

CHAPTER 120

(HB 285)

AN ACT relating to consumer loan companies.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 286.4-410 is amended to read as follows:

- (1) As used in this subtitle, unless the context requires otherwise:
- (a) *"Applicant" means a person filing an application under this subtitle;*~~["Commissioner" means the commissioner of financial institutions; and]~~
 - (b) *"Consumer loan company" means a person licensed under this subtitle to engage in the business of making loans to a consumer for personal, family, or household use in the amount or value of fifteen thousand dollars (\$15,000) or less;*
 - (c) *"Control" means the power to direct the management or policies of a licensee or applicant, whether through ownership of securities, by contract, or otherwise;*
 - (d) *"Executive officer" means a natural person holding the title or responsibility of president, vice president, chief executive officer, chief financial officer, chief operational officer, or chief compliance officer;*
 - (e) "Licensee" means a person licensed under this subtitle;~~and]~~
 - (f) *"Managing principal" means a natural person who meets the requirements of Section 4 of this Act and actively participates in and is primarily responsible for the operations of a licensee;*
 - (g) *"Material fact" means a fact that a reasonable person knows, or should know, that could reasonably be expected to influence any decision or action taken by the commissioner under this subtitle;*
 - (h) *"Nationwide consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a(p); and*
 - (i) *"Person in control of a licensee or applicant" means, with respect to an applicant or licensee, any of the following:*
 - 1. *A director, general partner, or executive officer;*
 - 2. *In the case of a limited liability company, a managing member or manager;*
 - 3. *Any person who directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of voting securities;*
 - 4. *Any person who has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of voting securities;*
 - 5. *In the case of a partnership or limited liability company, any person that has the right to receive twenty-five percent (25%) or more of the capital upon dissolution; or*
 - 6. *Any person that exercises control*
- ~~[(e) "Person" means an individual, partnership, association, trust, corporation and any other legal entity].~~
- (2) This subtitle shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, *savings*~~[building]~~ and loan associations, *agricultural* cooperative~~[marketing]~~ associations, credit unions, *industrial* loan~~[and investment]~~ companies, or licensed pawnbrokers. This subtitle does not apply to the purchase or acquisition, directly or indirectly, of notes, chattel mortgages, installment or conditional sales contracts, embodying liens or evidencing title retention arising from the bona fide sale of goods or services by a seller of ~~the~~~~[such]~~ goods or services.

➔Section 2. KRS 286.4-430 is amended to read as follows:

- (1) Each application for a license under this subtitle shall be made in writing, under oath or affirmation, in ~~a~~^{such} form~~as~~ the commissioner prescribes.
- (2) ~~Each~~^{The} application shall contain **the following information:**
- (a) In the case of an **applicant that is a natural person**, ~~individual, his~~ ^{the} name, **electronic mail address**, and ~~the~~ ^{physical} address of ~~the~~ ^{his} residence and place of business **of both the applicant and, if applicable, the managing principal;**
- (b) In the case of **an applicant that is a partnership, limited liability company, or association:**~~the name~~
1. **Names, electronic mail addresses, and physical addresses**~~address~~ of every member **and managing principal;**~~thereof~~ and~~the~~
 2. **The physical address**~~of the place~~ where the business is to be conducted;
- (c) In the case of **an applicant that is a corporation:**~~the~~
1. **The names, electronic mail addresses, and physical addresses** of the principal officers,~~and~~ directors, **and managing principal;**~~thereof~~ and~~the~~
 2. **The physical address** of the place where the business is to be conducted; and
- (d) Such additional information as the commissioner prescribes.

➔Section 3. KRS 286.4-440 is amended to read as follows:

~~(1)~~ Each applicant, at the time of making application, shall pay **the following to the commissioner:**

- (1) **Five hundred dollars (\$500)**~~two hundred fifty dollars (\$250) to the commissioner~~ as a fee for investigating the application **to conduct business as a consumer loan company**~~for the initial location~~ in Kentucky;~~or a fee of one hundred fifty dollars (\$150) for additional locations,~~ and
 - (2) The additional sum of **five hundred dollars (\$500)**~~four hundred dollars (\$400)~~ as an annual license fee for each location for the period terminating on the last day of the current calendar year.~~If the application is filed after June 30 in any year, the payment shall be two hundred dollars (\$200) as a license fee in addition to the fee for investigation.~~
- ~~(2) If any person regulated by the department desires to purchase an existing licensed location or locations, the person shall submit an application to the commissioner containing the information as the commissioner may prescribe. The fee for this application shall be one hundred dollars (\$100) per location not to exceed one thousand dollars (\$1,000).~~

➔Section 4. KRS 286.4-450 is amended to read as follows:

- (1) **For any new application for a license, submitted on or after January 1, 2020, to qualify for a license, an applicant shall satisfy and maintain, for the duration of licensure under this subtitle, the following bonding requirements, which shall cover all licensed locations:**
 - (a) **The applicant shall deposit with the commissioner, in a form directed by the commissioner, one (1) of the following instruments that satisfy the requirements of paragraph (b) of this subsection:**
 1. **An irrevocable letter of credit;**
 2. **A corporate surety bond;**
 3. **Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited United States currency in an amount that satisfies the requirements of paragraph (b) of this subsection, with a signed and notarized acknowledgement from the financial institution; or**
 4. **A savings certificate of a federally insured financial institution in this state that is not available for withdrawal except by direct order of the commissioner, with a signed and notarized acknowledgement from the financial institution. Interest earned on the certificate shall accrue to the applicant;**
 - (b) **The instruments identified in paragraph (a) of this subsection shall:**
 1. **Be made payable to the commissioner;**
 2. **Be in the following amounts:**

- a. *One hundred thousand dollars (\$100,000), if the applicant is privately held; or*
 - b. *Two hundred fifty thousand dollars (\$250,000), if the applicant is publicly traded;*
3. *Provide for claim on the instrument by the commissioner who has a cause of action under this subtitle. The total liability of the surety, cumulative or otherwise, shall not exceed the amount specified in the instrument; and*
4. *Be available for the recovery of expenses, fines, and fees levied or imposed by the commissioner under this subtitle, and for losses or damages that are determined by the commissioner to have been incurred by any customer as a result of the applicant's or licensee's failure to comply with the requirements of this subtitle; and*
- (c) *No claim shall be maintained to enforce any liability on an instrument under this subsection unless the claim is brought within three (3) years after the act upon which it is based.*
- (2) (a) *For any application submitted on or after January 1, 2020, including renewal applications, an applicant or licensee shall demonstrate that its financial condition is sufficient to effectively conduct the business of a licensee in one (1) or more licensed Kentucky locations by having and maintaining, for the duration of licensure under this subtitle:*
- 1. *If the applicant is privately held:*
 - a. *A total net worth of at least fifty thousand dollars (\$50,000), when receivables are one million dollars (\$1,000,000) or less; or*
 - b. *A total net worth of at least one hundred thousand dollars (\$100,000), when receivables are more than one million dollars (\$1,000,000); or*
 - 2. *If the applicant is publicly traded, a total net worth in excess of two hundred fifty thousand dollars (\$250,000).*
- (b) *For the purposes of this subsection, receivables shall be determined upon the initial application, or for renewal applications, based on the most recent annual report filed under KRS 286.4-590.*
- (3) (a) *Each applicant shall have, at the time of making application and for the duration of licensure under this subtitle, at least one (1) managing principal.*
- (b) *Prior to a change in managing principal, each licensee shall file a written request for the change with the department. The written request shall include sufficient proof that the new managing principal has experience to satisfy the requirements of this subsection, and the commissioner may deny the requested change.*
- (c) *Each person named as a managing principal in an application or written request under this subsection shall provide the commissioner with sufficient proof that the managing principal has at least two (2) years of lending experience working in a financial institution. The commissioner shall determine from the application or written request whether an applicant has sufficient experience to satisfy this requirement and may withhold approval based on this determination.*
- (4) (a) *At the time of application, the commissioner shall require each managing principal and person in control of an applicant or licensee to submit to a criminal background check.*
- (b) *The cost of each records background check shall be borne by the applicant or licensee.*
- (5) *The commissioner may deem an application incomplete if the applicant fails to pay any fee, or submit any documentation or information, required under this subtitle within sixty (60) days from the date the application was filed. After sixty (60) days, if the application is incomplete, it shall be considered abandoned.*
- (6) (a) *Once a completed application is filed, and after an investigation, the commissioner shall, after investigation, issue to the applicant a license to make loans in accordance with this subtitle, if the commissioner:*
- (a) ~~Approves the form of the application;~~
 - (b) ~~finds that the financial responsibility, *financial condition*, experience, character, and general fitness of the applicant *reasonably demonstrate that*, and of the members thereof if the applicant is a partnership~~

or association, and of the officers and directors thereof if the applicant is a corporation, command the confidence of the community and to warrant the belief that the business of the applicant, **its managing principal, and each person in control of the applicant** will **operate** ~~be operated~~ honestly, fairly, and efficiently in accordance with the purposes of this subtitle ~~;~~ and

~~(c) Finds that the applicant has complied with KRS 286.4-440.~~

~~(b)(2)~~ If the commissioner **finds that the applicant does not meet the requirements under paragraph (a) of this subsection** ~~does not so find~~, he or she shall not issue a license and shall ~~notify the applicant of the denial and~~ return **any license fee** ~~the sum~~ paid by the applicant ~~as a license fee~~, **but shall retain the five hundred dollars (\$500)** ~~retaining the two hundred fifty dollars (\$250)~~ investigation fee to cover the cost of investigating the application.

