

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACT

RELATING TO BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES;
OPPOSING PREDATORY LOANS PRACTICES, INCLUDING THE PASSAGE OF
S.B. 1316, A BILL INTRODUCED TO THE STATE OF ARIZONA SENATE
ENTITLED "ARIZONA FLEXIBLE LOAN ACT"

WHEREAS:

- A. The Navajo Nation established the Budget and Finance Committee (B&F) as a standing committee and as such empowered B&F to coordinate and review all financial activities of the State for the benefit of the Navajo people. See 2 N.N.C. §§ 300 (a), 301 (B) (6).
- B. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to assist and coordinate all requests for information, appearances and testimony relating to state legislation impacting the Navajo Nation. 2 N.N.C. §§ 164 (A) (9), 700 (A), 701 (A) (4), 701 (A) (6) (2015); see also CO-45-12.
- C. The Navajo Nation has a government-to-government relationship with the State of Arizona.
- D. On January 28, 2016, the "Arizona Flexible Loan Act" (S.B. 1316) - sponsored by Senator John Kavanagh - was introduced to the State of Arizona Senate. See S.B. 1316, 52nd Leg. § 2 (2016), attached as Exhibit A; See also <http://www.azleg.gov/> (last visited May 18, 2016).
- E. S.B. 1316, is a bill introduced to establish the sale of flexible credit loans to be regulated under the authority of the Department of Financial Institutions (DFI). See Exhibit A.

- F. DFI, formerly known as the State Banking Department was originally codified in 1922 and enacted into law in 1973. DFI is statutorily charged with the licensing, supervision and regulation of state-chartered financial institutions and enterprises. The regulated entities include money transmitters, motor vehicle dealers, collection agencies, consumer lenders, mortgage banks and brokers, and credit unions and banks. DFI also investigates complaints that are filed by consumers against licensed entities and directs appropriate remedial action if the violations are substantiated. See Exhibit A.
- G. There are several provisions within S.B. 1316: Flexible Credit Lender Licensure; Finance Charges; Other Fees; Exemptions; Prohibited Acts; Restrictions; Recordkeeping and Reporting; Disclosures; Consumer Credit Counseling and Payment Plans; and Miscellaneous. See S.B. 1316, 52nd Leg. § 2 (2016), attached as Exhibit A.
- H. The most significant being the Finance Charges provision which permits a licensee to contract for and receive finance charges on a flexible credit loan, not exceed the following, if the original principal amount is at least \$500 but not more than \$2,500: 17% per month if unsecured; and 15% per month if secured with personal property. Also, prohibiting a licensee from compounding finance charges. See Exhibit A.
- I. The Office of the Navajo Nation Human Rights Commission (Commission) recommends the Navajo Nation oppose the S.B. 1316, due to the complaints the Commission's office receives regarding payday loans, title loans and short term loans in New Mexico. See Exhibit B (Memorandum from Leonard Gorman, Executive Director Office of Navajo Nation Human Rights Commission to Honorable Jonathan Hale, Council Delegate, Mar. 21, 2016).
- J. The Commission has determined after examining the issue, predatory auto lending targeted Navajo elders, Navajos with limited English comprehension, and those on fixed incomes, were the same practiced small loan businesses. See Exhibit B (Memorandum from Leonard Gorman, Executive Director Office of Navajo Nation Human Rights Commission to Honorable Jonathan Hale, Council Delegate, Mar. 21, 2016).

K. If S.B. 1316 is passed the Navajos who reside in Arizona would be subjected to the same practice as New Mexico. See Exhibit B.

L. In the best interest of the Navajo people, the Navajo Nation opposes the passage of S.B. 1316, cited as the Arizona Flexible Loan Act.

NOW THEREFORE, BE IT RESOLVED:

A. The Navajo Nation opposes predatory loans practices, including the passage of S.B. 1316, a bill introduced to the State of Arizona Senate cited as, "Arizona Flexible Loan Act."

B. The Navajo Nation hereby authorizes the Navajo Nation President, the Navajo Nation Speaker, the Navajo Nation Chief Justice and their designees, to oppose the passage of S.B. 1316.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 9 in favor and 0 oppose, (Pursuant to 2 N.N.C. §700 (D), Two members from each committee), this 23rd day of June, 2016.

A handwritten signature in dark ink, appearing to read "LoRenzo Bates", with a large, stylized flourish at the end.

Honorable LoRenzo Bates, Chairperson
Naabik'íyáti' Committee

Motion: Seth Damon

Second: Dwight Witherspoon

NAVAJO NATION

RCS# 463

Naa'bik'iyati Committee

6/23/2016

06:30:04 PM

Amd#1 to Amd#

Page 1 insert language

PASSED

MOT Tsosie

Page 3 insert language

SEC Begay, K

Yea : 9

Nay : 0

Not Voting : 15

Yea : 9

Begay, K
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Bennett

Damon
Hale

Pete
Smith

Tsosie
Witherspoon

Nay : 0

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Bates
Begay, NM
Brown
Chee

Crotty
Daniels
Filfred
Jack

Perry
Phelps
Shepherd
Slim

Tso
Vacant
Yazzie

House Engrossed Senate Bill

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SENATE BILL 1316

AN ACT

AMENDING SECTIONS 6-125 AND 6-126, ARIZONA REVISED STATUTES; AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 18; AMENDING TITLE 28, CHAPTER 7, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-2138; REPEALING TITLE 6, CHAPTER 18, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO CONSUMER CREDIT LOANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-125, Arizona Revised Statutes, is amended to
3 read:

4 6-125. Annual examination assessment of financial institutions
5 and enterprises; costs of foreign examination; payment

6 A. Before August 31 of each year the superintendent shall make the
7 following annual assessments:

- 8 1. ~~Upon~~ ON banks, the annual assessment set by the superintendent.
9 2. ~~Upon~~ ON savings and loan associations, a charge not to exceed the
10 annual assessment set for state banks under paragraph 1 of this subsection.
11 3. ~~Upon~~ ON credit unions, the annual assessment set by the
12 superintendent.

13 B. The superintendent shall assess against the institution or
14 enterprise examined a charge at the rate set by the superintendent but not to
15 exceed sixty-five dollars per hour for each examiner employed in the
16 following examinations:

- 17 1. Any examination of a trust company.
18 2. Any examination of the trust operation of a bank or a savings and
19 loan association.
20 3. Any examination of a financial institution ordered by the
21 superintendent in addition to the regular examination required under section
22 6-122.
23 4. Any examination of an enterprise ordered by the superintendent.
24 5. Any examination of a financial institution holding company or
25 international banking facility.
26 6. Any examination of a consumer lender.
27 7. ANY EXAMINATION OF A FLEXIBLE CREDIT LENDER.

28 C. For a financial institution or enterprise maintaining an office
29 outside this state, in addition to the annual assessment or examination
30 assessment, the superintendent shall make an assessment equal to the travel
31 and subsistence expense incurred in the examination of the office in the
32 foreign state or country. Notwithstanding any other limitation prescribed by
33 law, examiners engaged in examination of a foreign office shall be reimbursed
34 for their necessary travel and subsistence expenses. Reimbursement for
35 examiners' expenses shall be credited to the appropriation account of the
36 department.

37 D. Assessments under this section are due and payable to the
38 department within thirty days after notice of the assessment is mailed by the
39 department. The superintendent shall assess a penalty of fifty dollars for
40 each day after the thirty-day period that the financial institution or
41 enterprise fails to remit the assessment, unless, ~~upon~~ ON good cause shown, a
42 written request for an extension is approved by the superintendent prior to
43 the expiration of the specified time. In no event shall the total penalty
44 exceed the examination assessment.

1 E. The superintendent shall set the amount of the annual assessment to
2 be charged to banks and credit unions. In setting the annual assessment ~~upon~~
3 ON banks, the superintendent shall consider the annual assessment set by the
4 comptroller of currency for national banks. In setting the annual assessment
5 ~~upon~~ ON credit unions the superintendent shall consider the annual assessment
6 set by the national credit union administration for federal credit unions.

