A BILL FOR

1 An Act requiring the licensure of flexible credit lenders, and
2 making civil penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
Section 1. NEW SECTION. 536B.1 Title.
This chapter shall be known and may be cited as the "Iowa Flexible Loan Act".

Sec. 2. NEW SECTION. 536B.2 Definitions.
As used in this chapter, unless the context otherwise requires:
1. "Annual percentage rate" means the measure of the cost of credit, expressed as a yearly rate, that relates the amount extended to a consumer on a flexible credit loan to the amount and timing of payments made, as computed under the federal Truth in Lending Act.
2. "Consumer" means an individual who obtains a flexible credit loan.
3. "Federal Truth in Lending Act" means as defined in section 537.1302.
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 excluding other fees allowed under section 536B.19.
5. "Flexible credit lender" means a person who advertises to make, solicit, or hold the person out to make a flexible credit loan to a consumer in this state.
6. "Flexible credit loan" is a loan in which all of the following are applicable:
   a. The debt is incurred for a personal, family, or household purpose.
   b. The debt is not less than five hundred dollars and not more than two thousand five hundred dollars.
   c. The debt is unsecured.
   d. The debt is payable in substantially equal installment payments of principal and interest for the term of the loan.
   e. The debt is subject to prepayment in whole or in part at any time without penalty.
   f. The term length of the loan is for a minimum of six months and a maximum of twenty-four months.
7. "Licensee" means a person licensed pursuant to this chapter.

8. "Regularly engaged in the business" means any of the following:
   a. Advertising to or making any other solicitation to a resident of this state to offer a flexible credit loan within this state.
   b. Making three or more flexible credit loans within a calendar year to residents of this state.

9. "Superintendent" means the superintendent of banking within the banking division of the department of commerce.

Sec. 3. NEW SECTION. 536B.3 Exemptions.

This chapter shall not apply to any of the following:

1. A person who does business under the authority of a law of this state, or any other state while regulated by a state agency of that other state, or of the United States, relating to banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies, or receiverships if the person is regulated by the other law or under the jurisdiction of a court.

2. A person who is not regularly engaged in the business of making a flexible credit loan.

3. A person who is licensed pursuant to another law of this state to the extent that the person's activities are governed by that law.

4. A consumer loan to the extent provided under chapters 533D, 535C, 536, 536A, 536C, or 537.

Sec. 4. NEW SECTION. 536B.4 License — application — fees.

1. Unless exempt under section 536B.3, a person shall not engage in the business of making a flexible credit loan to a resident of this state without first having obtained a license as a flexible credit lender from the superintendent.

2. An applicant for a license shall submit an application in writing, under oath, and in the form as prescribed by the
The application shall require any information that the superintendent determines is necessary.

3. At the time of making the application, the applicant shall pay to the superintendent a fee of one hundred dollars.

Sec. 5. NEW SECTION. 536B.5 Grounds for denial of license. The superintendent may deny a license for any of the following:

1. The person is insolvent.

2. The person has failed to demonstrate the financial responsibility, experience, character, and general fitness to command the confidence of the community and to warrant the belief that the business of the proposed flexible credit lender will be honestly and efficiently conducted.

3. The person has failed to pay the fee required under section 536B.4, subsection 3.

4. The person has failed to demonstrate that the person maintains at least twenty-five thousand dollars in assets readily available for use in the conduct of the business for the licensed office and each licensed branch office.

5. The person has, either knowingly or without the exercise of due care to prevent a violation, violated any provision of this Title XIII of the Code or any rule or order adopted or made pursuant to this Title XIII.

Sec. 6. NEW SECTION. 536B.6 Issuance of license — form — posting.

1. The superintendent shall issue a license to an applicant within thirty days after receiving a complete application unless the superintendent finds grounds for denying the license.

2. A license issued under this chapter shall be valid for a term of one year, beginning on January 1 and ending on December 31.

3. A license issued under this chapter shall remain in full force until surrendered, revoked, or suspended.

4. A license issued under this chapter shall not be...
1 transferable or assignable.
2 5. A license issued under this chapter shall remain the
3 property of this state. Upon the voluntary surrender of the
4 license by the licensee or the revocation of the license by
5 the superintendent, the licensee shall immediately deliver the
6 license to the superintendent. Surrender or revocation of the
7 license shall not affect any other liability of the licensee.
8 6. A license issued under this chapter shall be kept
9 conspicuously posted at the office of the licensee and any
10 licensed branch office where flexible credit loan transactions
11 are conducted.