~~(c)~~ **When determining whether an applicant has satisfied the qualifications required under this subsection, the commissioner shall consider the grounds set forth in Section 8 of this Act.**

~~(d)(3)~~ The commissioner shall approve or deny every application for license within sixty (60) days from the **receipt of a completed application**, ~~filing thereof with the fees~~ unless the time is extended by a written agreement between the applicant and the commissioner.

~~(e)~~ If the commissioner denies a license, the applicant may, **within twenty (20) days from the date of denial, file a written petition requesting a hearing with the office of the commissioner. Upon the timely filing of a petition to appeal.** ~~and upon appeal~~ an administrative hearing shall be conducted in accordance with KRS Chapter 13B. **If the applicant does not file a petition within the required time frame, he or she shall be deemed to have waived the right to appeal.**

~~(f)(4)~~ The official record of the hearing shall be filed in the office of the commissioner as **a public record** ~~records~~, open to public inspection.

(7) **Any applicant, or person in control of an applicant, that has a license denied by the commissioner shall not be eligible to apply for a license under this subtitle, or serve as a person in control of an applicant or licensee, until the expiration of one (1) year from the date a final order denying the license is entered by the commissioner.**

➔Section 5. KRS 286.4-460 is amended to read as follows:

- (1) Every license shall state the **physical** address of the office at which the business is to be conducted, the name of the licensee, **any assumed names used by the licensee at that location**, and **the initial date of licensure** ~~if the licensee is a partnership or association, and the names of the members thereof~~.
- (2) The license ~~shall be kept displayed in the office of the licensee and~~ shall not be transferable or assignable **without the prior written approval of the commissioner pursuant to Section 16 of this Act**. Not more than one (1) place of business shall be maintained under the same license but the commissioner may issue more than one (1) license to the same licensee upon compliance with all the provisions of this subtitle for each license, ~~;~~ **except that** ~~provided, however,~~ nothing herein shall be deemed to require a license for any place of business devoted to accounting, recordkeeping, or administrative purposes.
- (3) Whenever a licensee desires to change **the physical** ~~his or her~~ place of business to another location, ~~within the same county~~ the licensee shall give written notice to the commissioner **at least fifteen (15) days prior to the location change** ~~, who, if he or she finds that the interests of the community will be served thereby, shall indorse on the license a transfer to the new place of business, with the date of transfer, which indorsement shall be authority for the operation of the business at the new location. No change in the place of business of a licensee to a location outside of the original county shall be permitted under the same license~~.
- (4) **No licensee shall transact business for which this subtitle requires a license under a name that is not designated on the license, unless the licensee has given written notice to the commissioner at least thirty (30) days prior to the name change.**

➔Section 6. KRS 286.4-470 is amended to read as follows:

- (1) No licensee shall conduct the business authorized by this subtitle in any office, room, or place of business in which any other business, except purchase of retail and installment sales contracts, **tax preparation**, and motor club memberships, is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the commissioner. **The commissioner shall have sixty (60) days to either approve or deny the written authorization request.**

- (2) Nothing in this subtitle shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.
- (3) Nothing in this subtitle shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars (\$15,000) at the licensed location at the same rates as provided in KRS 360.010.

➔Section 7. KRS 286.4-480 is amended to read as follows:

- (1) Each license shall remain in full force and effect until it is surrendered by the licensee, ~~or~~ suspended, ~~or~~ revoked, **or expired** as provided in this subtitle. Each licensee shall, on or before each December ~~31~~²⁰, pay to the commissioner the annual license fee for the next succeeding calendar year.
- (2) ***Failure of a licensee to pay the annual license fee required by this section shall result in the expiration of the licensee's license on January 1 of the following year.***
- (3) ***The commissioner may reinstate an expired license if, within thirty-one (31) days of expiration, the licensee:***
 - (a) ***Satisfies all requirements set forth in this subtitle; and***
 - (b) ***Pays a one hundred dollar (\$100) late fee.***
- (4) ***Any reinstatement under subsection (3) of this section shall be retroactive to January 1 of the calendar year in which it expired.***

