

ENROLLED SENATE
BILL NO. 583

By: Monson and Littlefield of
the Senate

and

Nations of the House

An Act relating to professions and occupations; creating the Deferred Deposit Lending Act; providing short title; defining terms; specifying application of act and certain provisions thereof; providing for documentation of deferred deposit loans by agreement; specifying contents thereof; providing for disclosure of credit terms; requiring certain information and documents provided to debtors; requiring acknowledgement thereof; providing for payment of proceeds of deferred deposit loan; requiring certain notices and posting of certain information; providing for rescission rights and procedures therefor; prohibiting deferred deposit lender from engaging in certain practices; providing for collection of past-due accounts and certain instruments; prohibiting certain act; providing that debtor not be subject to certain criminal penalties; providing for finance charge for deferred deposit loans; requiring disclosure thereof; limiting dishonored instrument charge; prohibiting renewal of deferred deposit loan transactions; requiring lender to make certain determination; providing for completion of transaction and allowing new transaction under certain conditions; providing for endorsement and redemption of certain instruments; prohibiting making of certain deferred deposit loans unless debtor undergoes consumer credit counseling; specifying certain duties of Administrator of Consumer Credit; prohibiting certain advertising practices; providing for licensing of deferred deposit lenders and locations at which loans made; specifying qualifications, term and fee for license and contents of license application; requiring certain investigation; providing for examination of licensed locations and certain documents of licensee or other persons; making certain information confidential; providing for examination fee; requiring appointment of agent in state; providing for maintenance and accessibility of certain books and records; requiring certain reports; making certain information public; allowing Administrator or representative to apply to court for certain order; providing for certain investigations; providing for examination of out-of-state records; providing for payment of certain

expenses; providing for censure, probation, suspension, revocation or refusal to renew license and enjoining of certain violations under certain circumstances; providing procedures for certain notice and hearings; providing for surrender of licenses and obligations of preexisting contracts; providing for reinstatement of licenses; requiring notification by licensees of conviction or plea of guilty or nolo contendere to felony; providing for application of Administrative Procedures Act; authorizing Administrator or hearing examiner to issue cease and desist orders; providing for judicial review; specifying procedures for conduct of hearings and court's authority; providing for enforcement of court orders; specifying authority of Administrator; authorizing Administrator to conduct certain study and issue report thereof; providing for civil penalties; creating Oklahoma Deferred Deposit Lending Regulatory Revolving Fund; providing for deposits thereto and expenditures therefrom; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3101 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Deferred Deposit Lending Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3102 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Administrative Procedures Act" means the general act of this state governing administrative procedures and is cited in Section 250 et seq. of Title 75 of the Oklahoma Statutes;
2. "Administrator" means the Administrator as defined in the Uniform Consumer Credit Code;
3. "Business instrument" means a draft, check or evidence of the proceeds paid to a debtor in a deferred deposit loan transaction by a deferred deposit lender;
4. "Debtor" means the signor of an instrument which is initially payable to a deferred deposit lender;
5. "Deferred deposit lender" or "lender" means any person licensed under this act to make deferred deposit loans, including an assignee of the lender's right to payment, but use of the term does

not itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment;

6. "Deferred deposit loan" means a transaction whereby a lender makes a cash advance to a debtor not as part of a revolving loan account as defined in Section 3-108 of Title 14A of the Oklahoma Statutes and, for a finance charge or other consideration, does the following:

- a. accepts a dated instrument from the debtor,
- b. agrees to hold the instrument for a period of time prior to negotiation, deposit or presentation of the instrument for payment, and
- c. advances to the debtor, credits to the debtor's account, or pays to another person on the debtor's behalf, the amount of the instrument, less the finance charge permitted by this act;

7. "Finance charge" means the finance charge as defined in Regulation Z;

8. "Instrument" means a personal check, negotiable order of withdrawal, or authorization to transfer or withdraw funds from a deposit account of the debtor signed by the debtor and made payable to a deferred deposit lender in a deferred deposit loan subject to this act;

