

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1393

By: Rice of the House

and

Easley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Uniform Consumer Credit Code; amending 14A O.S. 1991, Sections 3-512, 3-205, 3-206, 3-208, 3-504, 3-508B and 3-509, which relate to consumer loans; modifying provision related to sale of certain insurance; authorizing sales of certain goods at locations where supervised loans made; prescribing conditions for sales; providing exception for refinancing of certain consumer loans; providing exception for computation of certain principal amount; providing exception for consolidation of certain consumer loans; modifying reference; defining term for purposes of certain licensing procedure; providing for enforcement of provisions against certain licensees; providing for applicability of provisions to certain licensees; prohibiting motor vehicles as security for certain loans; providing security interests void if created in violation of provisions; modifying terminology with respect to loan transactions; providing for minimum term for certain loan transactions; providing for scheduling; providing for refinancing or consolidation of certain loans according to certain requirements; prescribing procedures regarding permissible practices with respect to certain loans; prescribing procedures with respect to acquisition charges; modifying provisions related to multiple agreements; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 14A O.S. 1991, Section 3-512, is amended to read as follows:

Section 3-512. (1) A licensee who is authorized to make supervised loans under this Part shall not engage in the business of making sales of goods at any location where supervised loans are made, ~~except the sale of insurance in connection with the making of loans;~~ provided, however, a licensee may make sales of

goods through vending machines at the location where supervised loans are made and may sell other goods approved by the Administrator of the Department of Consumer Credit which are paid for by a consumer in cash and not with the proceeds of a loan by the licensee also making the sale. The word "location" as used in this section means the entire space in which supervised loans are made and said location must be separated from any location in which merchandise is sold or displayed by walls which may be broken only by a passageway to which the public is not admitted.

(2) A sale of goods or services pursuant to a lender credit card or similar arrangement made at a place of business other than that of a licensee does not violate this section.

(3) An occasional sale of property used in the ordinary course of the business of the licensee does not violate this section.

(4) A sale of items repossessed by the licensee does not violate this section.

(5) No licensee shall conduct the business of making loans under this act under any name, or at any place of business within this state, other than that stated in the license.

SECTION 2. AMENDATORY 14A O.S. 1991, Section 3-205, is amended to read as follows:

Section 3-205. With respect to a consumer loan, refinancing, or consolidation, other than one made under Section 3-508B of this title, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3-201) or the provisions on loan finance charge for supervised loans (Section 3-508A), whichever is appropriate. For the purpose of determining the loan finance charge permitted, other than in relation to Section 3-508B, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the

refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 3-210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (Section 3-210) shall be allowed; and

(2) appropriate additional charges (Section 3-202), payment of which is deferred.

SECTION 3. AMENDATORY 14A O.S. 1991, Section 3-206, is amended to read as follows:

Section 3-206. (1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, other than one made under Section 3-508B of this title, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (Section 3-205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3-201) or the provisions on loan finance charge for supervised loans (Section 3-508A), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan, other than one made under Section 3-508B of this title, with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (Section 2-205) or

the provisions on refinancing loans (Section 3-205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3-201) or the provisions on loan finance charge for supervised loans (Section 3-508A), whichever is appropriate.

SECTION 4. AMENDATORY 14A O.S. 1991, Section 3-208, is amended to read as follows:

Section 3-208. (1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor the lender may add the amounts paid to the debt. In the case of covenants as to duties other than the payment of taxes and insuring the collateral, the lender shall give written notice to the debtor setting forth the duties to be performed and a statement of the amount to be charged for the performance of said duties. Said written notice shall be by certified mail to the last-known address of the debtor, at least thirty (30) days prior to the commencement of the performance of the specified duties, unless otherwise agreed in writing by the lender and debtor. The debtor, prior to commencement of performance, shall have the option to make alternative arrangements for compliance with the covenants. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule, and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3-201) or for supervised loans (Section 3-508A), whichever is appropriate.