7 Sec. 2. Section 6-126, Arizona Revised Statutes, is amended to read:

8 6-126. Application fees for financial institutions and
9 enterprises

10 A. The following nonrefundable fees are payable to the department with
11 the filing of the following applications:

- 12 1. To apply for a banking permit, five thousand dollars.
- 13 2. To apply for an amendment to a banking or savings and loan
14 association permit, one thousand dollars.
- 15 3. To establish each banking branch office, seven hundred fifty
16 dollars.
- 17 4. To move a banking office to other than an established office of a
18 bank, one thousand dollars.
- 19 5. To apply for a savings and loan association permit, five thousand
20 dollars.
- 21 6. To establish each savings and loan association branch office, one
22 thousand five hundred dollars.
- 23 7. To move an office of a savings and loan association to other than
24 an established office, one thousand dollars.
- 25 8. To organize and establish a credit union, one hundred dollars.
- 26 9. To establish each credit union branch or to move a credit union
27 office to other than an established office of a credit union, two hundred
28 fifty dollars.
- 29 10. To organize and establish any other financial institutions for
30 which an application or investigation fee is not otherwise provided by law,
31 two thousand five hundred dollars.
- 32 11. To acquire control of a financial institution, other than a
33 consumer lender, five thousand dollars.
- 34 12. To apply for a trust company license, five thousand dollars.
- 35 13. To apply for a commercial mortgage banker, mortgage banker, escrow
36 agent or consumer lender license, one thousand five hundred dollars.
- 37 14. To apply for a mortgage broker, commercial mortgage broker, sales
38 finance company or debt management company license, eight hundred dollars.
- 39 15. To apply for a collection agency license, one thousand five
40 hundred dollars.
- 41 16. To apply for a deferred presentment company license, one thousand
42 dollars.
- 43 17. To apply for a motor vehicle dealer license, three hundred
44 dollars.

- 1 18. To apply for a branch office of an escrow agent, consumer lender,
2 FLEXIBLE CREDIT LENDER, commercial mortgage banker, mortgage banker, trust
3 company, money transmitter, collection agency or deferred presentment
4 company, five hundred dollars.
- 5 19. To apply for a branch office of a mortgage broker, commercial
6 mortgage broker, debt management company or sales finance company, two
7 hundred fifty dollars.
- 8 20. To apply for approval of the articles of incorporation of a
9 business development corporation, five hundred dollars.
- 10 21. To apply for approval for the merger or consolidation of two or
11 more financial institutions, five thousand dollars per institution.
- 12 22. To apply for approval to convert from a national bank or federal
13 savings and loan charter to a state chartered institution, five thousand
14 dollars.
- 15 23. To apply for approval to convert from a federal credit union to a
16 state chartered credit union, one thousand dollars.
- 17 24. To apply for approval to merge or consolidate two or more credit
18 unions, five hundred dollars per credit union.
- 19 25. To move an established office of an enterprise to other than an
20 established office, fifty dollars.
- 21 26. To issue a duplicate or replace a lost enterprise's license, one
22 hundred dollars.
- 23 27. To change a responsible person on a mortgage broker's, commercial
24 mortgage broker's, commercial mortgage banker's or a mortgage banker's
25 license, two hundred fifty dollars.
- 26 28. To change an active manager on a collection agency license or a
27 manager of a money transmitter branch office license, two hundred fifty
28 dollars.
- 29 29. To change the licensee name on a financial institution or
30 enterprise license, not more than two hundred fifty dollars.
- 31 30. To apply for a money transmitter license, one thousand five
32 hundred dollars plus twenty-five dollars for each branch office and
33 authorized delegate to a maximum of four thousand five hundred dollars.
- 34 31. To acquire control of any money transmitter or controlling person
35 pursuant to chapter 12 of this title, two thousand five hundred dollars.
- 36 32. To receive the following publications:
37 (a) Quarterly bank and savings and loan statement of condition, not
38 more than ten dollars per copy.
39 (b) Monthly summary of actions report, not more than five dollars per
40 copy.
41 (c) A list of licensees, a monthly pending actions report and all
42 other in-house prepared reports or listings made available to the public, not
43 more than one dollar per page.
- 44 33. To apply for a loan originator license, an amount to be determined
45 by the superintendent.

1 34. To apply for a loan originator license transfer, an amount to be
2 determined by the superintendent.

3 35. To apply for a conversion from a mortgage banker license to a
4 mortgage broker license, an amount to be determined by the superintendent.

5 36. TO APPLY FOR A FLEXIBLE CREDIT LENDER LICENSE, AN AMOUNT TO BE
6 DETERMINED BY THE SUPERINTENDENT.

7 B. On issuance of a license or permit for a financial institution or
8 enterprise, the superintendent shall collect the first year's annual
9 assessment or renewal fee for the financial institution or enterprise
10 prorated according to the number of quarters remaining until the date of the
11 next annual assessment or renewal.

12 C. The following annual renewal fees shall be paid each year:

13 1. For an escrow agent, or trust company, one thousand dollars plus
14 two hundred fifty dollars for each branch office.

15 2. For a debt management company or sales finance company, five
16 hundred dollars plus two hundred dollars for each branch office.

17 3. For a collection agency, six hundred dollars plus two hundred
18 dollars for each branch office.

19 4. For a motor vehicle dealer, one hundred fifty dollars.

20 5. For an inactive mortgage broker or commercial mortgage broker, two
21 hundred fifty dollars.

22 6. For a mortgage banker that negotiates or closes in the aggregate
23 one hundred loans or less in the immediately preceding calendar year, seven
24 hundred fifty dollars, and for a mortgage banker that negotiates or closes in
25 the aggregate over one hundred loans in the immediately preceding calendar
26 year, one thousand two hundred fifty dollars. In addition, a mortgage banker
27 shall pay two hundred fifty dollars for each branch office.

28 7. For a commercial mortgage banker, one thousand two hundred fifty
29 dollars. In addition, a commercial mortgage banker shall pay two hundred
30 fifty dollars for each branch office.

31 8. For a mortgage broker or commercial mortgage broker that negotiates
32 or closes in the aggregate fifty loans or less in the immediately preceding
33 calendar year, two hundred fifty dollars and for a mortgage broker or
34 commercial mortgage broker that negotiates or closes in the aggregate more
35 than fifty loans in the immediately preceding calendar year, five hundred
36 dollars. In addition, a mortgage broker or commercial mortgage broker shall
37 pay two hundred dollars for each branch office.

38 9. For a consumer lender OR A FLEXIBLE CREDIT LENDER, one thousand
39 dollars plus two hundred dollars for each branch office.

40 10. For a money transmitter, five hundred dollars plus twenty-five
41 dollars for each branch office and each authorized delegate to a maximum of
42 two thousand five hundred dollars.

43 11. For a deferred presentment company, four hundred dollars. In
44 addition, a deferred presentment company shall pay two hundred dollars for
45 each branch office.

12. For a loan originator, an amount to be determined by the superintendent.

13. For an inactive status loan originator, an amount to be determined by the superintendent.

D. The license, renewal or branch office permit fee for a premium finance company for each calendar year or part thereof shall not be less than one hundred dollars or more than three hundred dollars as set by the superintendent. If the license is issued or the branch office is opened after June 30 in any year, the fees shall not be less than fifty dollars or more than one hundred fifty dollars for that year.

Sec. 3. Title 6, Arizona Revised Statutes, is amended by adding chapter 18, to read:

CHAPTER 18

FLEXIBLE CREDIT LOANS

ARTICLE 1. GENERAL PROVISIONS

6-1801. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AMOUNT FINANCED" MEANS THE AMOUNT OF CREDIT EXTENDED TO A CONSUMER ON A FLEXIBLE CREDIT LOAN DETERMINED PURSUANT TO THE TRUTH IN LENDING ACT (P.L. 90-321, 82 STAT. 146; 15 UNITED STATES CODE SECTIONS 1601 THROUGH 1667f).

2. "ANNUAL PERCENTAGE RATE" MEANS THE MEASURE OF THE COST OF CREDIT, EXPRESSED AS A YEARLY RATE, THAT RELATES THE AMOUNT AND TIMING OF VALUE RECEIVED BY THE CONSUMER TO THE AMOUNT AND TIMING OF PAYMENTS MADE, DETERMINED PURSUANT TO THE TRUTH IN LENDING ACT (P.L. 90-321, 82 STAT. 146; 15 UNITED STATES CODE SECTIONS 1601 THROUGH 1667f).

3. "CONSUMER" MEANS AN INDIVIDUAL WHO OBTAINS A FLEXIBLE CREDIT LOAN FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

4. "FINANCE CHARGE" MEANS THE AMOUNT PAYABLE BY A CONSUMER INCIDENT TO OR AS A CONDITION OF THE EXTENSION OF A FLEXIBLE CREDIT LOAN BUT DOES NOT INCLUDE OTHER FEES ALLOWED PURSUANT TO SECTION 6-1833.

5. "FLEXIBLE CREDIT LENDER" MEANS A PERSON THAT ADVERTISES TO MAKE, SOLICITS OR HOLDS ITSELF OUT TO MAKE OR MAKES FLEXIBLE CREDIT LOANS TO CONSUMERS IN THIS STATE.