9. "Licensed location" means the place of business where a lender is allowed to make deferred deposit loans under a license issued pursuant to this act;

10. "Licensee" means a person licensed to make deferred deposit loans pursuant to this act;

11. "Loan amount" means the principal which the debtor actually receives after signing an instrument payable initially to a deferred deposit lender;

12. "Person" includes a natural person, an individual, organization, partnership, corporation, joint venture, trust, association or any other legal entity, however organized;

13. "Principal of a deferred deposit loan" means the total of the net amount paid to, receivable by or paid or payable for the account of the debtor;

14. "Regulation Z" means Title 160, Chapter 45 of the Oklahoma Administrative Code, adopted in conformity with the Consumer Credit Protection Act, Public Law 90-321, 82 Stat. 146, as amended, including the amendments to the Federal Consumer Credit Protection Act in the Truth in Lending Simplification and Reform Act, Public Law 96-221, 94 Stat. 168-185; and

15. "Renewal" means a transaction in which a debtor pays in cash the finance charge payable under a deferred deposit loan and

refinances all or part of the unpaid balance of the principal of the deferred deposit loan with a new deferred deposit loan. A transaction is also considered a renewal if a debtor pays off an existing deferred deposit loan with the proceeds of a deferred deposit loan from another lender.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3103 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The scope of this act shall not apply to a supervised lender licensed under the Uniform Consumer Credit Code. Further, nothing in this act shall modify, affect, alter, change or restrict practices or operations of supervised lenders under the Uniform Consumer Credit Code, rules of the Oklahoma Department of Consumer Credit or rules or interpretations of the Administrator of the Department of Consumer Credit.

B. Except as otherwise provided in subsection A of this section, the provisions of this act shall apply to all deferred deposit loans made; provided, the following lenders shall not be subject to the licensing requirements of this act:

1. A bank, savings institution, credit union or farm credit system organized under and regulated by the laws of the United States or any state;

2. Government or governmental agencies or instrumentalities; or

3. Pawnbrokers engaged in pawn transactions as defined in the Oklahoma Pawnshop Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3104 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Each deferred deposit loan shall be documented by a written agreement executed by both the lender and the debtor. The written agreement shall contain the name or trade name of the lender, the license number of the lender, the toll-free telephone number of the Department of Consumer Credit, the transaction date, the loan amount, and a statement of the total amount of fees charged. The written agreement must expressly authorize the lender to defer presentment or deposit of the instrument until a specific date, not later than forty-five (45) days from the date the instrument is accepted by the lender.

B. The disclosure of the credit terms of a deferred deposit loan shall be according to and governed by the requirements of Regulation Z. The definitions and requirements of that act, regulation and commentary shall apply to deferred deposit loans as if those provisions are fully set out in this act.

C. A completed copy of the written agreement and "Notice of Cancellation" form as prescribed by the Administrator shall be given to and acknowledged in writing by the debtor when the written agreement is signed.

D. A lender may pay the proceeds of a deferred deposit loan to the debtor by a business instrument, money order or cash. A lender may not charge the debtor an additional fee for cashing the lender's business instrument.

E. A lender shall provide the following notices in a prominent place on each deferred deposit loan agreement in at least twelve-point type:

"A deferred deposit loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs."

"You have the right to rescind this deferred deposit loan no later than 5 p.m. of the next business day following this loan transaction."

F. A lender shall post at the licensed location a notice of the charges, terms, and effective annual percentage rate for deferred deposit loans made by the lender.

G. Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least twelve-point type to read:

"This is a deferred deposit loan instrument regulated by the Oklahoma Department of Consumer Credit, Title 59, Sections 3101 et seq. and any holder of this check takes it subject to all claims and defenses of the originator."

and shall include the address and toll-free telephone number of the Department of Consumer Credit.