Sec. 7. NEW SECTION. 536B.7 License location.
1. A licensee shall designate the principal place of
2 business where the licensee shall conduct flexible credit loan
3 transactions pursuant to this chapter, which shall be indicated
4 on the license as the licensed office location.
5 2. a. A licensee may obtain a branch office license from
6 the superintendent for each branch office if the licensee wants
7 to maintain more than one license location.
8 b. A licensee may obtain a branch office license by
9 submitting an application in the form as prescribed by the
10 superintendent and paying a fee of two hundred fifty dollars
11 for each branch office license.
12 c. The superintendent shall issue a branch office
13 license indicating the address of the branch office if the
14 superintendent determines that the applicant is qualified for
15 the license.
16 3. A licensee shall not conduct flexible credit loan
17 transactions under any name or at any place of business other
18 than the name and location indicated on the license. However,
19 a licensee may do any of the following:
20 a. Provide a flexible credit loan by mail or electronic
21 means.
22 b. Make an accommodation to a consumer at any location upon
23 a request by the consumer.
c. Conduct an administrative, loan servicing, or recordkeeping activity at any other location not open to the public provided that the superintendent is notified in advance of that activity.

4. A licensee may change the licensed office location or licensed branch office location by providing the superintendent with written notice, and the superintendent shall amend the license accordingly.

5. a. A licensee may conduct flexible credit loan transactions from within any licensed office location or licensed branch office location in which any other business not licensed pursuant to this Title XIII of the Code is solicited or engaged in, or in conjunction with any other business not licensed pursuant to this Title XIII.

b. If the superintendent determines that the other business is of such a nature or is being conducted in such a manner as to conceal an evasion or violation of this Title XIII of the Code or any rules adopted pursuant to this Title XIII, or is otherwise being conducted in an unlawful manner, the superintendent may restrict the licensee from conducting its business as a flexible credit lender in conjunction with that other business.

Sec. 8. NEW SECTION. 536B.8 Renewal of license.

1. A license issued pursuant to this chapter shall be renewed annually. A licensee may renew a license by submitting an application in the form as prescribed by the superintendent no later than December 1 and paying a renewal fee of two hundred fifty dollars.

2. The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after December 1.

3. The license of a licensee who has not filed a renewal application or paid the renewal fee by December 31 shall expire and the licensee shall not act as a flexible credit lender until the license is renewed or a new license is issued.
pursuant to this chapter.
Sec. 9. NEW SECTION. 536B.9 Grounds for denial of license renewal — suspension — revocation.
1. The superintendent may deny the renewal of a license or suspend or revoke a license if the superintendent determines any of the following:
   a. The licensee is insolvent.
   b. The licensee is not a person of honesty, truthfulness, and good character, as determined by rule.
   c. The licensee has failed to pay the annual renewal fees.
   d. The licensee has failed to file an annual report as required by this chapter when the report was due or within any extension of time provided by the superintendent for good cause.
   e. The licensee has failed to demonstrate that the licensee maintains at least twenty-five thousand dollars in assets readily available for use in the conduct of the business for the licensed office and each licensed branch office.
2. The superintendent may also deny the renewal of a license or suspend or revoke a license if the superintendent determines a fact or condition exists which would have warranted the superintendent to refuse to originally issue the license.
Sec. 10. NEW SECTION. 536B.10 Records — examination by superintendent — fees.
1. A licensee shall keep such books, accounts, and records as the superintendent may require in order to determine whether the licensee is complying with the provisions of this chapter and with the rules adopted by the superintendent under this chapter.
2. A licensee shall preserve for at least two years after making the last entry on any flexible credit loan all books, accounts, and records pertaining to the loan. A licensee who uses an electronic recordkeeping system shall not be required to keep a written copy of the books, accounts, and records if the licensee is able to generate all of the information
required under this section in a timely manner for examination or other purposes.

3. A licensee shall make any books, accounts, and records kept outside of this state available to the superintendent within three business days upon request by the superintendent. The superintendent may examine such books, accounts, and records at the office of the licensee located outside of this state.

4. A licensee shall provide to the superintendent or the superintendent’s duly authorized representative access, during normal business hours, to the licensee’s offices, files, safes, and vaults regarding the flexible credit lending business or regarding the subject matter of any examination, investigation, or hearing regarding the licensee.