6. "FLEXIBLE CREDIT LOAN" MEANS A WRITTEN AGREEMENT SUBJECT TO THIS CHAPTER BETWEEN A LICENSEE AND A CONSUMER ESTABLISHING A DIRECT CLOSED-END LOAN THAT SATISFIES ALL OF THE FOLLOWING:

(a) HAS AN ORIGINAL PRINCIPAL AMOUNT THAT IS NOT LESS THAN FIVE HUNDRED DOLLARS AND NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS.

(b) IS FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

(c) IS UNSECURED OR IS SECURED BY PERSONAL PROPERTY NOT INCLUDING REAL ESTATE.

(d) HAS A MINIMUM TERM OF FORTY-FIVE DAYS AND A MAXIMUM TERM OF TWENTY-FOUR MONTHS.

1 (e) IS PAYABLE IN SUBSTANTIALLY EQUAL INSTALLMENTS OF PRINCIPAL AND
2 INTEREST FOR THE TERM OF THE LOAN.

3 (f) IS SUBJECT TO PREPAYMENT IN WHOLE OR IN PART AT ANY TIME WITHOUT
4 PENALTY.

5 7. "LICENSEE" MEANS A PERSON LICENSED PURSUANT TO THIS CHAPTER.

6 8. "REGULARLY ENGAGED IN THE BUSINESS" MEANS EITHER:

7 (a) ADVERTISING TO OR ANY OTHER SOLICITATION OF A RESIDENT OF THIS
8 STATE THAT OFFERS A FLEXIBLE CREDIT LOAN AND THAT OCCURS WITHIN THIS STATE.

9 (b) MAKING THREE OR MORE FLEXIBLE CREDIT LOANS WITHIN A CALENDAR YEAR
10 TO RESIDENTS OF THIS STATE.

11 6-1802. Exemptions

12 A. THIS CHAPTER DOES NOT APPLY TO A PERSON THAT:

13 1. DOES BUSINESS UNDER ANY OTHER LAW OF THIS STATE, OR ANY OTHER STATE
14 WHILE REGULATED BY A STATE AGENCY OF THAT OTHER STATE, OR OF THE UNITED
15 STATES, RELATING TO BANKS, SAVINGS BANKS, TRUST COMPANIES, SAVINGS AND LOAN
16 ASSOCIATIONS, PROFIT SHARING AND PENSION TRUSTS, CREDIT UNIONS, INSURANCE
17 COMPANIES OR RECEIVERSHIPS IF THE FLEXIBLE CREDIT LOAN TRANSACTIONS ARE
18 REGULATED BY THE OTHER LAW OR ARE UNDER THE JURISDICTION OF A COURT.

19 2. IS LICENSED AS A PAWNBROKER PURSUANT TO TITLE 44, CHAPTER 11,
20 ARTICLE 3 TO THE EXTENT THAT THE PERSON'S ACTIVITIES ARE GOVERNED BY THAT
21 ARTICLE.

22 3. IS NOT REGULARLY ENGAGED IN THE BUSINESS OF MAKING FLEXIBLE CREDIT
23 LOANS.

24 4. IS LICENSED PURSUANT TO CHAPTER 5 OF THIS TITLE OR ACTING PURSUANT
25 TO TITLE 44, CHAPTER 2.1 TO THE EXTENT THAT THE PERSON'S ACTIVITIES ARE
26 GOVERNED BY THAT CHAPTER.

27 B. THE REQUIREMENTS OF THIS CHAPTER DO NOT APPLY TO:

28 1. CLOSED-END LOANS OF LESS THAN FIVE HUNDRED DOLLARS OR MORE THAN TWO
29 THOUSAND FIVE HUNDRED DOLLARS.

30 2. CONSUMER LOANS MADE UNDER CHAPTER 5 OF THIS TITLE.

31 3. FLEXIBLE CREDIT LOANS THAT ARE LAWFULLY MADE TO NONRESIDENTS OF
32 THIS STATE PURSUANT TO A FLEXIBLE CREDIT LOAN LAW OF ANOTHER STATE SIMILAR IN
33 PRINCIPLE TO THIS CHAPTER.

34 4. EDUCATIONAL LOANS THAT ARE EITHER:

35 (a) MADE, INSURED OR GUARANTEED PURSUANT TO A PROGRAM AUTHORIZED BY
36 THE UNITED STATES, THIS STATE OR ANY OTHER STATE.

37 (b) MADE BY A NONPROFIT ORGANIZATION THAT IS EXEMPT FROM TAXATION
38 UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE TO STUDENTS WHO ATTEND
39 POSTSECONDARY EDUCATIONAL INSTITUTIONS IN THIS STATE.

40 5. SECONDARY MOTOR VEHICLE FINANCE TRANSACTIONS AS DEFINED IN SECTION
41 44-281.

42 6-1803. License; applicability; contents of application; fees;
43 nontransferable

44 A. UNLESS EXEMPT UNDER SECTION 6-1802, A PERSON, WHETHER LOCATED IN
45 THIS STATE OR IN ANOTHER STATE, MAY NOT ENGAGE IN THE BUSINESS OF MAKING A

1 FLEXIBLE CREDIT LOAN TO A RESIDENT OF THIS STATE WITHOUT FIRST BEING LICENSED
2 AS A FLEXIBLE CREDIT LENDER BY THE SUPERINTENDENT.

3 B. THIS CHAPTER APPLIES TO ANY PERSON THAT SEEKS TO AVOID ITS
4 APPLICATION BY ANY DEVICE, SUBTERFUGE OR PRETENSE.

5 C. EACH APPLICANT FOR A LICENSE SHALL SUBMIT AN APPLICATION IN
6 WRITING, UNDER OATH AND IN THE FORM PRESCRIBED BY THE SUPERINTENDENT. THE
7 SUPERINTENDENT MAY REQUIRE AS PART OF AN APPLICATION ANY OTHER INFORMATION
8 THAT THE SUPERINTENDENT DEEMS NECESSARY.

9 D. AT THE TIME OF FILING AN APPLICATION FOR A LICENSE, AN APPLICANT
10 SHALL PAY TO THE SUPERINTENDENT THE FEE PRESCRIBED IN SECTION 6-126.

11 E. BEFORE JUNE 30 OF EACH YEAR, EACH LICENSEE MAY OBTAIN A RENEWAL OF
12 A LICENSE BY FILING AN APPLICATION IN THE FORM PRESCRIBED BY THE
13 SUPERINTENDENT AND PAYING THE FEE PRESCRIBED IN SECTION 6-126.

14 F. THE SUPERINTENDENT MAY DENY A LICENSE TO A PERSON IF THE
15 SUPERINTENDENT FINDS THAT AN APPLICANT:

16 1. IS INSOLVENT AS DEFINED IN SECTION 47-1201.

17 2. HAS FAILED TO DEMONSTRATE THE FINANCIAL RESPONSIBILITY, EXPERIENCE,
18 CHARACTER AND GENERAL FITNESS TO COMMAND THE CONFIDENCE OF THE PUBLIC AND TO
19 WARRANT THE BELIEF THAT THE BUSINESS WILL BE OPERATED LAWFULLY, HONESTLY,
20 FAIRLY AND EFFICIENTLY WITHIN THE PURPOSES OF THIS CHAPTER.

21 3. HAS FAILED TO PAY THE LICENSE FEE.

22 4. HAS FAILED TO HAVE AT LEAST TWENTY-FIVE THOUSAND DOLLARS IN ASSETS
23 READILY AVAILABLE FOR USE IN THE CONDUCT OF THE BUSINESS OF EACH LICENSED
24 OFFICE AND BRANCH OFFICE.

25 G. A FLEXIBLE CREDIT LENDER LICENSE IS NOT TRANSFERABLE OR ASSIGNABLE,
26 AND A PERSON MAY NOT ACQUIRE CONTROL OF A LICENSEE THROUGH STOCK PURCHASE OR
27 OTHER DEVICE WITHOUT THE PRIOR WRITTEN CONSENT OF THE SUPERINTENDENT. THE
28 SUPERINTENDENT MAY REFUSE CONSENT IF THE SUPERINTENDENT FINDS THAT ANY OF THE
29 GROUNDS FOR DENIAL OF RENEWAL, REVOCATION OR SUSPENSION OF A LICENSE
30 PRESCRIBED IN SECTION 6-1805 ARE APPLICABLE TO THE ACQUIRING PERSON. FOR THE
31 PURPOSES OF THIS SUBSECTION, "CONTROL" MEANS THE POWER TO VOTE MORE THAN
32 TWENTY PERCENT OF THE OUTSTANDING VOTING SHARES OF A LICENSED CORPORATION,
33 LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION OR TRUST.