➔SECTION 8. KRS 286.4-490 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) ***For the purposes of this section, "adverse action" means the suspension of, revocation of, conditioning or restricting of, or refusal to issue or renew a license or acceptance of the surrender of a license in lieu of a revocation or suspension.***
- (2) ***The commissioner may take adverse action against a licensee, applicant, or person in control of a licensee or applicant, or issue a cease-and-desist order to one of those persons, if the commissioner finds, after a thorough investigation, that the person:***
 - (a) ***Has failed to open an office within one hundred twenty (120) days from the date a license is granted unless good cause is shown;***
 - (b) ***Has committed fraud or made a misrepresentation of material fact;***
 - (c) ***Does not meet, has failed to comply with, or has violated any provisions of this subtitle, or any administrative regulation or order of the commissioner issued under the subtitle;***
 - (d) ***Has made a false statement of material fact in the application for a license or failed to give a truthful reply to a question in the application;***
 - (e) ***Has demonstrated incompetence or untrustworthiness to act as a licensee;***
 - (f) ***Is unfit, through lack of financial responsibility or experience, to conduct the business of a licensee;***
 - (g) ***Does not conduct business in accordance with the law or conducts business by a method that includes activities that are illegal where performed;***
 - (h) ***Is insolvent;***
 - (i) ***Is the subject of an active administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the financial services industry;***
 - (j) ***Has made or caused to be made to the commissioner a false representation of material fact or has suppressed or withheld from the commissioner information that the applicant or licensee possesses and which, if submitted, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;***
 - (k) ***Has refused to permit a lawful examination or investigation by the commissioner, or has refused or failed, within a reasonable time, to furnish to the commissioner any information or records, or make any report, that may be required under this subtitle;***

- (l) *Has been convicted of a felony;*
 - (m) *Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;*
 - (n) *Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state under threat of administrative action;*
 - (o) *Has knowingly employed or contracted with a person who has failed to obtain any necessary license or registration related to the financial services industry or has had a license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated in this state or another jurisdiction;*
 - (p) *Has failed to pay any fee required under this subtitle;*
 - (q) *Has failed to comply with an administrative or court order imposing child support obligations;*
 - (r) *Has failed to pay state income taxes or comply with any administrative or court order directing the payment of state income tax;*
 - (s) *Has filed for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110, within the last ten (10) years;*
 - (t) *Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;*
 - (u) *Has violated any of the recordkeeping and reporting requirements of the United States government, including 31 U.S.C. secs. 5311 to 5332; or*
 - (v) *No longer meets the requirements of this subtitle to hold a license.*
- (3) *If the reason for adverse action taken by the commissioner at any one location is generally applicable to all locations operated by a licensee, the commissioner may apply the adverse action to all licenses issued to a licensee.*
- (4) *Any person, or person in control of a licensee, who has had a license revoked by the commissioner shall not be eligible to apply for a license under this subtitle or to serve as a person in control of a licensee until after expiration of two (2) years from the date a final order of revocation is entered by the commissioner. A person whose license has been revoked twice shall be deemed permanently revoked and shall not be eligible for a license, or to serve as a person in control of a licensee, under this subtitle.*
- (5) *A person, or person in control of a licensee, against whose license adverse action has been taken under this section shall not:*
- (a) *Participate in any business for which a license is required under this subtitle; or*
 - (b) *Engage in any business activity on the premises where a licensee is conducting its business without prior written approval of the commissioner.*
- (6) (a) *Adverse action taken against a license, or the expiration of a license, shall not abrogate or modify:*
- 1. *The civil or criminal liability of a licensee for acts committed prior to the surrender or expiration; or*
 - 2. *The obligation of any preexisting contract between a licensee and a customer.*
- (b) *The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.*
- (7) (a) *If the commissioner has reason to believe from evidence satisfactory to the commissioner that a person has violated, or is about to violate, a provision in this subtitle, the commissioner may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for temporary or permanent relief against any person.*
- (b) *The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper.*

- (c) *Any person who violates a temporary restraining order or injunction issued by the court, in addition to being held in contempt of court, may be assessed a civil penalty under Section 21 of this Act by the court.*

➔Section 9. KRS 286.4-500 is amended to read as follows:

- (1) (a) *Notice of entry of any order denying a license shall be in writing and served personally or sent by certified mail to the last known address of the applicant.*
- (b) *A person whose application has been denied may, within twenty (20) days of service of the notice, submit a written petition to the commissioner requesting a hearing. The hearing shall be held in accordance with KRS Chapter 13B.*
- (c) *If no written petition is received, the commissioner may enter a final order denying the license.*
- (2) (a) *The commissioner may file an administrative complaint against any person or licensee that the commissioner believes has or may have violated this subtitle and the violation of which is subject to the penalties set forth in Section 8 or 21 of this Act.*
- (b) 1. *The commissioner shall serve an administrative complaint against a person or licensee personally or by certified mail, return receipt requested, postage prepaid, to the last known address of each person or licensee named in the complaint.*
2. *The person or licensee named in the complaint shall be entitled to a hearing on the complaint, held in accordance with KRS Chapter 13B. A written request for a hearing shall be submitted to the department, along with a written answer to the complaint, within twenty (20) days of being served the complaint.*
3. *If a written answer and request for hearing are not filed within twenty (20) days of being served the complaint, the person or licensee shall be deemed to have waived the hearing and the commissioner may enter a final order granting the relief requested in the complaint.*
- (3) *Whenever the commissioner denies any application for a license or assesses any of the penalties set forth in Section 8 or 21 of this Act under the provisions of this subtitle or revokes any license issued pursuant to this subtitle, the commissioner shall forthwith file in his or her office a written order to that effect, stating his or her findings with respect to the order thereto and the reasons for the action. The commissioner shall also forthwith serve upon the applicant for license or licensee a copy of the order, and the applicant or licensee may appeal to the Circuit Court of Franklin County, within thirty (30) days after the service of a copy of the order.*
- (4) *Any final order shall be served in the same manner as an administrative complaint under subsection (2) of this section.*
- (5) *Service by certified mail under this subtitle shall be deemed complete as provided in KRS 13B.050(2).*