H. At the time a debtor enters into a deferred deposit loan transaction, the lender shall provide the debtor with a pamphlet, approved by the Administrator of Consumer Credit, describing the availability of debt management and credit counseling services and the debtor's rights and responsibilities in the transaction. The pamphlet shall indicate a toll-free telephone number for the Administrator that the debtor may contact to receive information relating to debt management and credit counseling services.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105 of Title 59, unless there is created a duplication in numbering, reads as follows:

Without penalty or cost of any kind, a debtor in a deferred deposit loan transaction shall have the right to rescind in writing the deferred deposit loan until 5 p.m. on the next business day following the day the debtor signs the deferred deposit loan agreement; provided, any attempted rescission will not be effective unless the notice is timely and is accompanied by a return of the full principal advanced by the lender to the debtor. Exercising rescission entitles the debtor to a full refund of all fees paid by the debtor as part of the deferred deposit loan transaction.

Rescission occurs when the debtor gives written notice of rescission to the lender at the address of the office of the licensee as stated in the deferred deposit agreement or at the location where the transaction occurred.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3106 of Title 59, unless there is created a duplication in numbering, reads as follows:

A deferred deposit lender shall not:

1. Charge fees other than, or in excess of those authorized by this act;
2. Make deferred deposit loans at unlicensed locations;
3. Alter or delete the date on an instrument after it has been accepted by the lender pursuant to a deferred deposit loan;
4. Accept an undated instrument or an instrument dated on a date other than the date of the deferred deposit loan;
5. Accept an instrument unless the account on which the instrument is drawn is a legitimate, open and active account;
6. Require a debtor to provide security for the deferred deposit loan or require a debtor to provide a guaranty from another person;
7. Advance a loan amount greater than Five Hundred Dollars (\$500.00) to a borrower in one deferred deposit loan transaction exclusive of the finance charge allowed in Section 8 of this act;
8. Engage in a deferred deposit loan with a term of less than thirteen (13) days or more than forty-five (45) days;
9. Negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender;
10. Negotiate any instrument presented by a borrower if the borrower has redeemed the instrument by paying the full amount due under the deferred deposit loan;
11. Make any charge for insurance in connection with a deferred deposit loan transaction;
12. Refuse the borrower's right to rescind the deferred deposit loan at any time between the time of the deferred deposit loan transaction and 5 p.m. of the next business day following the deferred deposit loan transaction;
13. Charge the borrower an additional finance charge or fee for cashing a lender's business instrument, if the lender pays the proceeds from the loan transaction in the form of a business instrument; or

14. Require or accept more than one dated instrument per deferred deposit loan.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3107 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A lender shall collect past-due accounts in a professional, fair and lawful manner, in accordance with the federal Fair Debt Collection Practices Act.

B. A lender shall not threaten or pursue criminal action against a debtor as a result of the debtor's instrument being returned unpaid or the debtor's deferred deposit loan account not being paid.

C. A debtor shall not be subject to any criminal penalty if an instrument is dishonored.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3108 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Regardless of any other law governing the imposition of interest, fees, loan finance charges or the extension of credit, a deferred deposit lender may charge a finance charge for each deferred deposit loan that does not exceed Fifteen Dollars (\$15.00) for every One Hundred Dollars (\$100.00) advanced up to the first Three Hundred Dollars (\$300.00) of the amount advanced; for the advance amounts in excess of Three Hundred Dollars (\$300.00), the lender may charge an additional finance charge of Ten Dollars (\$10.00) for every One Hundred Dollars (\$100.00) advanced in excess of Three Hundred Dollars (\$300.00). The credit terms of the deferred deposit loan shall be disclosed in accordance with Regulation Z, including the terms "finance charge" and "annual percentage rate". The finance charge under this subsection shall be deemed fully earned as of the date of the transaction. Except for a fee for a dishonored instrument, the lender may charge only those charges expressly authorized in this subsection in connection with a deferred deposit loan.

B. If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a payor financial institution due to insufficient funds, a closed account or a stop payment order, the lender shall have the right to exercise all civil means authorized by law to collect the amount of the instrument. In addition, the lender may contract for and collect a dishonored instrument charge, not to exceed Twenty-five Dollars (\$25.00); however, a dishonored instrument charge shall not be allowed if the instrument is dishonored by a financial institution, or the debtor places a stop payment order, due to forgery or theft of the instrument.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3109 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A lender may not enter into a renewal of a deferred deposit loan transaction.