34 6-1804. Issuance of license; license year; requirements

35 A. IF THE SUPERINTENDENT FINDS NO GROUNDS FOR DENIAL OF A LICENSE,
36 WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING A COMPLETE APPLICATION, THE
37 SUPERINTENDENT SHALL GRANT THE APPLICATION AND ISSUE A LICENSE TO THE
38 APPLICANT.

39 B. THE LICENSE YEAR FOR A LICENSEE BEGINS ON JULY 1 AND ENDS ON JUNE
40 30 OF EACH YEAR. A FLEXIBLE CREDIT LENDER SHALL APPLY FOR RENEWAL AS
41 PRESCRIBED BY THE SUPERINTENDENT NOT LATER THAN JUNE 30 OF EACH YEAR. A
42 LICENSE FOR WHICH A RENEWAL APPLICATION IS NOT RECEIVED BY THE SUPERINTENDENT
43 BY JUNE 30 IS SUSPENDED AND THE FLEXIBLE CREDIT LENDER MAY NOT ACT AS A
44 FLEXIBLE CREDIT LENDER UNTIL THE LICENSE IS RENEWED OR A NEW LICENSE IS
45 ISSUED PURSUANT TO THIS ARTICLE. THE LICENSE OF A FLEXIBLE CREDIT LENDER

1 THAT HAS NOT FILED A RENEWAL APPLICATION AND PAID THE RENEWAL FEE BY JULY 31
2 EXPIRES.

3 C. ALL LICENSES ISSUED REMAIN IN FULL FORCE UNTIL SURRENDERED, REVOKED
4 OR SUSPENDED.

5 D. A LICENSE REMAINS THE PROPERTY OF THIS STATE. ON TERMINATION AT
6 THE REQUEST OF THE LICENSEE OR REVOCATION BY THE SUPERINTENDENT, THE LICENSEE
7 SHALL IMMEDIATELY DELIVER THE LICENSE TO THE SUPERINTENDENT. TERMINATION OF
8 THE LICENSE DOES NOT AFFECT ANY OTHER LIABILITY OF THE LICENSEE.

9 E. THE LICENSEE SHALL DESIGNATE THE PRINCIPAL LOCATION OF THE LICENSED
10 OFFICE WITHIN OR OUTSIDE THIS STATE. IF A LICENSEE WISHES TO MAINTAIN MORE
11 THAN ONE OFFICE LOCATION, THE LICENSEE SHALL FIRST OBTAIN A BRANCH OFFICE
12 LICENSE FROM THE SUPERINTENDENT FOR EACH BRANCH OFFICE. THE LICENSEE SHALL
13 SUBMIT AN APPLICATION IN THE FORM PRESCRIBED BY THE SUPERINTENDENT AND PAY
14 THE FEE PRESCRIBED IN SECTION 6-126 FOR EACH BRANCH OFFICE LICENSE. IF THE
15 SUPERINTENDENT DETERMINES THAT THE APPLICANT IS QUALIFIED, THE SUPERINTENDENT
16 SHALL ISSUE A BRANCH OFFICE LICENSE INDICATING THE ADDRESS OF THE BRANCH
17 OFFICE.

18 F. A LICENSEE SHALL PROMINENTLY DISPLAY THE FLEXIBLE CREDIT LENDER
19 LICENSE IN THE OFFICE OF THE FLEXIBLE CREDIT LENDER AND ANY BRANCH OFFICE
20 LICENSE IN THAT BRANCH OFFICE WHERE LOAN TRANSACTIONS ARE CONDUCTED.

21 6-1805. Denial of renewal; suspension; revocation

22 A. THE SUPERINTENDENT MAY DENY RENEWAL OF A LICENSE OR SUSPEND OR
23 REVOKE A LICENSE IF THE SUPERINTENDENT FINDS THAT A LICENSEE:

24 1. IS INSOLVENT AS DEFINED IN SECTION 47-1201.
25 2. HAS SHOWN THAT THE LICENSEE IS NOT A PERSON OF HONESTY,
26 TRUTHFULNESS AND GOOD CHARACTER.

27 3. HAS FAILED TO PAY THE ANNUAL RENEWAL FEES.

28 4. HAS FAILED TO FILE AN ANNUAL REPORT WHEN DUE OR WITHIN ANY
29 EXTENSION OF TIME GRANTED BY THE SUPERINTENDENT FOR GOOD CAUSE.

30 5. HAS FAILED TO HAVE OR MAINTAIN AT LEAST TWENTY-FIVE THOUSAND
31 DOLLARS IN ASSETS USED OR READILY AVAILABLE FOR USE IN THE CONDUCT OF THE
32 BUSINESS OF EACH LICENSED OFFICE AND BRANCH OFFICE.

33 6. EITHER KNOWINGLY OR WITHOUT THE EXERCISE OF DUE CARE TO PREVENT A
34 VIOLATION, HAS VIOLATED ANY PROVISION OF THIS TITLE OR ANY RULE OR ORDER
35 ADOPTED OR MADE PURSUANT TO THIS TITLE.

36 7. HAS FAILED TO OPERATE THE BUSINESS OF MAKING FLEXIBLE CREDIT LOANS
37 FOR A CONTINUOUS PERIOD OF TWELVE MONTHS OR MORE, EXCEPT THAT THE
38 SUPERINTENDENT, ON GOOD CAUSE SHOWN, MAY EXTEND THE TIME FOR OPERATING THAT
39 BUSINESS FOR A SINGLE FIXED PERIOD OF NOT MORE THAN TWELVE MONTHS.

40 B. THE SUPERINTENDENT MAY ALSO DENY RENEWAL OF A LICENSE OR SUSPEND OR
41 REVOKE A LICENSE IF THE SUPERINTENDENT FINDS THAT ANY FACT OR CONDITION
42 EXISTS THAT, IF IT HAD EXISTED AT THE TIME OF THE ORIGINAL APPLICATION FOR
43 THE LICENSE, WOULD HAVE CLEARLY WARRANTED THE SUPERINTENDENT TO REFUSE TO
44 ISSUE THE LICENSE.

1 6-1806. Business limited to licensed locations; restrictions

2 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A LICENSEE MAY
3 NOT CONDUCT THE BUSINESS OF MAKING FLEXIBLE CREDIT LOANS PURSUANT TO THIS
4 CHAPTER UNDER ANY NAME OR AT ANY PLACE OF BUSINESS OTHER THAN THE NAME AND
5 PLACE STATED IN THE LICENSEE'S FLEXIBLE CREDIT LENDER LICENSE OR BRANCH
6 OFFICE LICENSE.

7 B. A LICENSEE MAY:

8 1. MAKE FLEXIBLE CREDIT LOANS BY MAIL OR ELECTRONIC MEANS.

9 2. ON REQUEST, MAKE ACCOMMODATIONS TO CONSUMERS AT ANY LOCATION
10 REQUESTED BY THE CONSUMER.

11 3. CONDUCT ANY ADMINISTRATIVE, LOAN SERVICING OR RECORDKEEPING
12 ACTIVITY AT ANY OTHER LOCATION NOT OPEN TO THE PUBLIC, IF THE SUPERINTENDENT
13 IS NOTIFIED IN ADVANCE OF THAT ACTIVITY.

14 C. A LICENSEE MAY CHANGE THE LOCATION OF ITS LICENSED OFFICE OR
15 LICENSED BRANCH OFFICE BY GIVING WRITTEN NOTICE TO THE SUPERINTENDENT, WHO
16 SHALL AMEND THE LICENSE ACCORDINGLY.

17 D. ALL FLEXIBLE CREDIT LOANS THAT ARE MADE AT THE LOCATION OF A
18 LICENSED OFFICE OR BRANCH OFFICE ARE SUBJECT TO THE REQUIREMENTS OF ARTICLE 2
19 OF THIS CHAPTER, WHETHER MADE BY A LICENSEE, ANY PERSON OTHERWISE EXEMPT FROM
20 THIS CHAPTER PURSUANT TO SECTION 6-1802 OR ANY OTHER PERSON.