➔Section 10. KRS 286.4-533 is amended to read as follows:

Notwithstanding the provisions of KRS 286.4-530(10) or of any other law, in any extension of credit in accordance with *this subtitle* [Subtitle 4 of KRS Chapter 286], the licensee may charge and collect the following:

- (1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest;
- (2) A bad check charge of twenty-five dollars (\$25), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower;
- (3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee;
- (4) *A loan processing fee of five percent (5%) of the original charge for credit investigations of one dollar and fifty cents (\$1.50) for each fifty dollars (\$50) or fraction thereof of the principal amount of the loan. This charge shall be limited to a maximum of one hundred fifty dollars (\$150) permitted only on the first two thousand dollars (\$2,000) of the principal amount of the loan. Any charge collected up to and including fifty dollars (\$50) shall be nonrefundable. In the event of prepayment, any loan processing fee above fifty dollars (\$50) shall be subject to refund in the same manner as other charges pursuant to KRS 286.4-530(6). A loan*

processing fee may only be charged once on a loan or refinance within any ninety day (90) period~~[No charge shall be collected unless a loan has been made as a result of the investigation];~~

- (5) An alternative to the default charge described in KRS 286.4-530(4), not to exceed five percent (5%) of each scheduled installment, or fifteen dollars (\$15), whichever is greater. Only one (1) charge may be collected for each scheduled installment; and
- (6) Costs or other expenses authorized for a secured party in accordance with KRS 355.9-207 and 355.9-607.

➔Section 11. KRS 286.4-580 is amended to read as follows:

- (1) No licensee shall take any confession of judgment or any power of attorney running to *the licensee*~~[himself]~~ or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor take any note or promise to pay that does not disclose the date and amount of the loan obligation, a schedule or description of the payments to be made thereon, and the rate or aggregate amount of the agreed charges; nor take any instrument *that is incomplete at the time*~~[in which blanks are left to be filled in after]~~ the loan is made.
- (2) No licensee shall enter into any contract of loan under this subtitle *unless*:

(a) ~~[under which]~~ The borrower agrees to make any scheduled repayment of principal *within*:

1. ~~[more than]~~ Sixty (60) months and fifteen (15) days from the date of making *the*~~[such]~~ contract if the principal amount of the loan exclusive of interest and charges is three thousand dollars (\$3,000) or less;~~;~~ or
2. One hundred and twenty (120) months *from the date of making the contract* if the principal amount of the loan exclusive of interest and charges exceeds three thousand dollars (\$3,000);~~;~~ and

(b) ~~The~~~~[every such]~~ contract *provides*~~[shall provide]~~ for repayment of the amount lent in substantially equal installments at approximately equal periodic intervals of time,~~;~~ *except*~~[provided, however,]~~ that when appropriate for the purpose of facilitating payment in accordance with the reasonable nature of obligor's main source of income, payments may be deferred or omitted, if all other payments are increased in *a*~~[such]~~ manner that *the*~~[such]~~ other payments are substantially equal in amount and sufficient in the aggregate to retire the loan in the period of months as~~[hereinafter]~~ provided *in this subsection*.

- (3) No licensee shall take any mortgage or other lien instrument upon real estate as security for any loan under this subtitle in which the principal is three thousand dollars (\$3,000) or less, unless *the*~~[such]~~ lien is subject to a prior mortgage.

➔Section 12. KRS 286.4-600 is amended to read as follows:

- (1) (a) *To enable the commissioner to determine whether the licensee is complying with the provisions of this subtitle, and with the administrative regulations promulgated under it*, each licensee shall keep and use in his or her business *books, accounts, records, or card systems in accordance with sound accounting principles and practices*.
- (b) *Unless applicable state or federal law requires a longer retention period, the licensee shall, after making the final entry in them, preserve any books, accounts, records, or card systems*~~[and shall preserve for at least two (2) years after making the final entry therein, such books, accounts, records, or card systems]~~:
 1. *For at least two (2) years; or*
 2. ~~[in accordance with sound accounting principles and practices to enable the commissioner to determine whether the licensee is complying with the provisions of this subtitle, and with the regulations [made pursuant thereto], and]~~For at least three (3) years on loans secured by residential property.
- (2) (a) *Any licensee that intends to cease operation of any office or offices licensed under this subtitle shall*:
 1. *Give the commissioner at least thirty (30) days' prior written notice of the cessation of operations, along with a plan for ceasing operations that is sufficient to safeguard the interest of the public; and*
 2. *Designate a custodian of records prior to the cessation of operations, who shall*:

- a. *Agree in writing to serve in that capacity and to comply with the requirements of this section; and*
 - b. *Notify the commissioner of:*
 - i. *The designation of a custodian, including but not limited to the custodian's name, physical address, electronic mail address, and telephone number; and*
 - ii. *The physical location where the records required to be kept under this subtitle will be preserved.*
- (b) *This subsection shall not apply to changes of location authorized under Section 5 of this Act.*
- (3) (a) *Except as provided in paragraph (b) of this subsection, all records referenced in this section shall be made accessible to the commissioner or the commissioner's designated representative upon demand.*
- (b) *Records held by a designated custodian under subsection (2) of this section shall be made accessible upon five (5) business days' written notice.*
- (4) *If good cause is demonstrated, the commissioner may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period required under this section.*
- (5) *It shall be unlawful for any person to knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information required to be preserved under this subtitle for the purpose of obstructing a subpoena issued, or investigation or examination conducted, by the commissioner.*

➔Section 13. KRS 286.4-610 is amended to read as follows:

- (1) The provisions of this subtitle shall be enforced by the commissioner, who may~~[- after notice to licensees and a hearing,]~~ promulgate *administrative* regulations *in accordance with KRS Chapter 13A*~~[-, referenced to the section or sections which set forth the legislative standards they interpret or apply,]~~ for the proper conduct of the business licensed under this subtitle. All regulations of general application shall state the date of promulgation and the effective date. A copy of every~~[- such]~~ regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the commissioner as a public record.
- (2) (a) The commissioner shall *examine*~~[- make an annual examination of]~~ the affairs, business, office, and records of every licensee *at least once during every twenty-four (24) month period, but not more frequently than once during every twelve (12) month period*~~[-, and such further examinations or investigations as the commissioner deems necessary for the purpose of discovering violations of this subtitle or of securing information necessary for its proper enforcement].~~ Every licensee shall pay a *reasonable* fee sufficient to cover the cost of each *routine* examination based upon fair compensation for time and actual expenses.
- (b) *The commissioner may also conduct investigations of licensees or persons within or outside of the state as the commissioner deems necessary to discover violations of this subtitle or to secure information necessary for its proper enforcement.*
- (c)~~[(3)]~~ For the purpose of making~~[- such]~~ examinations or investigations *under this section*, the commissioner and his or her representatives:
- 1. May~~[- require the attendance of and -]~~:
 - a. *Compel the attendance of any person or obtain any documents by subpoenas;*
 - b. *Administer oaths and affirmations; and*
 - c. Examine under oath *or affirmation* all persons whose testimony he or she may require, relative to the loans or business of *the*~~[- any such]~~ licensee~~[-];~~ and
 - 2. Shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this subtitle.
- (3) (a) *The commissioner may investigate any person who is or appears to be engaging in the business regulated by this subtitle without first securing a license.*

- (b) *For the purpose of investigations of unlicensed persons, the commissioner or his or her representative may:*
1. *Compel the attendance of any person or obtain any documents by subpoenas;*
 2. *Administer oaths and affirmations; and*
 3. *Examine under oath or affirmation all persons whose testimony he or she may require, relative to the loans or business of the person.*
- (4) *If any person fails to comply with a subpoena issued by the commissioner under this section, the commissioner may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement of the subpoena.*
- (5) *In order to carry out the purposes of this subtitle, the commissioner may:*
- (a) *Retain examiners, auditors, investigators, attorneys, accountants, or other professionals and specialists to conduct or assist in the conduct of any examination, investigation, or enforcement action; and*
 - (b) *Use, hire, contract, or employ public or private analytical systems, methods, or software.*
- (6) *The authority of this section shall remain in effect whether a person acts or claims to act under any licensing law of this subtitle or acts or claims to act without such authority.*

➔SECTION 14. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "registry" means the State Regulatory Registry, LLC, or its successor organization.*
- (2) *When an application, report, or approval request is required under this subtitle to be filed with the commissioner, the commissioner may require, by administrative regulation or order, that the filing, including any applicable fees and any supporting documentation, be submitted to:*
 - (a) *The State Regulatory Registry, LLC, or its successor organization;*
 - (b) *The registry's parent, affiliate, or operating subsidiary; or*
 - (c) *Other agencies or authorities as part of a nationwide licensing system, which may act as an agent for receiving, requesting, and distributing information to and from any source directed by the commissioner.*
- (3) *The commissioner may report violations of this subtitle, enforcement actions, and other relevant information to the registry, notwithstanding any provision of this subtitle to the contrary.*
- (4) *The commissioner may use the registry as an agent for requesting information from and distributing information to the United States Department of Justice or other governmental agencies.*

➔SECTION 15. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

Every person licensed under this subtitle shall maintain an agent in this Commonwealth for service of process. The name, physical address, telephone number, and electronic mail address of the agent shall be filed with the application for licensure. The commissioner shall be notified in writing by the licensee at least five (5) days prior to any change in the status of an agent.