B. Upon any application being made for a deferred deposit loan, the lender shall determine if the applicant has any outstanding deferred deposit loans as follows:

1. The applicant shall be required to sign an affidavit stating whether the applicant has any deferred deposit loans outstanding with the lender or any other deferred deposit lender and if so, the status of each such loan; and

2. The lender shall be required to verify the accuracy of the affidavit through commercially reasonable means. A lender's method of so verifying shall be considered in compliance with the provisions of this section if the verification method includes a manual investigation or an electronic query of:

- a. the lender's own records, including both records maintained at the location where the loan is being applied for and records maintained at other locations that are owned and operated by the lender or the lender's affiliates, and
- b. a private database approved by the Administrator of Consumer Credit, if the lender subscribes to such a database; provided, all lenders shall be required to subscribe to such a database or otherwise obtain the required information in a manner approved by the Administrator not later than July 1, 2004.

If the lender determines that the applicant has more than one outstanding deferred deposit loan, the loan applied for shall not be made.

C. A deferred deposit loan transaction is completed when the lender presents the instrument for payment or initiates an ACH debit to the debtor's bank account to collect on the instrument, or the debtor redeems the instrument by paying the full amount of the instrument to the lender. Once the debtor has completed the deferred deposit loan transaction, the lender may enter into a new deferred deposit loan agreement with the debtor, and the new deferred deposit loan transaction shall not be deemed to be a renewal of the previous deferred deposit loan; provided, a new deferred deposit loan made within thirteen (13) calendar days after a previous deferred deposit loan has been entered into between the lender and the debtor shall be considered a renewal and shall not be made.

D. A lender shall negotiate or present an instrument for payment only if the instrument is endorsed with the actual business name of the lender.

E. Prior to the lender negotiating or presenting the instrument, the debtor shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the

debtor pays to the lender the unpaid balance of the principal and all accrued fees and charges.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3110 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A lender shall not make a deferred deposit loan to a debtor if a debtor is applying for a sixth or subsequent deferred deposit loan in a ninety-day period, unless the debtor has undergone consumer credit counseling within the preceding six-month period.

B. The Administrator of Consumer Credit shall maintain a list of approved consumer credit counselors. In order to meet the requirement to undergo consumer credit counseling as provided in this section, a debtor shall be required to contact an approved counselor, either in person or by telephone. The counselor shall provide a written statement to the debtor that such contact has been made. Such statement shall be provided to the lender as part of the application for the deferred deposit loan.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3111 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No lender shall engage in this state in false or misleading advertising concerning the terms or conditions of credit with respect to a deferred deposit loan.

B. Advertising which complies with Regulation Z does not violate subsection A of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3112 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No person may engage in the business of making deferred deposit loans without first obtaining a license pursuant to this act, unless exempt under subsection B of Section 3 of this act. A separate license is required for each location where deferred deposit loans are made. The licensee shall post its license to engage in the business of making deferred deposit loans at each licensed location.

B. The Administrator may initiate administrative action against an unlicensed person as if the person held a license under this act if the person is found to be engaged in the business of making deferred deposit loans.

C. The Administrator may issue a license for each location at which deferred deposit loans are to be made to any person making deferred deposit loans at multiple locations; provided, if such licensee is not in compliance with this act as to each license, any action to revoke, suspend or not renew one license shall be applicable to all licenses issued to that licensee. This subsection shall not be construed to require a license for any place of

business devoted to accounting or other record keeping and where deferred deposit loans are not made.