21 E. A LICENSEE MAY NOT CONDUCT THE BUSINESS OF MAKING FLEXIBLE CREDIT
22 LOANS PURSUANT TO THIS CHAPTER FROM WITHIN ANY LICENSED OFFICE OR BRANCH
23 OFFICE IN WHICH ANY OTHER BUSINESS NOT LICENSED PURSUANT TO THIS TITLE IS
24 SOLICITED OR ENGAGED IN, OR IN ASSOCIATION OR CONJUNCTION WITH ANY OTHER
25 BUSINESS NOT LICENSED PURSUANT TO THIS TITLE, WITHOUT GIVING PRIOR NOTICE TO
26 THE SUPERINTENDENT. IF IT APPEARS TO THE SUPERINTENDENT THAT THE OTHER
27 BUSINESS IS OF SUCH A NATURE OR IS BEING CONDUCTED IN SUCH A MANNER AS TO
28 CONCEAL AN EVASION OF THIS CHAPTER OR IS CONTRARY TO THE PUBLIC INTEREST OR
29 OTHERWISE BEING CONDUCTED IN AN UNLAWFUL MANNER, THE SUPERINTENDENT MAY ACT
30 PURSUANT TO SECTION 6-137 TO RESTRICT THE LICENSEE FROM CONDUCTING ITS
31 BUSINESS IN CONJUNCTION WITH THAT OTHER BUSINESS. FOR THE PURPOSES OF THIS
32 SUBSECTION, "PUBLIC INTEREST" MEANS THE LAWS OF THIS STATE OR OF THE UNITED
33 STATES OR RULES ADOPTED BY THE SUPERINTENDENT.

34 6-1807. Books; accounts; records; access

35 A. A LICENSEE SHALL MAINTAIN BOOKS, ACCOUNTS AND RECORDS THAT ENABLE
36 THE SUPERINTENDENT TO DETERMINE WHETHER THE LICENSEE IS IN COMPLIANCE WITH
37 THIS CHAPTER.

38 B. A LICENSEE SHALL PRESERVE ITS BOOKS, ACCOUNTS AND RECORDS OF
39 FLEXIBLE CREDIT LOANS FOR AT LEAST TWO YEARS AFTER MAKING THE FINAL ENTRY FOR
40 ANY FLEXIBLE CREDIT LOAN. A LICENSEE THAT USES AN ELECTRONIC RECORDKEEPING
41 SYSTEM IS NOT REQUIRED TO KEEP A WRITTEN COPY OF THE ACCOUNTS AND RECORDS IF
42 THE LICENSEE IS ABLE TO GENERATE ALL OF THE INFORMATION REQUIRED BY THIS
43 SECTION IN A TIMELY MANNER FOR EXAMINATION OR OTHER PURPOSES.

44 C. EVERY LICENSEE SHALL OBSERVE GENERALLY ACCEPTED ACCOUNTING
45 PRINCIPLES AND PRACTICES.

1 D. A LICENSEE SHALL MAKE ANY BOOKS, ACCOUNTS AND RECORDS THAT ARE KEPT
2 OUTSIDE OF THIS STATE AVAILABLE TO THE SUPERINTENDENT IN THIS STATE NOT MORE
3 THAN THREE BUSINESS DAYS AFTER DEMAND IS MADE BY THE SUPERINTENDENT OR THE
4 SUPERINTENDENT MAY CHOOSE TO PERFORM THE EXAMINATION OR INVESTIGATION AT THE
5 OFFICE OF THE LICENSEE LOCATED OUTSIDE THIS STATE.

6 E. FOR THE PURPOSES OF THIS CHAPTER, THE SUPERINTENDENT OR THE
7 SUPERINTENDENT'S DULY AUTHORIZED REPRESENTATIVES SHALL HAVE ACCESS DURING
8 NORMAL BUSINESS HOURS TO THE OFFICES AND PLACES OF BUSINESS, FILES, SAFES AND
9 VAULTS OF ALL LICENSEES REGARDING THAT BUSINESS OR THE SUBJECT MATTER OF ANY
10 EXAMINATION, INVESTIGATION OR HEARING.

11 6-1808. Annual report of licensee; civil penalty for failure to
12 file

13 A. ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE LICENSEE SHALL FILE A
14 REPORT UNDER OATH AND IN THE FORM PRESCRIBED BY THE SUPERINTENDENT CONCERNING
15 THE BUSINESS AND OPERATIONS DURING THE TWELVE-MONTH PERIOD ENDING THE
16 PRECEDING JUNE 30. ON GOOD CAUSE SHOWN BY A LICENSEE, THE SUPERINTENDENT MAY
17 EXTEND THE TIME FOR FILING THE REPORT FOR A PERIOD OF NOT MORE THAN SIXTY
18 DAYS.

19 B. IF A LICENSEE FAILS TO FILE THE ANNUAL REPORT, THE SUPERINTENDENT
20 OR ANY PERSON DESIGNATED BY THE SUPERINTENDENT MAY EXAMINE THE BOOKS,
21 ACCOUNTS AND RECORDS OF THE LICENSEE, PREPARE THE ANNUAL REPORT AND CHARGE
22 THE LICENSEE AN EXAMINATION FEE AS PRESCRIBED IN SECTION 6-125.

23 C. IF A LICENSEE FAILS TO FILE THE ANNUAL REPORT WITHIN THE SPECIFIED
24 TIME, THE SUPERINTENDENT MAY ASSESS A CIVIL PENALTY FOR THE FAILURE TO FILE
25 THE ANNUAL REPORT UNLESS AN EXTENSION OF TIME IS GRANTED BY THE
26 SUPERINTENDENT IN WRITING BEFORE THE DUE DATE OF THE ANNUAL REPORT. THE
27 SUPERINTENDENT MAY NOT ASSESS A PENALTY OF MORE THAN FIVE DOLLARS PER DAY.
28 THE LICENSEE SHALL PAY THE PENALTY TO THE SUPERINTENDENT WITHIN THIRTY DAYS
29 AFTER THE ASSESSMENT.

30 6-1809. Report; average annual percentage rate; average loan
31 amount

32 A. AT THE TIME OF MAKING ITS ANNUAL REPORT TO THE SUPERINTENDENT, EACH
33 LICENSEE SHALL REPORT THE LICENSEE'S AVERAGE ANNUAL PERCENTAGE RATE AND
34 AVERAGE LOAN AMOUNT FOR THE PREVIOUS TWELVE MONTHS. THE AVERAGE ANNUAL
35 PERCENTAGE RATE DESCRIBED IN THIS SUBSECTION REFERS TO THE AMOUNT FINANCED AS
36 COMPUTED PURSUANT TO THE TRUTH IN LENDING ACT (P.L. 90-321, 82 STAT. 146,
37 15 UNITED STATES CODE SECTIONS 1601 THROUGH 1667f).

38 B. ON AT LEAST AN ANNUAL BASIS THE SUPERINTENDENT SHALL COMPILE A
39 REPORT OF THE AVERAGE ANNUAL PERCENTAGE RATE AND AVERAGE LOAN AMOUNT OF EACH
40 LICENSEE AS SUBMITTED PURSUANT TO SUBSECTION A OF THIS SECTION. THE
41 SUPERINTENDENT SHALL DISSEMINATE THIS REPORT IN A MANNER DEEMED APPROPRIATE
42 BY THE SUPERINTENDENT, AND THE SUPERINTENDENT SHALL MAKE THE REPORT AVAILABLE
43 TO THE PUBLIC FOR INSPECTION AND COPYING.

1 6-1810. Effect of revocation; suspension or surrender on
2 preexisting contract; impairment of contracts

3 A. THE REVOCATION, SUSPENSION OR SURRENDER OF A FLEXIBLE CREDIT LENDER
4 LICENSE DOES NOT IMPAIR OR AFFECT:

5 1. THE OBLIGATION OF ANY PREEXISTING FLEXIBLE CREDIT LOAN BETWEEN THE
6 FLEXIBLE CREDIT LENDER AND ANY CONSUMER.

7 2. THE ABILITY OR RIGHT OF THE FLEXIBLE CREDIT LENDER TO SERVICE
8 EXISTING FLEXIBLE CREDIT LOANS FROM OUTSIDE THIS STATE.

9 B. IF THIS CHAPTER OR ANY PART OF THIS CHAPTER IS MODIFIED, AMENDED OR
10 REPEALED, RESULTING IN A CANCELLATION OR ALTERATION OF ANY FLEXIBLE CREDIT
11 LENDER LICENSE OR RIGHT OF A LICENSEE UNDER THIS CHAPTER, THAT CANCELLATION
12 OR ALTERATION DOES NOT IMPAIR OR AFFECT THE OBLIGATION OF ANY PREEXISTING
13 CONTRACT BETWEEN A FLEXIBLE CREDIT LENDER AND ANY CONSUMER.

14 6-1811. Prohibited acts

15 A. A LICENSEE MAY NOT KNOWINGLY ADVERTISE, DISPLAY, DISTRIBUTE,
16 BROADCAST OR TELEVIEW, OR CAUSE OR ALLOW TO BE ADVERTISED, DISPLAYED,
17 DISTRIBUTED, BROADCAST OR TELEVIEWED, IN ANY MANNER, ANY FALSE, MISLEADING OR
18 DECEPTIVE STATEMENT OR REPRESENTATION WITH REGARD TO THE RATES, TERMS OR
19 CONDITIONS FOR A FLEXIBLE CREDIT LOAN. TO THE EXTENT APPLICABLE, ALL
20 ADVERTISING SHALL COMPLY WITH THE ADVERTISING REQUIREMENTS OF THE TRUTH IN
21 LENDING ACT (P.L. 90-321, 82 STAT. 146, 15 UNITED STATES CODE SECTIONS 1601
22 THROUGH 1667f).