➔SECTION 16. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "change of control" means any of the following:*
 - (a) *A transfer of ownership interest that results in giving a person the power to direct the management or policies of a licensee;*
 - (b) *For publicly traded licensees, a transfer of at least ten percent (10%) of the outstanding voting stock;*
 - (c) *For privately held licensees, a transfer of at least twenty-five percent (25%) of the outstanding voting stock; or*
 - (d) *The acquisition of an existing licensed location or locations by a licensee.*

- (2) (a) *Except as provided in paragraph (b) of this subsection, a change of control of a licensee or an existing licensed location shall be approved in writing by the commissioner prior to the change.*
- (b) *For the following changes of control, a licensee shall file an application with the commissioner within fifteen (15) days after learning of the change of control:*
1. *A change of control that results when a person acquires control of a licensee by devise or descent;*
 2. *A change of control that results when a person acquires authority to act:*
 - a. *As a personal representative, custodian, guardian, conservator, or trustee;*
 - b. *As an officer appointed by a court of competent jurisdiction; or*
 - c. *By operation of law;*
 3. *A change of control that results from the public offering of securities; and*
 4. *A change of control that has been exempted by regulation or order of the commissioner, if the commissioner makes a finding that it is in the public interest to do so.*
- (3) *The licensee shall make an application to the commissioner for approval of a change of control on a form prescribed by the commissioner.*
- (4) (a) *For changes of control resulting in an existing licensee obtaining control of an existing licensed location or locations, the application fee shall be one hundred dollars (\$100) per location, except that the total fee for a single application shall not exceed one thousand dollars (\$1,000) regardless of the number of locations acquired.*
- (b) *For all other changes of control, the application fee shall be the fees set forth in Section 3 of this Act.*
- (5) *The commissioner shall approve an application for a change of control if the commissioner determines that the requirements of this subtitle for obtaining a license will be satisfied after the change of control.*
- (6) (a) *Before filing an application for approval of a change of control, a licensee may submit a written request for a determination from the commissioner as to whether a proposed transaction constitutes a change of control.*
- (b) *If the commissioner determines that a proposed transaction would not constitute a change of control, then the commissioner shall respond in writing to that effect, and the licensee shall not be subject to the requirements of this section.*
- (c) *In the event the commissioner does not make a determination as to whether a proposed transaction would constitute a change of control within sixty (60) days from the date of the request, then no application for a change of control shall be required.*

➔SECTION 17. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

In addition to the requirements contained in this subtitle, every person or licensee shall comply with all applicable federal and state laws relating to financial services. However, the regulatory penalties utilized to address violations of this section shall be limited to those authorized in this subtitle.

➔SECTION 18. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The following shall be considered confidential by law and privileged, and shall not be subject to disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884:*
- (a) *Reports of examination, and correspondence that relates to a report of examination, of a licensee;*
 - (b) *Investigations, and records that relate to an investigation, conducted under this subtitle;*
 - (c) *Annual reports filed under KRS 286.4-590; and*
 - (d) *Any confidential and privileged documents, materials, reports, or information received by the commissioner pursuant to subsection (5)(c) of this section.*

- (2) *Confidential and privileged documents shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless the commissioner determines or, after notice to the commissioner and a hearing, a court of competent jurisdiction determines that the commissioner would not be prejudiced.*
- (3) (a) *Subject to paragraph (b) of this subsection, all other documents, materials, reports, or other information that are provided to or filed with the commissioner under this subtitle shall be open to public inspection.*
- (b) *Notwithstanding paragraph (a) of this subsection, the commissioner may, as authorized by the provisions of KRS Chapter 61, classify as confidential or withhold from public inspection for a period of time, as he or she considers necessary, any information which in his or her judgment, the public welfare or the welfare of any licensee or its customers requires to be withheld.*
- (4) *Neither the commissioner nor any person who receives documents, materials, reports, or other information while acting under the authority of the commissioner shall be required to testify in any civil action concerning any confidential documents, materials, reports, or information.*
- (5) *In order to assist in the performance of the commissioner's duties, the commissioner may:*
- (a) *Use, disclose, or make public the confidential and privileged documents or information referenced in subsection (1) of this section in furtherance of any regulatory or legal action brought as part of the commissioner's official duties;*
- (b) *Share the confidential and privileged documents referenced in subsection (1) of this section with other state and federal regulatory agencies, or with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidential and privileged status of the documents in accordance with any sharing or use agreements referenced in paragraph (d) of this subsection;*
- (c) *Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information, from other state, federal, and international regulatory agencies, the related associations, affiliates, or subsidiaries, and from local, state, federal, and international law enforcement authorities, except that the commissioner shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information; and*
- (d) *Enter into agreements governing the sharing and use of confidential documents and information when the sharing or use is serving a legitimate governmental need or is necessary in the performance of a legitimate governmental function, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.*
- (6) *No waiver of any applicable privilege or claim of confidentiality in documents, materials, reports, or information shall occur as a result of the disclosures authorized under this section.*