5. a. A licensee required to provide the superintendent with access to its records pursuant to this section shall pay the cost of the examination or investigation. The superintendent shall determine the cost of the examination or investigation based upon the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter.

b. Failure to pay the examination or investigation fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation fee for each day the payment is delinquent.

Sec. 11. NEW SECTION. 536B.11 Annual report by licensee.

1. A licensee shall annually on or before April 1 file a report with the superintendent giving such relevant information as the superintendent reasonably may require concerning the business and operations during the twelve-month period
ending the preceding December 31. Upon good cause shown by a
licensee, the superintendent may extend the time for filing the
report for a period not to exceed sixty days.

2. The annual report shall include a licensee's average
annual percentage rate and average loan amount during the
twelve-month period ending the preceding December 31.

3. a. If a licensee fails to file an annual report under
this section on or before April 1 or within any extension
of time provided by the superintendent for good cause, the
superintendent or any person designated by the superintendent
may examine the books, accounts, and records of the licensee,
prepare the annual report, and charge the licensee an
examination fee as established by rule. The fee shall be based
on the actual cost of the examination or investigation.

b. If a licensee fails to file an annual report within the
specified time and has not received an extension, the licensee
shall be subject to a civil penalty not to exceed five dollars
per day until the licensee has filed the annual report. The
licensee shall pay the penalty to the superintendent within
thirty days after the penalty is levied.

Sec. 12. NEW SECTION. 536B.12 Surrender of license.
A licensee may surrender a flexible credit loan license
by delivering to the superintendent written notice that the
license is surrendered. The surrender does not affect the
licensee's civil or criminal liability for acts committed
prior to such surrender or entitle such licensee to a return
of any part of the annual license fee. The superintendent
may establish procedures for the disposition of the books,
accounts, and records of the licensee and may require such
action as deemed necessary for the protection of consumers that
have flexible credit loans that are outstanding at the time of
surrender of the license.

Sec. 13. NEW SECTION. 536B.13 Impairment of preexisting
loan.
1. The revocation, suspension, surrender, expiration, or
altered of a license provided under this chapter shall not
impair or affect any of the following:
  a. The obligation of a preexisting flexible credit loan
  between a flexible credit lender and a consumer.
  b. The ability or right of a flexible credit lender to
  service a preexisting flexible credit loan from outside this
  state.
  2. If this chapter or any part of this chapter is modified,
 amended, or repealed, resulting in a cancellation or alteration
 of any flexible credit lender license or right of a licensee
 under this chapter, that cancellation or alteration shall not
 impair or affect the obligation of any preexisting contract
 between a flexible credit lender and any consumer.
 Sec. 14. NEW SECTION. 536B.14 Restrictions.
 1. A licensee shall not knowingly advertise, display,
 distribute, broadcast, or televise, or cause or allow to be
 advertised, displayed, distributed, broadcast, or televised, in
 any manner, any false, misleading, or deceptive statement or
 representation with regard to the rates, terms, or conditions
 of a flexible credit loan. To the extent applicable, all
 advertising shall comply with the advertising requirements
 specified in the federal Truth in Lending Act.
 2. a. A licensee shall not provide a flexible credit loan
 with an annual percentage rate greater than that provided in 10
 U.S.C. §987(b), to any of the following:
 (1) A member of the United States armed forces who is on
 active duty under a call or order that does not specify a
 period of thirty days or less.
 (2) A person on active national guard duty or armed forces
 military reserve active duty.
 (3) A dependent as defined in 10 U.S.C. §987(i).
 b. A licensee shall not provide a flexible credit loan
 to a consumer unless the consumer has signed a statement, to
 be included as part of the loan, attesting to whether or not
 the consumer is a military member or a dependent as defined
1 in 10 U.S.C. §987(i). The statement shall be in the form as
2 prescribed by the superintendent by rule.
3 c. A flexible credit loan made in violation of 10 U.S.C.
4 §987 is void and its terms and conditions unenforceable.
5 Sec. 15. NEW SECTION. 536B.15 Rules.
6 The superintendent may adopt rules to administer this
7 chapter.
8 Sec. 16. NEW SECTION. 536B.16 Noncompliance.
9 1. A flexible credit loan that is provided by a person who
10 is required to be licensed under this chapter but who is not
11 licensed is void and its terms and conditions unenforceable.
12 2. Except as provided in subsection 1 and section 536B.14,
13 subsection 2, failure to comply with this chapter shall not
14 affect the validity or enforceability of a flexible credit
15 loan.
16 Sec. 17. NEW SECTION. 536B.17 Disclosures.
17 1. To the extent applicable, a licensee shall comply with
18 the disclosure requirements as set forth in the federal Truth
19 in Lending Act.
20 2. A licensee shall conspicuously display a sign printed
21 in at least twelve-point bold font type at each desk in the
22 licensed office and licensed branch office where flexible
23 credit loan transactions are conducted with the following
24 disclosure:
25 Notice: Before signing any loan documents or otherwise
26 committing to a loan, you may take copies of those documents
27 away from the flexible credit lender’s place of business for
28 review.
29 3. A licensee providing electronic flexible credit loans
30 shall conspicuously display the following disclosure on the
31 licensee’s internet site:
32 Notice: Before signing any loan documents or otherwise
33 committing to a loan, please read our terms and conditions
34 carefully.
35 4. A licensee who fails to provide disclosures as required
1 under this section shall be subject to a civil penalty not to exceed three hundred dollars for each violation.

