

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1387

By: Taylor

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5
6 AS INTRODUCED

7 An Act relating to consumer credit; amending 14A O.S.
8 2011, Section 6-104, as amended by Section 3, Chapter
9 159, O.S.L. 2014 (14A O.S. Supp. 2018, Section 6-
10 104), which relates to power and duties of
11 Administrator of Consumer Affairs; allowing
12 Administrator to enter into certain agreements;
13 allowing Administrator to accept certain reports;
14 providing discretion in preparation of certain
15 reports; allowing for mailing of reports upon
16 request; providing for certain document retention
17 period; providing for limited confidentiality;
18 specifying certain public records; specifying certain
19 records as confidential; allowing certain employees
20 to divulge certain confidential information upon
21 written request; specifying content details of
22 written request; providing for reproduction and
23 electronic storage of documents; detailing document
24 reproduction fees; providing for certain interagency
data exchanges; providing for data confidentiality
upon interagency exchange; requiring certain
transfers of data from supervisory agencies remain
confidential; allowing retention of original
documents; providing for reimbursement; defining
terms; amending 14A O.S. 2011, Section 6-203, which
relates to fees; requiring payment of an
investigation fee; allowing for expiration of license
if not paid; requiring payment of certain other fees;
amending 59 O.S. 2011, Section 1508, which relates to
examinations, investigations and access to records;
requiring payment of certain late fee; amending 59
O.S. 2011, Section 1953, which relates to
investigation, license and annual renewal fees;
requiring payment of certain late fee; providing for
codification; and providing an effective date.

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

2 SECTION 1. AMENDATORY 14A O.S. 2011, Section 6-104, as
3 amended by Section 3, Chapter 159, O.S.L. 2014 (14A O.S. Supp. 2018,
4 Section 6-104), is amended to read as follows:

5 Section 6-104. (1) In addition to other powers granted by this
6 title, the Administrator of Consumer Affairs may, within the
7 limitations provided by law:

- 8 (a) receive and act on complaints, take action designed to
9 obtain voluntary compliance with this title, or
10 commence proceedings on the Administrator's own
11 initiative,
- 12 (b) counsel persons and groups on their rights and duties
13 under this title,
- 14 (c) establish programs for the education of consumers with
15 respect to credit practices and problems,
- 16 (d) make studies appropriate to effectuate the purposes
17 and policies of this title and make the results
18 available to the public,
- 19 (e) with ~~commission~~ approval by the Commission on Consumer
20 Credit adopt, amend, and repeal substantive rules when
21 specifically authorized by this title, and adopt,
22 amend, and repeal procedural rules to carry out the
23 provisions of this title, all as provided by the
24 Administrative Procedures Act, and

1 (f) enforce the disclosure provisions of the Federal
2 Consumer Credit Protection Act as defined in Section
3 1-302 of Title 14A of the Oklahoma Statutes.

4 (2) Except for refund of an excess charge, no liability is
5 imposed under this title for an act done or omitted in conformity
6 with a rule of the Administrator or written opinion of the
7 Administrator stating rights and duties issued on the
8 Administrator's own motion or in response to a request under
9 paragraph (b) of subsection (1) of this section notwithstanding that
10 after the act or omission the rule or opinion may be amended or
11 repealed or be determined by judicial or other authority to be
12 invalid for any reason. The opinions of the Administrator shall be
13 compiled and published no less often than annually.

14 (3) The Administrator shall report annually on or before
15 January 1 to the Governor and Legislature on the operation of the
16 Administrator's office, on the use of consumer credit in the state,
17 and on the problems of persons of small means obtaining credit from
18 persons regularly engaged in extending sales or loan credit. For
19 the purpose of making the report, the Administrator is authorized to
20 conduct research and make appropriate studies. The report shall
21 include a description of the examination and investigation
22 procedures and policies of the Administrator's office, a statement
23 of policies followed in deciding whether to investigate or examine
24 the offices of credit suppliers subject to this title, a statement

1 of the number and percentages of offices which are periodically
2 investigated or examined, a statement of the types of consumer
3 credit problems of both creditors and debtors which have come to
4 the Administrator's attention through examinations and
5 investigations and the disposition of them under existing law, and a
6 general statement of the activities of the Administrator's office
7 and of others to promote the purposes of this title. The report
8 shall not identify the creditors against whom action is taken by the
9 Administrator.

