 a subsequent hearing upon an application to rescind the action
9 taken that is filed with the superintendent within 20 days
10 after receipt of the notice of the superintendent's emergency
11 action.

12 Section 20. (a) Any person aggrieved by the conduct
13 of a licensee under this act in connection with the licensee's
14 regulated activities may file a written complaint with the
15 superintendent who may investigate the complaint.

16 (b) In the course of the investigation of the
17 complaint, the superintendent may do any of the following:

18 (1) Subpoena witnesses.

19 (2) Administer oaths.

20 (3) Examine any individual under oath or
21 affirmation.

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

24 (c) If any person fails to comply with a subpoena of
25 the superintendent under this act or to testify concerning any
26 matter about which the person may be interrogated under this

1 act, the superintendent may petition any court of competent
2 jurisdiction for enforcement.

3 (d) The license of any licensee under this act who
4 fails to comply with a subpoena of the superintendent may be
5 suspended pending compliance with the subpoena.

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

10 Section 21. Within 15 days of the occurrence of any
11 one of the following events, a licensee shall file a written
12 report with the superintendent describing the event and its
13 expected impact on the activities of the licensee in this
14 state:

15 (1) The filing for bankruptcy or reorganization by
16 the licensee.

17 (2) The institution of revocation or suspension
18 proceedings against the licensee by any state or governmental
19 entity.

20 (3) The denial of the opportunity to engage in the
21 business of making loans by any state or governmental entity.

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

24 (5) Any felony conviction of the licensee or any of
25 its directors, officers, or principals.

26 (6) Other events that the superintendent may
27 determine and identify by rule.

1 Section 22. (a) Each licensee shall file an annual
2 report with the superintendent on the date of the renewal
3 application required in Section 9 containing all of the
4 following information:

5 (1) The names and addresses of persons owning a
6 controlling interest in each licensee.

7 (2) The location of all places of business operated
8 by the licensee and the nature of the business conducted at
9 each location.

10 (3) The names and addresses of all affiliated
11 entities regulated under Title 5 of the Code of Alabama 1975,
12 doing business in this state.

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

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

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

4 (c) The reports shall be filed in a form that may
5 reasonably be required by the superintendent and shall be
6 sworn to by a responsible officer of the licensee.

7 (d) The information submitted by licensees pursuant
8 to this section shall be afforded the same degree of
9 confidentiality by the department and the superintendent as is
10 applicable to reports filed by other lenders regulated by the
11 state.

12 Section 23. (a) In addition to any other powers
13 conferred upon the superintendent by law, the superintendent
14 is authorized to require persons subject to this act to be
15 licensed through a multi-state automated licensing system.
16 Pursuant to this authority, the superintendent may do any of
17 the following:

18 (1) Promulgate rules that are reasonably necessary
19 for participation in, transition to, or operation of a
20 multi-state automated licensing system.

21 (2) Establish relationships or enter into agreements
22 that are reasonably necessary for participation in, transition
23 to, or operation of a multi-state automated licensing system.
24 The agreements may include, but are not limited to, operating
25 agreements, information sharing agreements, interstate
26 cooperative agreements, and technology licensing agreements.

1 (3) Require that applications for licensing under
2 this act and renewals of such licenses be filed with a
3 multi-state automated licensing system.

4 (4) Require that any fees required to be paid under
5 this act be paid through a multi-state automated licensing
6 system.

7 (5) Establish deadlines for transitioning licensees
8 to a multi-state automated licensing system. The
9 superintendent has the authority to deny any applications or
10 renewal applications not filed with a multi-state automated
11 licensing system after such deadlines have passed,
12 notwithstanding any dates established elsewhere in this act;
13 provided, however, the superintendent shall provide reasonable
14 notice of any transition deadlines to licensees.

15 (6) Take such further actions as are reasonably
16 necessary to give effect to this section.

17 (b) Nothing in this section shall authorize the
18 superintendent to require a person who is not subject to this
19 act to submit information to, or to participate in, a
20 multi-state automated licensing system that is operated
21 pursuant to this act.

22 (c) Notwithstanding this section, the superintendent
23 retains full authority and discretion to license persons under
24 this act and to enforce this act to its fullest extent.
25 Nothing in this section shall be deemed to be a reduction or
26 derogation of that authority and discretion.

1 (d) Applicants for and holders of licenses issued
2 under this act shall pay all costs associated with submitting
3 an application to or transitioning a license to a multi-state
4 automated licensing system, as well as all costs required by a
5 multi-state automated licensing system for maintaining and
6 renewing any license issued by the superintendent on a
7 multi-state automated licensing system.

8 Section 24. The superintendent is authorized to use
9 a multi-state automated licensing system as an agent for
10 channeling information, whether criminal or noncriminal in
11 nature, whether derived from or distributed to the United
12 States Department of Justice or any other state or federal
13 governmental agency, or any other source, that the
14 superintendent is authorized to request from, or distribute
15 to, under this act.

16 Section 25. (a) In order to promote more effective
17 regulation and reduce regulatory burden through supervisory
18 information sharing, the requirements under any federal or
19 state law regarding the privacy or confidentiality of any
20 information or material provided to a multi-state automated
21 licensing system, and any privilege arising under federal or
22 state law, including the rules of any federal or state court
23 with respect to such information or material, shall continue
24 to apply to the information or material after the information
25 or material has been disclosed to a multi-state automated
26 licensing system. The information or material may be shared
27 with all state and federal regulatory officials with consumer

1 credit oversight authority without the loss of privilege or
2 the loss of confidentiality protections provided by federal or
3 state law, including the protection available under Chapter
4 27, Title 8 of the Code of Alabama 1975.

5 (b) For purposes of subsection (a), the
6 superintendent is authorized to enter into agreements or
7 sharing agreements with other governmental agencies, the
8 Conference of State Bank Supervisors, or other associations
9 representing governmental agencies as established by rule or
10 order of the superintendent.

11 (c) Information or material that is subject to a
12 privilege or confidential under subsection (a) shall not be
13 subject to either of the following:

14 (1) Disclosure under any federal or state law
15 governing the disclosure to the public of information held by
16 an officer or any agency of the federal government or the
17 respective state.

18 (2) Subpoena, discovery, or admission into evidence
19 in any private civil action or administrative process, unless
20 with respect to any privilege held by a multi-state automated
21 licensing system applicable to such information or material,
22 the person to whom such information or material pertains
23 waives that privilege, in whole or in part, in the discretion
24 of such person.

25 (d) This section shall supersede any inconsistent
26 provisions of Section 36-12-40, Code of Alabama 1975,
27 pertaining to the records open to public inspection.

1 (e) This section shall not apply with respect to
2 information or material relating to publicly adjudicated
3 disciplinary and enforcement actions against persons subject
4 to this act.

5 Section 26. The superintendent is authorized, by
6 rule, to require providers of flexible loans licensed under
7 this act to directly provide borrowers with financial literacy
8 education material or, in the event of default, in conjunction
9 with approved consumer credit counseling providers.

10 Section 27. This act shall become effective January
11 1, 2017.