D. When a licensee wishes to move a licensed location to another licensed location, the licensee shall give thirty (30) days' written notice to the Administrator, who shall amend the license accordingly.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3113 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. To qualify for a license issued pursuant to this act, an applicant shall have:

1. A minimum net worth, determined in accordance with generally accepted accounting principles, of at least Twenty-five Thousand Dollars (\$25,000.00) available for operation of each licensed location, with a maximum aggregate net worth requirement of Two Hundred Fifty Thousand Dollars (\$250,000.00) for an owner of multiple locations; and

2. The financial responsibility, character, experience and general fitness so as to command the confidence of the public and to warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently.

B. An application for a license pursuant to this act must be in writing, under oath, and on a form prescribed by the Administrator of Consumer Credit. The application must set forth all of the following:

1. The legal name and residence and business addresses of the applicant and, if the applicant is a partnership, association or corporation, of every member, officer, managing employee and director of it;

2. The location of the registered office of the applicant;

3. The registered agent of the applicant if the applicant is required by other law to have a registered agent;

4. The addresses of the locations to be licensed; and

5. Other information concerning the financial responsibility, background, experience and activities, such as other partnerships, associations and corporations located at or adjacent to the licensed location of the applicant and its members, officers, managing employees and directors as the Administrator may require.

C. On receipt of an application in the form prescribed by the Administrator and accompanied by the required license fee, the Administrator shall investigate whether the qualifications for license are satisfied. If the Administrator finds that the qualifications are satisfied, the Administrator shall issue to the applicant a license to engage in the business of making deferred deposit loans. If the Administrator fails to issue a license, the

Administrator shall notify the applicant of the denial and the reasons for the denial. The provisions of the Administrative Procedures Act shall apply to the appeal of the denial of a license.

D. Each application, regardless of the number of locations to be operated by a single licensee, must be accompanied by payment of an application fee of Two Hundred Fifty Dollars (\$250.00) and an investigation fee of Five Hundred Dollars (\$500.00). These fees shall not be refundable or abatable. If the license is granted, however, payment of the application fee shall satisfy the fee requirement for the first license year or its remainder.

E. Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. A license expires annually and may be renewed on payment of a license fee of Two Hundred Fifty Dollars (\$250.00). The annual license renewal fee for an application with more than one location shall be Two Hundred Fifty Dollars (\$250.00) for each location.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3114 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. At such times as the Administrator of Consumer Credit shall deem necessary, the Administrator or a duly authorized representative shall make an examination of all licensed locations of each licensee and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence and records of the licensee insofar as they pertain to the business regulated by this act. In the course of the examination, the Administrator or a duly authorized representative shall have free access to the office, place of business, files, safes and vaults of the licensee, and shall have the right to make copies of the books, accounts, papers, correspondence and records. The Administrator or a duly authorized representative may, during the course of the examination, administer oaths and examine any person under oath on any subject pertinent to any matter about which the Administrator is authorized or required by this act to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Administrator or a duly authorized representative examine or make copies of the books, or other relevant documents shall be deemed in violation of this act and the failure or refusal shall constitute grounds for administrative action against the licensee. The information obtained in the course of the examination shall be confidential. Each licensee shall pay to the Administrator an amount assessed by the Administrator to cover the direct and indirect cost of the examination and a proportionate share of general administrative expense, not to exceed Three Hundred Dollars (\$300.00) for each location; provided, however, that for any examination which lasts in excess of eight (8) hours, the Administrator shall charge an additional fee of Fifty Dollars (\$50.00) per hour for each examiner required to complete the examination; provided, further, that the Administrator may waive the examination fee for any examination which takes one (1) hour or less. If an examination fee is due and is not paid on completion of an examination, the Administrator shall bill the licensee, and there shall be a late fee of Fifty Dollars

(\$50.00) if the amount due is not received within thirty (30) days of the invoice date.

B. For the purpose of discovering violations of this act or of securing information required under this act, the Administrator or a duly authorized representative may investigate the books, accounts, papers, correspondence and records of any licensee or other person whom the Administrator has reasonable cause to believe is in violation of any provision of this act whether or not that person shall claim to be within the authority or scope of this act. For the purpose of this subsection, any person who advertises for, solicits or otherwise communicates a willingness to make deferred payment loans shall be presumed to be engaged in the business of making deferred deposit loans.