10 (4) The Administrator may enter into cooperative, coordinating
11 and information-sharing agreements with any other agencies that have
12 supervisory or regulatory responsibility over any entity that has
13 been or may be licensed by the Department of Consumer Credit or any
14 organization affiliated with or representing one or more agencies
15 with supervisory or regulatory responsibility over any entity that
16 has been or may be licensed by the Department, and the Administrator
17 may accept reports of examination and reports of investigation from
18 any such agency or organization in lieu of conducting the
19 Administrator's own examinations or investigations. The
20 Administrator may cooperate, coordinate and enter into information-
21 sharing agreements with the Oklahoma State Banking Department and
22 other state agencies with whom the agreements may be mutually
23 beneficial.

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1 (5) The Administrator shall have the authority to adopt rules,
2 not inconsistent with the provisions of this title, to limit the
3 amount of the additional charges that lenders are permitted to
4 impose under subsections (1) and (2) of Section 3-202 of this title
5 and Section 3-203.2 of this title, or to limit the amount of
6 deferral charges that sellers and lenders may impose under
7 subsections (2) and (3) of Section 2-204 of this title and
8 subsections (2) and (3) of Section 3-204 of this title. The
9 Administrator shall:

10 (a) in promulgating, amending or repealing rules pursuant
11 to this section, take into consideration whether
12 limits on the additional charges permitted under
13 subsections (1) and (2) of Section 3-202 of this title
14 and Section 3-203.2 of this title, or limits on
15 deferral charges that sellers and lenders may impose
16 under subsections (2) and (3) of Section 2-204 of this
17 title and subsections (2) and (3) of Section 3-204 of
18 this title, would:

19 (i) place lenders located in this state at a
20 competitive disadvantage, with respect to the
21 additional charges, as compared to out-of-state
22 credit card lenders or place sellers and lenders
23 in this state at a competitive disadvantage with
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1 respect to the deferral charges, as compared to
2 out-of-state sellers and lenders,
3 (ii) require sellers or lenders located in this state
4 to impose higher finance charges, or
5 (iii) impede the growth of consumer credit sales or the
6 consumer lending industry in this state, and

7 (b) adopt rules limiting the dollar amounts of the
8 additional charges permitted under subsections (1) and
9 (2) of Section 3-202 of this title and Section 3-203.2
10 of this title, or the deferral charges permitted under
11 subsections (2) and (3) of Section 2-204 of this title
12 and subsections (2) and (3) of Section 3-204 of this
13 title, in the event that the Administrator determines
14 that such limits are necessary to protect debtors in
15 this state from being subjected to charges which are
16 unreasonable or excessive as compared to the
17 prevailing charges being imposed by out-of-state
18 lenders and sellers.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6-116 of Title 14A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Upon the conclusion of any examination conducted by the
23 Department of Consumer Credit pursuant to this or any other act
24 administered by the Administrator of Consumer Affairs, the

1 Administrator may make and file in the Office of the Administrator a
2 report in detail disclosing the results of such examination or may,
3 on conditions prescribed by the Administrator, prepare a summary
4 memorandum regarding the results of such examination, and shall,
5 upon request by the examined party, mail a copy of such report or
6 memorandum to the examined party.

7 B. All examinations and reports received by the Administrator
8 shall be preserved in the Office of the Administrator for a period
9 of not less than five (5) years. Such examination and reports and
10 all other records of licensed entities are to be kept confidential,
11 except as otherwise permitted by law. Copies of such examinations
12 and reports in the possession of an institution under the
13 Department's supervision are the property of the Department and are
14 not subject to disclosure to third parties, including disclosure or
15 production pursuant to subpoena or other request. All requests for
16 review of such examinations and reports shall be directed to the
17 Department and are subject to the requirements of Section 3 of this
18 act.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6-117 of Title 14A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The following records in the Oklahoma Department of Consumer
23 Credit are designated as public records:

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1 1. All applications for licensure and supporting information
2 with the exception of personal financial records of individual
3 applicants, dates of birth, Social Security numbers, signatures and
4 fingerprints;

5 2. All records introduced at administrative hearings; and

6 3. All records related to licensed entities filed in the office
7 of the Secretary of State.