➔SECTION 19. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if, after a thorough investigation and written findings, it appears upon grounds satisfactory to the commissioner that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.*
- (2) *The commissioner may enter an emergency cease-and-desist order against an unlicensed person if, after a thorough investigation, it appears upon grounds satisfactory to the commissioner that the unlicensed person has engaged or is engaging in unsafe or unsound practices, or actions contrary to this subtitle, that pose an imminent threat to the public interest.*
- (3) *One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the commissioner that:*
- (a) *The licensee has willfully failed to comply with more than one (1) of the requirements of this subtitle;*
- (b) *The licensee is in such financial condition that it cannot continue in business with safety to its customers;*

- (c) *The licensee, or a person in control of the licensee, has been found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an active administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;*
 - (d) *The licensee has made a misrepresentation of material fact to, or concealed an essential or material fact from, a person in the course of doing business, or has engaged in a course of business that has worked or tended to work a fraud or deceit upon a person or would so operate;*
 - (e) *The licensee has refused to permit a lawful examination or investigation, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the commissioner in connection with a lawful investigation or examination; or*
 - (f) *The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state, or has surrendered or terminated any license, registration, or claim of exemption issued by this state under threat of administrative action.*
- (4) *An emergency order issued under this section, compliant with KRS 13B.125, becomes effective when served by the commissioner. The emergency order shall be delivered by personal service or certified mail to the last known address of every affected party.*
 - (5) *A person aggrieved by an emergency order issued by the commissioner under this section may request an emergency hearing. The request for hearing shall be filed with the commissioner within twenty (20) days of service of the emergency order.*
 - (6) *Upon receipt of a timely written request for an emergency hearing, an emergency hearing shall be conducted as set forth in KRS 13B.125.*
 - (7) *An emergency order issued under this section shall remain in effect until it is stayed, withdrawn, or superseded by an order of the commissioner or until it is terminated by a court order.*

➔SECTION 20. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

Unless a remedy is otherwise specifically provided in this subtitle, any licensee or person aggrieved by a final decision of the commissioner issued pursuant to this subtitle may, within twenty (20) days of service of notice of the decision, request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

➔SECTION 21. A NEW SECTION OF SUBTITLE 4 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *For any repetitive violation of this subtitle or an administrative regulation promulgated under this subtitle, or any willful violation of an order of the commissioner entered under this subtitle, the commissioner may levy a civil penalty against any licensee.*
- (b) *The civil penalty shall not be less than two hundred fifty dollars (\$250) or more than two thousand five hundred dollars (\$2,500) per violation, plus the state's costs and expenses for the examination and prosecution of the matter, including reasonable attorney's fees and court costs.*
- (2) (a) *For an occurrence of consumer harm by any licensee resulting from any violation of this subtitle, administrative regulation promulgated under this subtitle, or order of the commissioner entered under this subtitle, the commissioner may:*
 - 1. *Order any remedy authorized in subsection (4) of this section; and*
 - 2. *Levy a civil penalty against the licensee if the total amount of consumer harm exceeds one thousand dollars (\$1,000).*
- (b) *The civil penalty shall be:*
 - 1. *The lesser of:*
 - a. *One thousand dollars (\$1,000) per consumer harmed; or*

- b. *Ten percent (10%) of the total cumulative amount of ordered rescission, restitution, refund, disgorgement, or the recovery of expenses; and*
2. *The state's costs and expenses for the examination and prosecution of the matter, including reasonable attorney's fees and court costs.*
- (3) (a) *The commissioner shall levy a civil penalty against any unlicensed person who violates any provision of this subtitle, administrative regulation promulgated under this subtitle, or order of the commissioner entered under this subtitle.*
- (b) *The civil penalty shall not be less than two thousand five hundred dollars (\$2,500) or more than seven thousand five hundred dollars (\$7,500) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.*
- (4) *The commissioner may order rescission, restitution, refund, disgorgement, recovery of expenses, and direct such other affirmative action as the commissioner deems necessary against any licensee or person who violates any order issued by the commissioner or any provision of, or administrative regulation promulgated under, this subtitle. The commissioner shall have jurisdiction to institute an action in Franklin Circuit Court or any court of competent jurisdiction for the enforcement of these orders.*
- (5) *The commissioner may notify the Kentucky Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky in Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.*

➔Section 22. The following KRS section is repealed:

286.4-630 Review of commissioner's rulings.

Signed by Governor March 26, 2019.