23 B. A CONSUMER MAY NOT HAVE OUTSTANDING FLEXIBLE CREDIT LOANS TOTALING
24 MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS UNDER THIS CHAPTER AT ANY ONE
25 TIME. EACH LICENSEE SHALL INQUIRE OF ANY CONSUMER SEEKING A FLEXIBLE CREDIT
26 LOAN UNDER THIS CHAPTER REGARDING THE CONSUMER'S OUTSTANDING FLEXIBLE CREDIT
27 LOANS. IF THE LICENSEE DETERMINES THAT THE CONSUMER DOES NOT HAVE
28 OUTSTANDING FLEXIBLE CREDIT LOANS THAT EXCEED A TOTAL INDEBTEDNESS OF TWO
29 THOUSAND FIVE HUNDRED DOLLARS, A LICENSEE MAY OFFER THE CONSUMER A FLEXIBLE
30 CREDIT LOAN IN AN AMOUNT THAT DOES NOT TOTAL MORE THAN TWO THOUSAND FIVE
31 HUNDRED DOLLARS IN TOTAL FLEXIBLE CREDIT LOANS OUTSTANDING BY THE CONSUMER.
32 IF THE LICENSEE DETERMINES THAT THE CONSUMER HAS FLEXIBLE CREDIT LOANS THAT
33 TOTAL TWO THOUSAND FIVE HUNDRED DOLLARS, A LICENSEE MAY NOT OFFER A FLEXIBLE
34 CREDIT LOAN TO THE CONSUMER UNTIL THE LICENSEE DETERMINES THAT THE CONSUMER
35 QUALIFIES TO OPEN A NEW FLEXIBLE CREDIT LOAN PURSUANT TO THIS SUBSECTION. ON
36 ANY APPLICATION BEING MADE FOR A FLEXIBLE CREDIT LOAN, THE LICENSEE SHALL
37 DETERMINE IF THE CONSUMER HAS ANY OUTSTANDING FLEXIBLE CREDIT LOANS AS
38 FOLLOWS:

39 1. THE CONSUMER SHALL SIGN AN ATTESTATION STATING WHETHER THE CONSUMER
40 HAS ANY FLEXIBLE CREDIT LOANS OUTSTANDING WITH THE LICENSEE OR ANY OTHER
41 FLEXIBLE CREDIT LENDER AS DESCRIBED IN THIS SUBSECTION AND IF SO, THE STATUS
42 OF EACH LOAN.

43 2. THE LICENSEE SHALL VERIFY THE ACCURACY OF THE ATTESTATION THROUGH
44 COMMERCIALY REASONABLE MEANS. A LICENSEE'S METHOD OF VERIFICATION IS IN

1 COMPLIANCE WITH THIS SECTION ONLY IF THE VERIFICATION METHOD INCLUDES EITHER
2 OF THE FOLLOWING:

3 (a) ANY PRIVATE DATABASE THAT IS ESTABLISHED PURSUANT TO AN AGREEMENT
4 WITH THE DEPARTMENT PURSUANT TO TITLE 41, CHAPTER 6 AND APPROVED BY THE
5 SUPERINTENDENT AND IN WHICH ALL LICENSEES ARE REQUIRED TO SUBSCRIBE OR
6 OTHERWISE OBTAIN THE REQUIRED INFORMATION IN A MANNER APPROVED BY THE
7 SUPERINTENDENT ON OR BEFORE JULY 1, 2017. THE LICENSEE MAY CHARGE THE
8 CONSUMER A FEE FOR DATABASE VERIFICATION NOT TO EXCEED THE ACTUAL FEE CHARGED
9 TO THE LICENSEE BY THE DATABASE PROVIDER.

10 (b) UNTIL A PRIVATE DATABASE OR OTHER APPROVED MANNER OF OBTAINING THE
11 REQUIRED INFORMATION IS APPROVED BY THE SUPERINTENDENT OR IF THE PRIVATE
12 DATABASE IS NOT ACCESSIBLE, THE ATTESTATION AND THE LICENSEE'S OWN RECORDS,
13 INCLUDING BOTH RECORDS MAINTAINED AT THE LOCATION AT WHICH THE LOAN IS BEING
14 APPLIED AND RECORDS MAINTAINED AT OTHER LOCATIONS THAT ARE OWNED AND OPERATED
15 BY THE LICENSEE OR THE LICENSEE'S AFFILIATES.

16 C. THE DEPARTMENT SHALL INVESTIGATE ANY FINDING THAT A CONSUMER HAS
17 ILLEGALLY OBTAINED A FLEXIBLE CREDIT LOAN FROM A FLEXIBLE CREDIT LENDER IN
18 EXCESS OF THE MAXIMUM ALLOWABLE AMOUNT OF TWO THOUSAND FIVE HUNDRED DOLLARS
19 IN TOTAL FLEXIBLE CREDIT LOANS.

20 D. A LICENSEE MAY NOT MAKE A FLEXIBLE CREDIT LOAN HAVING AN ANNUAL
21 PERCENTAGE RATE GREATER THAN THAT SET FORTH IN FEDERAL LAW IN 10 UNITED
22 STATES CODE SECTION 987 (b) TO A PERSON WHO IS EITHER:

23 1. A MEMBER OF THE UNITED STATES ARMED FORCES WHO IS ON ACTIVE DUTY
24 UNDER A CALL OR ORDER THAT DOES NOT SPECIFY A PERIOD OF THIRTY DAYS OR LESS.

25 2. ON ACTIVE NATIONAL GUARD AND RESERVE DUTY.

26 3. A DEPENDENT, AS DEFINED IN THE JOHN WARNER NATIONAL DEFENSE
27 AUTHORIZATION ACT FOR FISCAL YEAR 2007 (P.L. 109-364; 120 STAT. 2083; 10
28 UNITED STATES CODE SECTION 987) OR ANY REGULATION ADOPTED PURSUANT TO THAT
29 ACT, INCLUDING 32 CODE OF FEDERAL REGULATIONS PART 232, OF A PERSON LISTED IN
30 PARAGRAPHS 1 AND 2 OF THIS SUBSECTION.

31 E. A LICENSEE MAY NOT MAKE A FLEXIBLE CREDIT LOAN TO A PERSON UNLESS
32 THAT PERSON HAS EITHER:

33 1. SIGNED AND PROVIDED TO THE LICENSEE AS PART OF THE LOAN A STATEMENT
34 ATTESTING TO WHETHER OR NOT THE PERSON IS A MILITARY MEMBER OR DEPENDENT AS
35 DEFINED AS A COVERED MEMBER IN THE JOHN WARNER NATIONAL DEFENSE AUTHORIZATION
36 ACT FOR FISCAL YEAR 2007 (P.L. 109-364; 120 STAT. 2083). SUCH STATEMENT
37 SHALL BE IN THE FORM AS MAY BE SET BY THE SUPERINTENDENT BY RULE OR MAY
38 CONFORM WITH THAT PROVIDED BY FEDERAL LAW OR REGULATION REGARDING COVERED
39 MEMBERS BY THE UNITED STATES DEPARTMENT OF DEFENSE.

40 2. USED ANOTHER AUTHORIZED METHOD TO DETERMINE THE PERSON IS NOT A
41 COVERED MEMBER AS MAY BE SET OUT IN FEDERAL LAW OR BY UNITED STATES
42 DEPARTMENT OF DEFENSE REGULATIONS.

43 F. ANY LOAN MADE IN VIOLATION OF THE JOHN WARNER NATIONAL DEFENSE
44 AUTHORIZATION ACT FOR FISCAL YEAR 2007 (P.L. 109-364; 120 STAT. 2083) IS
45 VOID.

1 G. A LICENSEE MAY NOT CONDITION A FLEXIBLE CREDIT LOAN ON THE
2 CONSUMER'S AGREEMENT TO MAKE REPAYMENT BY RECURRING AUTOMATIC ELECTRONIC
3 FUNDS TRANSFERS FROM THE CONSUMER'S BANK ACCOUNT. THIS SUBSECTION DOES NOT
4 PRECLUDE THE CONSUMER FROM PROVIDING WRITTEN AUTHORIZATION TO MAKE REPAYMENTS
5 BY RECURRING AUTOMATIC ELECTRONIC FUNDS TRANSFERS FROM THE CONSUMER'S BANK
6 ACCOUNT.