8 B. All other records in the Department shall be confidential
9 and not subject to public inspection. However, the Commission on
10 Consumer Credit, Administrator of Consumer Affairs or Deputy
11 Administrator may divulge such confidential information with the
12 written approval of the Administrator after receipt of a written
13 request which shall:

14 1. Specify the record or records to which access is requested;
15 and

16 2. Give the reasons for the request.

17 Such records may also be produced pursuant to a valid judicial
18 subpoena or other legal process requiring production, if the
19 Administrator determines that the records are relevant to the
20 hearing or proceeding and that production is in the best interests
21 of justice. The records may be disclosed only after a determination
22 by the Administrator that good cause exists for the disclosure.
23 Either prior to or at the time of any disclosure, the Administrator
24 shall impose such terms and conditions as the Administrator deems

1 necessary to protect the confidential nature of the record, the
2 financial integrity of any institution to which the record relates
3 and the legitimate privacy interests of any individual named in such
4 records.

5 C. All documents which the Department is required, by any
6 provision of any act administered by the Administrator or by any
7 other statute or regulation of this state, to retain or preserve in
8 its possession may be retained and preserved, in lieu of retention
9 of the original records or copies, in an electronic format and
10 stored by electronic imaging or otherwise so that the documents may
11 be later reproduced as necessary. Any such electronically stored or
12 imaged document or reproduction shall have the same force and effect
13 as the original thereof and be admitted in evidence equally with the
14 original.

15 D. With respect to records of the Department which are
16 considered public records, and which are subject to the Oklahoma
17 Open Records Act, the Department may charge a document copying fee
18 of twenty-five cents (\$0.25) per page. With respect to records of
19 the Department which are not considered public records, the
20 Department may charge a document copying fee of One Dollar (\$1.00)
21 per page, and if the Administrator, pursuant to the provisions of
22 subsection B of this section, permits the inspection or copying of
23 an examination report prepared by the Department, a minimum fee of
24 One Hundred Dollars (\$100.00) shall be charged.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-117.1 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. A supervisory agency shall make available to a requesting
5 agency any data obtained or generated by, and in the possession of,
6 the supervisory agency and that the requesting agency deems
7 necessary for review in connection with the supervision of any
8 person over which the requesting agency has direct supervisory
9 authority. However, the requested data must relate to the person,
10 or an affiliate of the person, over which the requesting agency has
11 direct supervisory authority. An agency has direct supervisory
12 authority over a person if such authority is specifically provided
13 by statute, or the agency granted the charter, license, or
14 registration of the person, or otherwise granted permission for the
15 person to conduct its business in this state.

16 B. When a requesting agency and a federal regulatory agency or
17 self-regulatory association have concurrent jurisdiction over a
18 person, a requesting agency may share with such agency or
19 association data received from a supervisory agency. However, the
20 federal regulatory agency or self-regulatory association shall
21 return such shared data to the requesting agency unless the federal
22 regulatory agency or self-regulatory association has obtained
23 approval from the supervisory agency to retain the data. The term
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1 "federal regulatory agency" shall not include law enforcement
2 agencies.

3 C. 1. All data received by a requesting agency from a
4 supervisory agency shall be and shall remain confidential and not
5 open to public inspection, subpoena or any other form of disclosure
6 while in the possession of the requesting agency. Any request for
7 inspection, subpoena or other form of disclosure shall be directed
8 at the supervisory agency from which the data originated and
9 disclosure thereof shall be subject to the laws, rules and policies
10 governing or relating to records of the supervisory agency.

11 2. The providing of data by a supervisory agency to a
12 requesting agency under this section shall not constitute a waiver
13 of, or otherwise affect, any privilege or claim of confidentiality
14 that a supervisory agency may claim with respect to such data under
15 any federal laws or laws of this state.