C. Every licensee shall maintain on file with the Administrator a written appointment of a resident of this state as the agent for service of all judicial or other process or legal notice, unless the licensee has appointed an agent under another statute of this state. In case of noncompliance, such service may be made on the Administrator.

D. Each licensee shall keep or make available in this state the books and records relating to loans made under this act as are necessary to enable the Administrator to determine whether the licensee is complying with this act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

E. Each licensee shall preserve or make available its books and records in the state relating to each of its loans for four (4) years from the date of the loan, or two (2) years from the date of the final entry made thereon, whichever is later. Each licensee's system of records shall be accepted if it discloses its information as may be reasonably required under this act. All deferred deposit loan agreements and notices of cancellation signed by debtors shall be kept at an office in this state designated by the licensee, except when transferred under an agreement which gives the Administrator access to the agreements.

F. Each lender shall, annually on or before the first day of May, file a report with the Administrator setting forth such relevant information as the Administrator may reasonably require concerning the business and operations during the preceding calendar year for each place of business conducted by such lender. Such report shall be made under oath and shall be in the form prescribed by the Administrator, who shall make and publish annually a consolidated analysis and recapitulation of such reports, but the individual reports and their contents shall be held confidential. There shall be a late fee of Twenty-five Dollars (\$25.00) for any annual report received after May 1.

G. Any transcript of any hearing held by the Administrator or an independent hearing examiner under this act shall be a public record and open to inspection at all reasonable times.

H. On failure without lawful excuse to obey a subpoena or to give testimony and on reasonable notice to all persons affected, the Administrator or a representative may apply to a court for an order compelling compliance, as provided by the Administrative Procedures Act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. If the Administrator of Consumer Credit has reasonable cause to believe a lender has violated any provision of this act, the Administrator may make an investigation to determine whether the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and upon the Administrator's own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

B. If the person's records are located outside this state, the person shall, at the person's option, either make them available to the Administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the Administrator or a representative to examine them at the place where they are maintained. Payments for such necessary expenses shall be made to the Commission on Consumer Credit. Any such payments so received by the Department shall be deposited in the Oklahoma Deferred Deposit Lending Regulatory Revolving Fund. The Administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the Administrator's behalf.

C. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby the Administrator may apply to a court for an order compelling compliance, as provided by the Administrative Procedures Act, Sections 250.1 through 323 of Title 75 of the Oklahoma Statutes.

D. The Administrator shall not make public the name or identity of a person whose acts or conduct are investigated pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this act.

E. The Administrator or an independent hearing examiner may, after notice and hearing, censure, probate, suspend, revoke or refuse to renew any license or enjoin violations of this act if the Administrator or an independent hearing examiner finds that:

1. The licensee has failed to pay the annual license fee imposed by this act, or an examination fee, investigation fee or

other fee or charge imposed by the Administrator under the authority of this act;

2. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this act or any rule or order lawfully made pursuant to and within the authority of this act;

3. Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the Administrator or an independent hearing examiner in refusing to issue the license;

4. The licensee has refused to permit examination by the Administrator;

5. The licensee has demonstrated incompetency or untrustworthiness to engage in the business of making deferred deposit loans; or

6. The licensee, as an individual, has been convicted of a felony or misdemeanor involving fraud, misrepresentation or deceit.

F. The hearing shall be held on not less than twenty (20) days' notice in writing setting forth the time and place of the hearing and a concise statement of the facts alleged to sustain the administrative action, and its effective date shall be set forth in a written order accompanied by finding of fact and a copy of the findings shall be delivered immediately to the licensee. The order, findings and evidence considered by the Administrator or the independent hearing examiner shall be filed with the public records of the Administrator.

G. Any licensee may surrender any license by delivering it to the Administrator with written notice of its surrender, but the surrender shall not affect the responsibility of the licensee for acts occurring prior to surrender of a license.

H. No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

I. The Administrator or an independent hearing examiner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Administrator or the independent hearing examiner in refusing originally to issue such license under these subsections.

