

# Flexible Credit Act

The Act authorizes open-ended credit plans extended to non-commercial borrowers for personal, family, or household purposes. Such loans may be secured or unsecured by personal property, lacking in fixed maturities or designated length of term, and are subject to prepayment of the outstanding balance at any time without penalty.

Submitted as:

Tennessee

[SB 1988](#)

Status: Signed into law on May 19, 2014.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Definitions.*]

2 As used in this chapter, “commissioner” means the commissioner of financial institutions or the  
3 commissioner’s designee.

4

5 Section 2. [*Authorization to make loans.*]

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

8 (1) Has obtained a certificate of registration under the [Insert citation – Industrial Loan and  
9 Thrift Companies Act];

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

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

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

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

19

20 Section 3. [*Notice to make loans.*]

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

26

27 Section 4. [*Open-end credit plan.*]

28 Notwithstanding any other statutory limitation, a lender authorized to make loans under this  
29 chapter may make a loan under an open-end credit plan which is a plan under which a registrant  
30 contemplates repeated loans that may be secured by real or personal property or both, without

1 fixed maturities or limitation as to the length of term, and that are subject to prepayment at any  
2 time at a periodic interest rate not to exceed twenty-four percent (24%) per annum.

3  
4 Section 5. [*Fees and charges.*]

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

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

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

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

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

17 (4) A late payment or delinquency charge;

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

22 (6) Returned payment charges;

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

25 (8) Stop payment fees;

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

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

30 (c)

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

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

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

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

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

1 Section 6. [*Audited financial statements.*]  
2 In addition to the obligations described in [Insert citation – annual reports of registrants – to  
3 governor and general assembly.], a lender authorized to make loans under this chapter shall  
4 submit to the commissioner by July 31 of each year an audited financial statement, including  
5 balance sheet, statement of income or loss, and statement of changes in financial position,  
6 summaries of the types of loans made, and other statistical information that may reasonably be  
7 required by the commissioner, consistent with generally accepted accounting practices, for the  
8 purpose of determining the general results of operations under this chapter.