16 D. A supervisory agency shall not be required to share original
17 documents with a requesting agency. A requesting agency shall
18 reimburse the supervisory agency for costs associated with providing
19 copies of data to the requesting agency.

20 E. As used in this section:

21 1. "Affiliate" means any person that controls, is controlled
22 by, or is under common control with another person. A person shall
23 be deemed to have "control" over any person if the person:

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1 a. directly or indirectly or acting through one or more
2 other persons owns, controls or has power to vote ten
3 percent (10%) or more of any class of voting
4 securities of the other person, or

5 b. controls in any manner the election, appointment or
6 designation of a majority of the directors, trustees
7 or other managing officers of the person;

8 2. "Data" means copies of any documents, reports, examination
9 reports, letters, correspondence, orders, stipulations, memorandums
10 of understanding, agreements or any other records not open for
11 public inspection generated by a supervisory agency or obtained by a
12 supervisory agency from the person it supervises, whether in paper
13 or electronic format. However, "data" shall not include records
14 that a requesting agency receives from a supervisory agency pursuant
15 to this section;

16 3. "Requesting agency" means, as applicable, the Oklahoma
17 Department of Consumer Credit, the Oklahoma State Banking
18 Department, the Oklahoma Insurance Department, or the Oklahoma
19 Department of Securities, that requests from a supervisory agency
20 data relating to a person over which the requesting agency does not
21 have direct supervisory authority;

22 4. "Supervision" means any examination, assessment, order,
23 stipulation, agreement, report, memorandum of understanding or other
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1 regulatory matter or process that a requesting agency is authorized
2 to perform in relation to a person; and

3 5. "Supervisory agency" means, as applicable, the Oklahoma
4 Department of Consumer Credit, the Oklahoma State Banking
5 Department, the Oklahoma Insurance Department, or the Oklahoma
6 Department of Securities that maintains data relating to a person
7 over which the agency has direct supervisory authority.

8 SECTION 5. AMENDATORY 14A O.S. 2011, Section 6-203, is
9 amended to read as follows:

10 Section 6-203. (1) Any person required to file notification
11 pursuant to the provisions of Section 6-201 of this title, on or
12 before January 31 of each year, shall pay to the Administrator of
13 Consumer Credit an annual fee as prescribed by rule, and an
14 investigation fee of One Hundred Dollars (\$100.00) for each business
15 location. A late fee shall be charged for any notification filed
16 after January 31. The license shall expire thirty (30) days after
17 January 31 of any year for which the annual fee and investigation
18 fee have not been paid. Licensees shall also pay a fee of Twenty-
19 five Dollars (\$25.00) for any returned check, address or license
20 change, or duplicate license request.

21 (2) The term "licensee" or "license", as used in this title,
22 includes any entity or individual that has filed or is required to
23 file notification with the Administrator pursuant to the provisions
24 of Sections 6-201 through 6-203 of this title.

1 SECTION 6. AMENDATORY 59 O.S. 2011, Section 1508, is
2 amended to read as follows:

3 Section 1508. A. At such times as the Administrator of
4 Consumer Credit may deem necessary, the Administrator or a duly
5 authorized representative of the Administrator may make an
6 examination of the place of business of each licensee and may
7 inquire into and examine the transactions, books, accounts, papers,
8 correspondence and records of such licensee insofar as they pertain
9 to the business regulated by the Oklahoma Pawnshop Act. Such books,
10 accounts, papers, correspondence, records and property taken,
11 purchased or received shall also be open for inspection at any
12 reasonable time to federal law enforcement officials and the chief
13 of police, district attorney, sheriff or written designee of the law
14 enforcement body in whose jurisdiction the pawnshop is located,
15 without any need of judicial writ or other process. In the course
16 of an examination, the Administrator or duly authorized
17 representative or any authorized peace officer shall have free
18 access to the office, place of business, files, safes and vaults of
19 such licensee, and shall have the right to make copies of any books,
20 accounts, papers, correspondence and records insofar as they pertain
21 to the business regulated by the Oklahoma Pawnshop Act. The
22 Administrator or duly authorized representative may, during the
23 course of such examination, administer oaths and examine any person
24 under oath upon any subject pertinent to any matter about which the