Sec. 18. NEW SECTION. 536B.18 Finance charge.
1. A licensee may charge a finance charge on a flexible credit loan at a rate not to exceed seventeen percent per month.
2. This section does not authorize the compounding of a finance charge.

Sec. 19. NEW SECTION. 536B.19 Other fees and charges.
1. In addition to a finance charge authorized under section 536B.18, a licensee may collect any of the following fees or charges:
   a. A delinquency charge if an installment is not paid in full within seven days, equal to five percent of the amount of the installment.
   b. Court costs and reasonable attorney fees if the flexible credit loan is referred for collection to an attorney other than an employee of the licensee.
   c. A dishonored check service fee if a licensee receives a check, draft, negotiable order of withdrawal, or similar instrument that is not paid or is not honored by a depository institution, equal to the actual charges assessed by the depository institution.
2. A licensee shall not directly or indirectly charge, contract for, or receive any other amount in connection with a flexible credit loan except as provided in this chapter.

EXPLANATION
The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill creates new Code chapter 536B to require licensure of persons who wish to provide flexible credit loans to residents of the state.
The bill defines "flexible credit loan" to mean a loan that is incurred for a personal, family, or household purpose, is not less than $500 and not more than $2,500, is unsecured,
is payable in substantially equal installment payments of principal and interest for the term of the loan, is subject to prepayment in whole or in part at any time without penalty, and is for a term length of a minimum of 6 months and a maximum of 24 months.

The bill exempts the following persons from the requirements of the bill: a person who does business under any law relating to banks, savings banks, trusts, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies, or receiverships, a person who is not regularly engaged in the business of making flexible credit loans, as defined in the bill, a person who is licensed pursuant to another Iowa Code chapter to the extent that the person's activities are governed by that Code chapter, or a consumer loan provided under Code chapters 533D, 535C, 536, 536A, 536C, 537.

The bill prohibits a person from engaging in the business of making flexible credit loans to a resident in this state without first obtaining a license from the superintendent of the banking division in the department of commerce. An applicant for a license must submit an application in the form prescribed by the superintendent and pay a fee of $100.

The bill allows the superintendent to deny a license if the applicant is insolvent, has failed to demonstrate the financial responsibility, experience, character, and general fitness required, as determined by rule, has failed to pay the $100 fee, or has failed to demonstrate the availability of at least $25,000 in assets for use in the conduct of the business for the licensed office and each licensed branch office.