J. Every licensee shall notify the Administrator of the conviction of or plea of guilty or nolo contendere to any felony within thirty (30) days after the plea is taken and also within thirty (30) days of the entering of an order of judgment and sentencing and shall notify the Administrator of any administrative action resulting in revocation, suspension or amendment of a license taken against the licensee in another state within thirty (30) days of the entering of the administrative order in that state.

K. Except as otherwise provided, the Administrative Procedures Act applies to and governs all administrative action taken by the Administrator pursuant to this act.

L. 1. After notice and hearing, the Administrator or the independent hearing examiner may order a lender or a person acting in the lender's behalf to cease and desist from engaging in violations of this act.

2. A respondent aggrieved by an order of the Administrator may obtain judicial review of the order as provided by the Administrative Procedures Act. In such a review proceeding, the Administrator may apply for a decree enforcing the order. All such proceedings shall be conducted and the court's authority in review shall be exercised in accordance with the provisions of the Administrative Procedures Act, with the following additions:

- a. the court may grant any temporary relief or restraining order it deems just,
- b. if the court affirms or modifies the order, it shall enter a decree enforcing and requiring compliance with the order as affirmed or as modified,
- c. an objection to the order not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown, and
- d. the copy of the testimony from the administrative hearing shall be available at reasonable times to all parties for examination without cost.

3. If no proceeding for review has been filed within the time specified by law, the Administrator or a representative may obtain from a court having jurisdiction over the respondent a decree for enforcement of the order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within the time specified by law, and that the respondent is subject to the jurisdiction of the court.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3116 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. In addition to other powers granted by this act, the Administrator of Consumer Credit may, within the limitations provided by law:

1. Maintain a list of licensees, which shall be available to interested persons and the public. The Administrator shall also provide a toll-free number whereby consumers may obtain information about licensees;

2. Establish a complaint process whereby an aggrieved debtor or a member of the public may file a complaint against a licensee or

nonlicensee who violates any provision of this act. The Administrator shall hold hearings upon the request of a party to the complaint, make findings of fact and conclusions of law, issue cease and desist orders and suspend or revoke a license granted under this act;

3. Take action designed to obtain voluntary compliance with this act or commence proceedings on the Administrator's own initiative;

4. Counsel persons and groups on their rights and duties under this act; and

5. With approval of the Commission on Consumer Credit, promulgate, amend and repeal administrative rules to carry out the provisions of the act, as provided by the Administrative Procedures Act.

B. The Administrator may conduct a study regarding the system of verification of the existence of deferred deposit loans as provided in paragraph 2 of subsection B of Section 9 of this act to determine:

1. If the system adequately provides lenders with information as to the existence of outstanding deferred deposit loans made by other lenders; and

2. If it is feasible for the Department of Consumer Credit to develop and maintain a database of outstanding deferred deposit loans to provide such information to lenders.

The Administrator shall consult with representatives of deferred deposit lenders, advocates for consumers of this state and other interested parties to conduct the study. The Administrator shall issue a report of any such findings to the President Pro Tempore of the Senate and the Speaker of the House of Representatives not later than December 1, 2004.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3117 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Administrator of Consumer Credit may order and impose civil penalties upon a person subject to the provisions of this act for violations of this act or the rules promulgated to implement this act in an amount not to exceed One Thousand Dollars (\$1,000.00) per violation. The Administrator may also order repayment of unlawful or excessive fees charged to debtors.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3118 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Commission on Consumer Credit to be designated the "Oklahoma Deferred Deposit Lending Regulatory Revolving Fund". The fund shall consist of all monies received by the Administrator of Consumer

Credit as license fees, examination fees, investigation fees, application fees and any administrative fines imposed pursuant to the Deferred Deposit Lending Act. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the Administrator. Monies accruing to the credit of this fund are hereby appropriated and may be budgeted and expended by the Administrator upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 19. This act shall become effective September 1, 2003.

Passed the Senate the 7th day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of May, 2003.

Presiding Officer of the House
of Representatives