1 Administrator is authorized or required by the Oklahoma Pawnshop Act
2 to consider, investigate or secure information. Any licensee who
3 fails or refuses to permit the Administrator or duly authorized
4 representative or any authorized peace officer to examine or make
5 copies of such books or other relevant documents shall thereby be
6 deemed in violation of the Oklahoma Pawnshop Act and such failure or
7 refusal shall constitute grounds for the suspension or revocation of
8 such license. The information obtained in the course of any
9 examination or inspection shall be confidential, except in civil or
10 administrative proceedings conducted by the Administrator, or
11 criminal proceedings instituted by the state. Each licensee shall
12 pay to the Administrator an examination fee. The Administrator may
13 require payment of an examination fee either at the time of initial
14 application, renewal of the license, or after an examination has
15 been conducted.

16 B. Whenever a peace officer has probable cause to believe that
17 property in possession of a licensed pawnbroker is stolen or
18 embezzled, the peace officer of the local law enforcement agency of
19 the municipality or other political subdivision in which the
20 pawnshop resides may place a written hold order on the property.
21 The initial term of the written hold order shall not exceed thirty
22 (30) days. However, the holding period may be extended in
23 successive thirty (30) day increments upon written notification
24 prior to the expiration of the initial holding period. If the

1 holding period has expired and has not been extended, the hold order
2 shall be considered expired and no longer in effect, and title shall
3 vest in the pawnbroker subject to any restrictions contained in the
4 pawn contract. The initial written hold order shall contain the
5 following information:

6 1. Signature of the pawnbroker or designee;

7 2. Name, title and identification number of the peace officer
8 placing the hold order;

9 3. Name and address of the agency to which the peace officer is
10 attached and the offense number;

11 4. Complete description of the property to be held, including
12 model number, serial number and transaction number;

13 5. Name of agency reporting the property to be stolen or
14 embezzled;

15 6. Mailing address of the pawnshop where the property is held;

16 and

17 7. Expiration date of the holding period.

18 C. While a hold order is in effect, the pawnbroker may consent
19 to release, upon written receipt, the stolen or embezzled property
20 to the custody of the local law enforcement agency to which the
21 peace officer placing the hold order is attached. The consent to
22 release the stolen or embezzled property to the custody of law
23 enforcement is not a waiver or release of the pawnbroker's property
24 rights or interest in the property. Otherwise, the pawnbroker shall

1 not release or dispose of the property except pursuant to a court
2 order or the expiration of the holding period including all
3 extensions. The district attorney's office shall notify the
4 pawnbroker in writing in cases where criminal charges have been
5 filed that the property may be needed as evidence. The notice shall
6 contain the case number, the style of the case, and a description of
7 the property. The pawnbroker shall hold such property until
8 receiving notice of the disposition of the case from the district
9 attorney's office. The district attorney's office shall notify the
10 pawnbroker in writing within fifteen (15) days of the disposition of
11 the case. Willful noncompliance of a pawnbroker to a written hold
12 order shall be cause for the pawnbroker's license to either be
13 suspended or revoked pursuant to paragraph 2 of subsection ~~A~~ B of
14 Section 1507 of this title. A hold order may be released prior to
15 the expiration of any thirty-day holding period by written release
16 from the agency placing the initial hold order.

17 D. For the purpose of discovering violations of the Oklahoma
18 Pawnshop Act or of securing information required hereunder, the
19 Administrator or duly authorized representative may investigate the
20 books, accounts, papers, correspondence and records of any licensee
21 or other person who the Administrator has reasonable cause to
22 believe is violating any provision of the Oklahoma Pawnshop Act
23 whether or not such person shall claim to be within the authority or
24 scope of the Oklahoma Pawnshop Act. For the purpose of this

1 section, any person who advertises for, solicits or holds himself
2 out as willing to make pawn transactions, shall be presumed to be a
3 pawnbroker.