The bill requires the superintendent to issue a license within 30 days of receiving an application unless grounds exist for denying it. A license is valid for one year, from January 1 to December 31, remains in full force until surrendered, revoked, or suspended, and is not transferable. A license remains the property of the state and must be immediately
1 returned to the superintendent if a licensee voluntarily
2 surrenders it. A license must be posted conspicuously in the
3 office of the licensee and any licensed branch offices.
4 The bill requires a licensee to designate the principal
5 place of business to be indicated on the license. A licensee
6 wishing to maintain more than one place of business may
7 obtain a branch office license by submitting an application
8 as prescribed by the superintendent and paying a $250 fee.
9 A licensee is prohibited from conducting flexible credit
10 loan transactions under any name or location different than
11 what is indicated on the license, provided, however, that
12 a licensee may provide loans by mail or electronic means,
13 make an accommodation to a consumer at any location upon
14 the consumer’s request, or conduct an administrative, loan
15 servicing, or recordkeeping activity at any other location if
16 the superintendent is notified. A licensee can change the
17 license location by giving the superintendent written notice to
18 amend the license.
19 The bill authorizes a licensee to conduct flexible credit
20 loan transactions from any licensed office location where other
21 business activities unrelated to flexible credit lending occur.
22 However, the superintendent may prohibit a licensee from
23 conducting business as a flexible credit lender in conjunction
24 with, or at the location of, such other business if the other
25 business is being conducted in an unlawful manner.
26 The bill allows a licensee to obtain a renewal license by
27 submitting an application as prescribed by the superintendent
28 no later than December 1 and paying a $250 fee. A renewal
29 application submitted after December 1 is subject to a $10 late
30 fee for each day it is late. A license of a licensee who has
31 not filed a renewal or paid the fee by December 31 expires.
32 The bill allows the superintendent to deny a renewal license
33 or suspend or revoke a license if the licensee is insolvent,
34 is not a person of honesty, truthfulness, and good character,
35 as determined by rule, has failed to pay the renewal fee, has
failed to file an annual report, or has failed to demonstrate the availability of at least $25,000 in assets for use in the conduct of the business for each office. The superintendent may deny a renewal license or suspend or revoke a license if a fact or condition exists to have warranted the superintendent to refuse to originally issue the license.

The bill requires a licensee to keep records for the superintendent to determine whether the licensee is complying with the bill for at least two years. A licensee must make all records kept outside of the state available to the superintendent within three business days upon request. A licensee must provide the superintendent with access to the licensee's records during normal business hours. A licensee subjected to an examination of its records by the superintendent must pay a fee determined by the actual cost of the examination. A licensee who fails to pay the fee within 30 days must pay a late fee of up to 5 percent of the amount of the fee for each day the payment is delinquent.

The bill requires a licensee to provide the superintendent with an annual report on or before April 1, which may be extended for no more than 60 days upon showing good cause. The report must include the licensee's average annual percentage rate, as defined in the bill, and average loan amount during the 12-month period ending the preceding December 31. The superintendent may examine the records of a licensee who has failed to file an annual report, prepare the annual report, and charge a fee based on the cost of the examination. A licensee who has failed to file an annual report without an extension is also subject to a civil penalty not to exceed $5 for each day until the report is filed, which must be paid within 30 days of being charged.

The bill provides that the revocation, suspension, surrender, cancellation, or alteration of a license will not impair or affect the validity of a preexisting flexible credit loan or the ability of a lender to service a preexisting loan
H.F. 196

1 outside of this state.
2 The bill restricts a licensee from advertising in any false
3 or misleading manner with regards to the rates or terms of a
4 flexible credit loan and requires a licensee to comply with
5 the advertising requirements in the federal Truth in Lending
6 Act. A licensee cannot provide a flexible credit loan to a
7 military member or dependent, as defined in 10 U.S.C. §987(i),
8 with an annual percentage rate greater than that provided in
9 10 U.S.C. §987(b). Before a licensee may provide a flexible
10 credit loan, the consumer must sign a statement attesting to
11 whether or not the consumer is a military member or dependent.
12 A loan made in violation of 10 U.S.C. §987 is void and its terms
13 and conditions unenforceable.
14 The bill provides that a flexible credit loan provided
15 by a person who is required to be licensed under new Code
16 chapter 536B but who is not licensed is void and its terms and
17 conditions unenforceable. However, any other noncompliance
18 with new Code chapter 536B, except pertaining to military
19 members and their dependents, will not affect the validity of
20 a flexible credit loan.
21 The bill requires a licensee to comply with the disclosure
22 requirements in the federal Truth in Lending Act. A licensee
23 must display a disclosure sign, as described in the bill, at
24 each desk in the licensed office and each licensed branch
25 office and on the licensee’s internet site if the licensee
26 provides electronic flexible credit loans. A licensee who
27 fails to do so is subject to a civil penalty not to exceed $300
28 for each violation.
29 The bill allows a licensee to charge a finance charge,
30 as defined in the bill, on a flexible credit loan at a rate
31 not to exceed 17 percent per month. However, a licensee is
32 not permitted to compound a finance charge. In addition to
33 this, a licensee may collect a delinquency charge, court costs
34 and reasonable attorney fees, and a dishonored check service
35 fee, as described in the bill. A licensee is prohibited
1 from collecting any other charges or fees in connection with 2 conducting flexible credit loan transactions.