7 6-1812. Rules

8 THE SUPERINTENDENT SHALL ADOPT RULES THAT ARE NECESSARY TO REGULATE THE
9 PROPER CONDUCT OF LICENSEES.

10 6-1813. Restriction: voidable loans

11 A. EXCEPT AS THE RESULT OF AN ACCIDENTAL OR BONA FIDE ERROR, IF THE
12 LICENSEE CHARGES, CONTRACTS FOR OR RECEIVES ANY AMOUNT IN EXCESS OF THE
13 FINANCE CHARGES AND OTHER FEES ALLOWED BY THIS CHAPTER AND THE LICENSEE FAILS
14 TO PROMPTLY REFUND THE OVERCHARGES ON DISCOVERY, THAT FLEXIBLE CREDIT LOAN IS
15 VOIDABLE.

16 B. ANY FLEXIBLE CREDIT LOAN THAT IS MADE BY A PERSON THAT IS REQUIRED
17 TO BE LICENSED PURSUANT TO THIS CHAPTER BUT THAT IS NOT LICENSED IS VOID AND
18 THE PERSON MAKING THAT FLEXIBLE CREDIT LOAN HAS NO RIGHT TO COLLECT, RECEIVE
19 OR RETAIN ANY PRINCIPAL, FINANCE CHARGES OR OTHER FEES IN CONNECTION WITH
20 THAT FLEXIBLE CREDIT LOAN.

21 C. THE LICENSEE MAY NOT COLLECT OR RECEIVE ANY PRINCIPAL, FINANCE
22 CHARGES OR OTHER FEES ON ANY FLEXIBLE CREDIT LOAN THAT HAS BEEN VOIDED.

23 6-1814. Noncompliance

24 EXCEPT AS PROVIDED IN SECTION 6-1813, A FAILURE TO COMPLY WITH THIS
25 CHAPTER DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY FLEXIBLE CREDIT
26 LOAN.

27 ARTICLE 2. REQUIREMENTS FOR FLEXIBLE CREDIT LOANS

28 6-1831. Disclosures: civil penalty

29 A. TO THE EXTENT APPLICABLE, A LICENSEE SHALL COMPLY WITH THE
30 DISCLOSURE REQUIREMENTS OF THE TRUTH IN LENDING ACT (P.L. 90-321, 82 STAT.
31 146, 15 UNITED STATES CODE SECTIONS 1601 THROUGH 1667f).

32 B. IN ADDITION TO THE REQUIREMENTS PRESCRIBED BY SUBSECTION A OF THIS
33 SECTION, A FLEXIBLE CREDIT LENDER SHALL CLEARLY LABEL ON ALL PAYMENT
34 STATEMENTS THE TOTAL PRINCIPAL BALANCE REMAINING AND THE TOTAL SCHEDULED
35 INTEREST REMAINING. THE PAYMENT STATEMENTS SHALL ALSO CLEARLY STATE THAT THE
36 PAYMENT OF AN ADDITIONAL AMOUNT EACH MONTH WILL LOWER THE TOTAL REMAINING
37 BALANCE AND THAT THE CONSUMER CAN PAY THE LOAN IN FULL AT ANY TIME WITHOUT
38 ANY PREPAYMENT PENALTIES.

39 C. EACH NOTE OR AGREEMENT EVIDENCING A FLEXIBLE CREDIT LOAN SHALL
40 CONTAIN THE FOLLOWING DISCLOSURE STATEMENT IN AT LEAST TEN-POINT TYPE THAT IS
41 IN ENGLISH AND, ON THE CUSTOMER'S REQUEST, IN SPANISH AND IN CLOSE PROXIMITY
42 TO THE CONSUMER'S SIGNATURE LINE OR, ALTERNATIVELY, A LICENSEE MAY PROVIDE
43 THE BORROWER WITH THE DISCLOSURES REQUIRED BY THIS SECTION IN A MOBILE OR
44 OTHER ELECTRONIC APPLICATION ON WHICH THE SIZE OF THE TYPEFACE OF THE
45 DISCLOSURE CAN BE MANUALLY MODIFIED BY A PROSPECTIVE BORROWER, IF THE

1 PROSPECTIVE BORROWER IS GIVEN THE OPTION TO PRINT THE DISCLOSURE IN A
2 TYPEFACE OF AT LEAST TWELVE-POINT SIZE OR IS PROVIDED BY THE LICENSEE WITH A
3 HARD COPY OF THE DISCLOSURE IN A TYPEFACE OF AT LEAST TWELVE-POINT SIZE
4 BEFORE THE LOAN IS CONSUMMATED:

5 NOTICE: YOU MAY REQUEST THAT THE INITIAL DISCLOSURES PRESCRIBED
6 IN THE TRUTH IN LENDING ACT (15 UNITED STATES CODE SECTIONS 1601
7 THROUGH 1667f) BE PROVIDED IN SPANISH BEFORE SIGNING ANY LOAN
8 DOCUMENTS.

9 D. A LICENSEE SHALL CONTINUOUSLY AND CONSPICUOUSLY DISPLAY THE NOTICE
10 PRESCRIBED BY SUBSECTION C OF THIS SECTION AND THE FOLLOWING NOTICE ON A SIGN
11 PRINTED IN AT LEAST TWELVE-POINT BOLD TYPE AT EACH DESK AT WHICH FLEXIBLE
12 CREDIT LOANS ARE USUALLY AND NORMALLY CLOSED OR ON A SIGN PROMINENTLY
13 DISPLAYED IN EACH LICENSED OFFICE OR BRANCH OFFICE:

14 NOTICE: BEFORE SIGNING ANY LOAN DOCUMENTS OR OTHERWISE
15 COMMITTING TO A LOAN, YOU MAY TAKE COPIES OF THOSE DOCUMENTS
16 AWAY FROM THE FLEXIBLE CREDIT LENDER'S PLACE OF BUSINESS FOR
17 REVIEW.

18 E. IF A LICENSEE IS PROVIDING ELECTRONIC LOANS, THE LICENSEE MUST
19 CONSPICUOUSLY DISPLAY THE FOLLOWING DISCLOSURE ON ITS WEBSITE:

20 NOTICE: BEFORE SIGNING ANY LOAN DOCUMENTS OR OTHERWISE
21 COMMITTING TO A LOAN, PLEASE READ OUR TERMS AND CONDITIONS
22 CAREFULLY.

23 F. IF THE LICENSEE FAILS TO MAKE THE DISCLOSURE STATEMENT PRESCRIBED
24 IN SUBSECTION C OF THIS SECTION, THE SUPERINTENDENT SHALL ASSESS THE LICENSEE
25 A ONE-TIME CIVIL PENALTY OF UP TO THREE HUNDRED DOLLARS FOR EVERY VIOLATION.

26 6-1832. Finance charges

27 A. A LICENSEE MAY CONTRACT FOR AND RECEIVE FINANCE CHARGES ON A
28 FLEXIBLE CREDIT LOAN THAT DOES NOT EXCEED THE FOLLOWING IF THE ORIGINAL
29 PRINCIPAL AMOUNT OF THE FLEXIBLE CREDIT LOAN IS AT LEAST FIVE HUNDRED DOLLARS
30 BUT NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS:

31 1. A RATE OF SEVENTEEN PERCENT PER MONTH IF UNSECURED.

32 2. A RATE OF FIFTEEN PERCENT PER MONTH IF SECURED WITH PERSONAL
33 PROPERTY.

34 B. A LICENSEE MAY NOT COMPOUND FINANCE CHARGES.

35 6-1833. Other allowable fees; annual reporting

36 A. IN ADDITION TO THE FINANCE CHARGES AUTHORIZED BY SECTION 6-1832, A
37 LICENSEE MAY CONTRACT FOR AND RECEIVE AND COLLECT FINANCE CHARGES ON A
38 DELINQUENCY CHARGE IN AN AMOUNT EQUAL TO FIVE PERCENT OF THE AMOUNT OF ANY
39 INSTALLMENT NOT PAID IN FULL WITHIN SEVEN DAYS AFTER ITS DUE DATE.

40 B. A LICENSEE MAY COLLECT ACTUAL FEES FOR THE ACQUISITION, PROCESSING
41 AND HANDLING OF PERSONAL PROPERTY THAT SECURES THE FLEXIBLE CREDIT LOAN.

42 C. IN ADDITION TO THE FINANCE CHARGES AND FEES PROVIDED IN THIS
43 ARTICLE, THE LICENSEE MAY NOT DIRECTLY OR INDIRECTLY CHARGE, CONTRACT FOR OR
44 RECEIVE ANY FURTHER OR OTHER AMOUNT IN CONNECTION WITH A FLEXIBLE CREDIT
45 LOAN.