4 E. Each licensee shall keep or make available in this state
5 such books and records relating to pawn transactions made under the
6 Oklahoma Pawnshop Act as are necessary to enable the Administrator
7 to determine whether the licensee is complying with the Oklahoma
8 Pawnshop Act. Such books and records shall be consistent with
9 accepted accounting practices.

10 F. Each licensee shall preserve or make available such books
11 and records in this state relating to each of its pawn transactions
12 for four (4) years from the date of the transaction, or two (2)
13 years from the date of the final entry made thereon, whichever is
14 later. Each licensee's system of records shall be accepted if it
15 discloses such information as may be reasonably required under the
16 Oklahoma Pawnshop Act. All agreements signed by customers shall be
17 kept at an office in this state designated by the licensee, except
18 when transferred under an agreement which gives the Administrator
19 access thereto. All credit sales made by a pawnbroker, other than
20 those sales defined in paragraph 6 of Section 1502 of this title, as
21 a pawn transaction, shall be made in accordance with and subject to
22 the provisions of Title 14A of the Oklahoma Statutes.

23 G. Each licensee shall, annually on or before the first day of
24 May or other date thereafter fixed by the Administrator, file a

1 report with the Administrator setting forth such relevant
2 information as the Administrator may reasonably require concerning
3 the business and operations during the preceding calendar year for
4 each licensed place of business conducted by such licensee within
5 the state. Such report shall be made under oath and shall be in the
6 form prescribed by the Administrator, who may make and publish
7 annually a consolidated analysis and recapitulation of such reports,
8 but the individual reports shall be held confidential. There shall
9 be a late fee of Fifty Dollars (\$50.00) if such report is not filed
10 on or before the date fixed by the Administrator.

11 H. The Administrator may promulgate rules necessary for the
12 enforcement of the Oklahoma Pawnshop Act consistent with all its
13 provisions. Before making such a rule relating to the licensees
14 subject to the Oklahoma Pawnshop Act, the Administrator shall give
15 each licensee at least thirty (30) days' written notice of a public
16 hearing, stating the time and place thereof and the terms or
17 substance of the proposed regulation. At the hearing, any licensee
18 or other person may be heard and may introduce evidence, data or
19 arguments or place the same on file. The Administrator, after
20 consideration of all relevant matters presented, shall adopt and
21 promulgate every rule in written form, stating the date of adoption
22 and date of promulgation. Each such rule shall be entered in a
23 permanent record book which shall be public record and be kept in
24 the Administrator's office. A copy of every rule shall be mailed to

1 each licensee, and no such rule shall become effective until the
2 expiration of at least twenty (20) days after such mailing. On the
3 application of any person and payment of the cost thereof, the
4 Administrator shall furnish such person a certified copy of such
5 rule.

6 I. Except as otherwise expressly provided in the Oklahoma
7 Pawnshop Act, the Administrative Procedures Act, Sections ~~251~~ 250 et
8 seq. and ~~301~~ 250.5 et seq. of Title 75 of the Oklahoma Statutes,
9 applies to and governs all administrative actions and civil
10 proceedings taken by the Administrator pursuant to the Oklahoma
11 Pawnshop Act.

12 SECTION 7. AMENDATORY 59 O.S. 2011, Section 1953, is
13 amended to read as follows:

14 Section 1953. A. Lessors shall pay an initial investigation
15 and license fee and an annual license renewal fee per place of
16 business, which fees shall accompany the license renewal form.
17 Lessors shall also pay a fee for any returned check, address or
18 license change, or duplicate license request. There shall be a late
19 fee for a late application for renewal of a license received after
20 December 1 of each year. This late fee shall consist of a charge of
21 Ten Dollars (\$10.00) per day, for up to thirty (30) days.

22 B. Lessors shall pay a rental-purchase agreement reviewal fee
23 as prescribed by rule of the Commission on Consumer Credit for any
24 rental-purchase agreement submitted to the Administrator of Consumer

1 Credit for review and approval. The Commission may prescribe by
2 rule a process for submitting rental-purchase agreements to the
3 Administrator for review and approval.

4 SECTION 8. This act shall become effective November 1, 2019.

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