

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1757 – SB 1988

March 20, 2014

**SUMMARY OF ORIGINAL BILL:** Enacts the Flexible Credit Act which authorizes registered Tennessee Industrial Loan and Thrift (TILT) companies with net worth of at least \$2,000,000, who have had their principal place of business in Tennessee for at least three years, and who provide audited financial statements and notice of intent to make loans authorized under this Act to the Commissioner of the Department of Financial Institutions, to make loans under an open-end credit plan, which are subject to prepayment at any time at a periodic interest rate not to exceed 24 percent per annum. Authorizes such lenders to charge borrowers fees and charges, in addition to interest, as agreed upon between the lender and the borrower. Requires such lenders to submit to the Commissioner, by July 31 of each year, an audited financial statement for the purpose of determining the general results of operations under this Act.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Impact – Authorizing qualified TILT companies to issue open-end loans and charge fees and charges as agreed upon between the companies and borrowers may result in an increase in revenue for such companies, as certain restrictions currently in place for open-end loans will be not be applicable. However, any such increase is dependent upon the terms of individual contracts between lenders and borrowers and cannot be quantified with reasonable certainty. Any impact on private sector jobs in Tennessee is estimated to be not significant.

**SUMMARY OF AMENDMENTS(014636, 014791):** Deletes all language after the enacting clause. Enacts the Flexible Credit Act. Prohibits any person from engaging in the business of making flex loans unless a license is obtained from the Department of Financial Institutions (DFI). Establishes license requirements and requires each application to be accompanied by a filing fee of \$500 for each location, which shall constitute the license fee for the first license year or part thereof; provided, however, if a supervision fee is established, the Commissioner of DFI shall require applicants to, instead, pay the nonrefundable supervision fee in place of the filing fee. Requires the Commissioner to investigate whether established license qualifications have been satisfied. Authorizes the Commissioner to require an applicant for a license to consent to a criminal history records check and to provide with the application

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fingerprints in a form acceptable to the Commissioner. Requires such criminal history checks to be conducted by the Tennessee Bureau of Investigation, or the Federal Bureau of Investigation, or both, and requires all costs incurred to be paid by the applicant. Authorizes an applicant to a hearing before the Commissioner if the Commissioner denies the application or fails to act on the application within 90 days after the filing of a properly completed application. Establishes that each license shall expire on December 31 and may be renewed for the ensuing twelve months upon showing continued compliance with the established requirements and the payment of a \$500 renewal fee or the supervision fee to the Commissioner between November 1 and December 31. Authorizes the Commissioner to establish a biennial license arrangement for the filing of the application for license renewal, but prohibits the license or supervision fee from being payable for more than one year at a time.

Establishes interest and fees that can be charged by licensees. Prohibits any flex plan from having an outstanding principal balance in excess of \$5,000 at any time, and requires any such plan to require payment on or before the due date of each billing cycle in an amount sufficient to reduce any outstanding principal balance by at least 2 percent per calendar month. Establishes the type of information that must be provided by a licensee to each prospective customer. Prohibits any customer from having outstanding more than one flex loan plan at any one time.

Authorizes the Commissioner to examine the relevant business, books and records of any licensee to ensure compliance with this Act, and requires any licensee that is examined or investigated to pay to the Commissioner the reasonable and actual expenses of the investigation or examination, of a supervision fee if applicable. Authorizes any person aggrieved by the conduct of a licensee to file a written complaint with the Commissioner who may investigate the complaint. Requires each licensee to file an annual report with the Commissioner, containing specified information and requires the Commissioner to submit to the Governor and General Assembly an annual analysis and recapitulation of the reports for the preceding calendar year. Authorizes the Commissioner to require persons subject to this Act to be licensed through a multi-state automated licensing system and requires such persons to pay all costs associated with submitting an application or transitioning a license to such system, as well as all costs required by such system for maintaining and renewing any license issued by the Commissioner on the system. Establishes that, for the purpose of promulgating rules, this Act shall take effect upon becoming a law and for all other purposes, it will take effect January 1, 2015.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

**Increase State Revenue – \$852,000/Department of Financial Institutions  
Exceeds \$10,000/Tennessee Bureau of Investigation**

**Increase State Expenditures – \$852,000/Department of Financial Institutions  
Exceeds \$10,000/Tennessee Bureau of Investigation**

Assumptions for the bill as amended:

- In order to implement the provisions of the Flexible Credit Act, the Department must do the following: establish a licensing process, draft license application forms as well as licensure renewal forms, investigate license applications, promulgate any rules needed to ensure appropriate consumer disclosures regarding fees and interest, establish schedules for conducting compliance examinations of licensees, conduct compliance examinations of licensees, conduct compliance examinations of persons who are unlicensed but doing business under the Act, establish a process for handling and investigating consumer complaints, and enter into necessary agreements to license persons under the multi-state licensing system.
- To accomplish this, the Department will require six additional positions: one Bank Financial Analyst, one Attorney 3 and four Loan Examiner 4 positions. The recurring increase in state expenditures for the Department is estimated to be \$851,950 (\$459,160 salary + \$141,988 benefits + \$250,802 travel, rent, car lease and other).
- Assuming 1,000 entities will be licensed each year, the recurring increase in state revenue to the Department is estimated to be \$500,000 (1,000 licensees x \$500 license fee).
- The Department shall further impose an exam fee to offset the expenditures incurred conducting such exams. Assuming a \$352 exam fee per licensee, the resulting recurring increase in state revenue to the Department is estimated to be \$352,000 (1,000 exams x \$352).
- The total recurring increase in revenue to the Department is estimated to be \$852,000 (\$500,000 + \$352,000).
- The recurring increase in expenditures to the Tennessee Bureau of Investigations to conduct criminal history checks, and an equivalent recurring increase in revenue to the Bureau is estimated to exceed \$10,000.
- If a supervision fee is established beginning January 1, 2016, in the place of license and exam fees, such fee shall be set in the amount that will result in revenue neutrality. The total recurring increase in state revenue to the Department in subsequent years would still be equal to \$852,000.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

**Other Impact – This bill as amended will result in a permissive recurring increase in business expenditures and a recurring increase in business revenue that will be greater than the total expenditures incurred in the process of conducting such business. However, due to many unknown factors, such recurring increases cannot be determined with reasonable certainty. The impact on private sector jobs in Tennessee is estimated to be positive, but due to many unknown factors, cannot be quantified with reasonable certainty.**

Assumptions for the bill as amended:

- The proposed legislation as amended would authorize qualified persons to issue flex loans and would establish interest and fees that can be charged to consumers by such licensed persons.
- The exact impact to commerce as a result of this bill as amended cannot be determined with reasonable certainty due to many unknown factors. However, it is reasonably estimated that entities electing to engage in the business of making flex loans in this state shall incur expenditures associated with license and exam fees as well as expenditures associated with conducting such business. It is further estimated that a large portion of such businesses will be profitable and the total revenue generated by these entities in this state shall be greater than the total expenditures incurred as a result of their operations.
- The impact on private sector jobs in Tennessee is estimated to be positive but cannot be quantified with reasonable certainty.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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