1 D. IN CONJUNCTION WITH THE REPORTING REQUIREMENTS PRESCRIBED IN
2 SECTION 6-1809, ON OR BEFORE OCTOBER 1 EACH YEAR, A LICENSEE SHALL REPORT TO
3 THE SUPERINTENDENT THE NUMBER OF FLEXIBLE CREDIT LOANS MADE IN THE PRIOR TWO
4 YEARS.

5 6-1834. Consumer credit counseling; default provision

6 A. IF A CONSUMER IS UNABLE TO MEET THE PAYMENT SCHEDULE REQUIREMENTS
7 ON THE FLEXIBLE CREDIT LOAN FOR THREE CONSECUTIVE MONTHS, THE CONSUMER MAY
8 REQUEST WITHIN THIRTY DAYS AFTER THE THIRD MISSED SCHEDULED PAYMENT DATE A
9 PAYMENT PLAN IF THE CONSUMER ENROLLS IN AND COMPLETES AN APPROVED CONSUMER
10 CREDIT COUNSELING COURSE. IF A CONSUMER REQUESTS A PAYMENT PLAN PURSUANT TO
11 THIS SUBSECTION, THE FLEXIBLE CREDIT LENDER SHALL PROVIDE THE PAYMENT PLAN TO
12 THE CONSUMER.

13 B. THE PAYMENT PLAN SHALL START ON THE DATE THAT THE CONSUMER ENROLLS
14 IN AN APPROVED CONSUMER CREDIT COUNSELING COURSE AND SHALL LAST NINETY DAYS.

15 C. WHILE THE CONSUMER IS PARTICIPATING IN THE PAYMENT PLAN, NO
16 ADDITIONAL INTEREST OR FEES SHALL ACCRUE ON THE LOAN.

17 D. IF A CONSUMER FAILS TO COMPLETE AN APPROVED CONSUMER CREDIT
18 COUNSELING COURSE WITHIN SIXTY DAYS AFTER ENROLLING IN THE COURSE, THE LOAN
19 SHALL REVERT TO THE ORIGINAL TERMS OF THE CONTRACT.

20 6-1835. Superintendent; liability

21 IF THE SUPERINTENDENT ACTS IN GOOD FAITH WHEN ESTABLISHING AND
22 APPROVING A PRIVATE DATABASE AS DESCRIBED IN SECTION 6-1811, THE
23 SUPERINTENDENT IS NOT SUBJECT TO ANY CIVIL OR CRIMINAL LIABILITY FOR EITHER
24 OF THE FOLLOWING:

25 1. PROVIDING VERIFICATION THAT THE BORROWER DOES NOT HAVE OUTSTANDING
26 FLEXIBLE CREDIT LOANS TOTALING MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS.

27 2. ANY BREACH OF THE DATABASE.

28 Sec. 4. Title 28, chapter 7, article 4, Arizona Revised Statutes, is
29 amended by adding section 28-2138, to read:

30 28-2138. Motor vehicle; loans; lien perfection

31 IF A MOTOR VEHICLE IS USED AS SECURITY FOR A LOAN, THE LENDER SHALL
32 FILE A LIEN ON THE MOTOR VEHICLE WITHIN THIRTY DAYS AFTER THE LOAN IS MADE TO
33 PERFECT A SECURITY INTEREST PURSUANT TO TITLE 47, CHAPTER 9.

34 Sec. 5. Delayed repeal

35 Title 6, chapter 18, Arizona Revised Statutes, as added by this act, is
36 repealed from and after December 31, 2036.

37 Sec. 6. Committee of reference review; flexible credit loans

38 Ten years after the effective date of this act, an appropriate
39 legislative committee of reference that is established pursuant to section
40 41-2954, Arizona Revised Statutes, shall review title 6, chapter 18, Arizona
41 Revised Statutes, as added by this act. The committee shall deliver a report
42 of its findings to the speaker of the house of representatives and the
43 president of the senate on or before December 1, 2026.

1 Sec. 7. Short title

2 Title 6, chapter 18, Arizona Revised Statutes, as added by this act,
3 may be cited as the "Arizona Flexible Loan Act".

4 Sec. 8. Effective date

5 Section 28-2138, Arizona Revised Statutes, as added by this act, is
6 effective from and after December 31, 2016.



OFFICE OF NAVAJO NATION HUMAN RIGHTS

EXHIBIT

tabbies


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ST. MICHAELS, ARIZONA 86511
PHONE: (928) 871-7436
FAX: (928) 871-7437

MEMORANDUM

DATE: March 21, 2016

TO: Hon. Jonathan Hale, *Council Delegate*
23rd Navajo Nation Council

FROM: 
Leonard Gorman, *Executive Director*
Office of Navajo Nation Human Rights Commission

SUBJECT: **Arizona 2016 Senate Bill 1316 – “Flexible Credit Loan”**



Per your memorandum request to the Navajo Nation Human Rights Commission (“Commission”) on March 15, 2016 on requesting recommendations to the Arizona 2016 Senate Bill 1316 (“Flexible Credit Loan”), the Commission recommends the Navajo Nation completely oppose the Flexible Credit Loan for the following reasons.

It is important to note that in the 1990’s no Arizona payday lender was permitted to offer a small loan product in excess of 36% annual percentage rate (“APR”) for nearly a decade. However, in 2000, the Arizona State Legislatures passed a law exempting payday lenders from the 36% APR cap for all other small loan products. This legislation was signed into law by Governor Jane Dee Hull in April 2000. According to the Center for Responsible Lending, payday lenders charged up to \$17.65 per \$100.00 borrowed, or 459% APR for a loan with a typical two-week term. However, the 2000 law contained a sunset provision that would remove the exemption on July 1, 2010. This meant that payday lenders would no longer be able to charge triple-digit annual percentage rates and instead will have to abide by the laws that apply to all of Arizona’s other small loan lenders.

In order to make permanent the exemption provision installed in the 2000 law, Proposition 200 (“Prop 200”) was introduced, which was ballot initiative financed and written by the payday loan industry. Ultimately, Prop 200 would have allowed payday lenders to continue charging high interest rates on small loans. However, in 2008, the voters of Arizona overwhelmingly rejected Prop 200. Many states and the federal government have acted to end the triple-digit APR by payday loans. Fifteen states and the District of Columbia have enforce interest rate caps on all small loans. In addition, the U.S. Congress passed and President Bush signed into law an interest rate cap of 36% APR on all small loans to active members of the military, whose security clearances and deployment schedules were found to be threatened by payday loans and other high-cost lenders.

The Flexible Credit Loan is written to undermine the will of Arizona voters and the federal government on controlling the APR on all small loans. The Flexible Credit Loan is also another attempt by the payday loan industry to push through an amendment to the Arizona Revised Statute ("ARS") that would allow predatory lenders to make high interest secured and unsecured loans. The Navajo Nation needs to understand that small loan businesses (i.e. payday loans, title loans, and short term loans) market their loans as a one-time quick fix, but the interest rates and fees are so high borrowers often end up not being able to afford to pay off their loans and cover their normal living expenses simultaneously. Borrowers often end up in the debt trap of taking out loan after loan after loan to pay off their previous loans while paying new fees each time.

Since 2013, the Commission has received approximately 17 complaints on payday loans, title loans, and short term loans in New Mexico. The Commission, after examining the issue, found that predatory auto lending targeted Navajo elders, Navajos with limited English comprehension, and Navajos with fixed incomes; the exact same practice was exhibited by the small loan businesses. The Commission found these small loan businesses targeted Navajos in the border towns of Gallup, Grants and Farmington, New Mexico and offer an average annual interest rates and fees of 350% APR. These small loans were made to single mothers, veterans, elders and Navajos who are the most vulnerable victims. In addition, these small loans often are not thoroughly explained to Navajos in the Navajo language. The terms and conditions of these small loans entail detail information that explain the penalties, procedures to resolve disputes and collection, late fees and deferred payment terms.

If the Arizona Legislature allows the Flexible Credit Loan to pass and become law, Navajos who reside in Arizona will be subject to the exact same practice exhibited in New Mexico, although many of the Navajos who reside in Arizona borrow money in New Mexico already. The Commission recommends the Navajo Nation oppose the Flexible Credit Loan in its entirety because there are current laws (i.e. ARS 6-632 and Military Lending Act) that protect Navajo consumers in Arizona on small loans from the payday loan industry. The Commission also recommends the Navajo Nation equally oppose the predatory lending of small loans to Navajos by supporting the capping of the APR.

If you have any questions regarding this memorandum, please do not hesitate to contact me directly at leonardgorman@navajo-nsn.gov at (928) 871-7484. Thank you.