SECTION 5. AMENDATORY 14A O.S. 1991, Section 3-504, is amended to read as follows:

Section 3-504. (1) On filing such application, bond, and payment of the required fees, the Administrator shall investigate the facts and if he shall find the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant belief the business will be operated lawfully and fairly, within the purposes of this act, and the applicant has available for the operation of such business net assets of at least Twenty-five Thousand Dollars (\$25,000.00), he shall grant such application and issue to the applicant a license which shall be his license and authority to make supervised loans under the provisions of this act.

(2) If the Administrator shall not so find, he shall notify the applicant, who shall, on request within thirty (30) days be entitled to a hearing on such application within sixty (60) days after the date of said request. The investigation fee shall be retained by the Administrator, but the annual fee shall be returned to the applicant in the event of denial.

(3) The Administrator shall grant or deny each application for a license within sixty (60) days from its filing with the required fees, or, from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Administrator.

(4) Each license shall state the address of the office from which the business is to be conducted and the name of the licensee. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Administrator.

(5) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee shall, on or before each December 1, pay to the Administrator One Hundred Fifty Dollars (\$150.00) for each license held by him, as the annual fee for the succeeding calendar year. If the annual fee remains unpaid fifteen (15) days after written notice of delinquency has been given to the licensee by the Administrator the license shall thereupon expire but not before December 31 of any year for which an annual fee has been paid.

(6) Every licensee shall maintain net assets of at least Twenty-five Thousand Dollars (\$25,000.00), either used or readily available for use, in the conduct of the business of each licensed office.

(7) A separate license shall be required for each office operated under this act. The Administrator may issue more than one license to any one person upon compliance with this part as to each license. Nothing contained herein, however, shall be construed to require a license for any place of business devoted to accounting or other record keeping and where supervised loans are not made.

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

(9) (a) For purposes of this section (3-504), the term "office" shall mean a location occupied by a licensee with the following characteristics:

- (i) a manager for the office who is not common to any other supervised lender's office,
- (ii) a street and mailing address separate from any other supervised lender's office,

(iii) an entrance through which the public may access only one supervised lender's office,
(iv) separation from any other supervised lender's office by walls or otherwise and through which neither employees nor the public may pass, and
(v) any other characteristics required pursuant to rule adopted by the Administrator.

(b) Any licensee holding a license prior to the effective date of this subsection (9) shall be subject to enforcement of the provisions of this subsection (9) from and after a transition period ending not later than May 31, 1998, in accordance with a transition rule to be adopted by the Administrator. Any licensee obtaining a license on or after the effective date of this act will be immediately subject to the requirements of this subsection (9).

(10) Any person holding a license under this act who shall violate any provision hereof shall be subject to forfeiture of each license held by him and if a corporation, its charter shall be subject to forfeiture, and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file suit for such forfeiture of charter and cancellation of the license in a district court in Oklahoma County.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-515 of Title 14A, unless there is created a duplication in numbering, reads as follows:

Section 3-515. Restrictions on interest in motor vehicles as security.

With respect to a supervised loan made under the provisions of Section 3-508B of this title in which the principal is Three Hundred Dollars (\$300.00) or less, a lender may not contract for an interest in motor vehicles as security. A security interest taken in violation of this section is void.

SECTION 7. AMENDATORY 14A O.S. 1991, Section 3-508B, is amended to read as follows:

Section 3-508B. (1) On loans having a ~~cash advance~~ principal of One Hundred Dollars (\$100.00) or less, a supervised lender may charge in lieu of the loan finance charges specified in Section 3-508A, the following amounts:

- (a) on any amount up to and including Twenty-nine Dollars and ninety-nine cents (\$29.99), a charge may be added at the ratio of One Dollar (\$1.00) for each Five Dollars (\$5.00) ~~cash advanced to the borrower~~ of principal;
- (b) on any ~~cash advance~~ loan in an amount in excess of Twenty-nine Dollars and ninety-nine cents (\$29.99) up to and including the amount of Thirty-five Dollars (\$35.00), there shall be allowed an acquisition charge for making the ~~advance~~ loan not in excess of 1/10 of the amount of the ~~cash advanced~~ principal. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars (\$3.00) per month;
- (c) on any ~~cash advance~~ loan of an amount in excess of Thirty-five Dollars (\$35.00) but not more than Seventy Dollars (\$70.00), there shall be allowed an acquisition charge for making the ~~advance~~ loan not in excess of 1/10 of the amount of the ~~cash advanced~~ principal. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars and fifty cents (\$3.50) per month;
- (d) on any ~~cash advance~~ loan of an amount in excess of Seventy Dollars (\$70.00) but not in excess of One Hundred Dollars (\$100.00), there shall be allowed an acquisition charge for making the ~~advance~~ loan, not in excess of 1/10 of the amount of the ~~cash advanced~~ principal. In addition thereto, an installment account handling charge shall be allowed not to exceed Four Dollars (\$4.00) per month.

(e) on any ~~cash advance~~ loan in an amount in excess of One Hundred Dollars (\$100.00) up to and including the amount of One Hundred Fifty Dollars (\$150.00), there shall be allowed an acquisition charge for making the ~~advance~~ loan not in excess of 1/10 of the amount of the ~~cash advance~~ principal. In addition thereto, an installment account handling charge shall be allowed not to exceed Four Dollars and fifty cents (\$4.50) per month;

(f) on any ~~cash advance~~ loan of an amount in excess of One Hundred Fifty Dollars (\$150.00) but not more than Two Hundred Dollars (\$200.00), there shall be allowed an acquisition charge for making the ~~advance~~ loan not in excess of 1/10 of the amount of the ~~cash advance~~ principal. In addition thereto, an installment account handling charge shall be allowed not to exceed Five Dollars (\$5.00) per month;

(2) The maximum term of any loan made under the terms of this section shall be one (1) month for each Ten Dollars (\$10.00) of ~~cash advance~~ principal up to a maximum term of ten (10) months. Provided, however, that under subsections (e) and (f) the maximum terms shall be one (1) month for each Twenty Dollars (\$20.00) of ~~cash advance~~ principal up to a maximum term of ten (10) months.

(3) The minimum term of any loan made under the terms of subsections (b) through (f) of this section shall be no less than sixty (60) days. Any loan made under the terms of this section shall be scheduled to be payable in substantially equal installments at not less than thirty (30) day intervals, with the first installment to be scheduled to be due not less than one (1) calendar month after the date such loan is made.

(4) Loans made under this section may be refinanced or consolidated according to the provisions of this section, notwithstanding anything in this act to the contrary. When a loan made under this section is refinanced or consolidated, installment account handling charges on the loans being refinanced or consolidated must be rebated pursuant to the provisions regarding

rebate on prepayment (Section 3-210) as of the date of refinancing or consolidation. For the purpose of determining the amount of acquisition and installment account handling charges permitted in relation to the refinancing or the consolidation of loans made under this section, the principal resulting from the refinancing or consolidation is the total of the unpaid balances of the principal of the loans being refinanced or consolidated, plus any new money advanced, and any delinquency or deferral charges if due and unpaid, less any unearned acquisition and installment account handling charges imposed in connection with loans being refinanced or consolidated.

(5) On such loans under this section, no insurance charges or any other charges of any nature whatsoever shall be permitted.

~~(4)~~ (6) ~~The~~ Except as otherwise provided, the acquisition charge authorized herein shall be deemed to be earned at the time a loan is made and shall not be subject to refund. Provided, however, in a loan made under this section which is prepaid in full, refinanced or consolidated within the first sixty (60) days, the acquisition charge under this section will not be fully earned at the time the loan is made, but must be refunded pro rata at the rate of one-sixtieth (1/60) of the acquisition charge for each day from the date of the prepayment, refinancing or consolidation to the sixtieth day of the loan. On the prepayment of any loan under this section, the installment account handling charge shall be subject to the provisions of Section 3-210 as it relates to refunds. Provisions of Section 3-203 as it relates to delinquency charges and Section 3-204 as it relates to deferral charges shall apply to loans made under the section.

SECTION 8. AMENDATORY 14A O.S. 1991, Section 3-509, is amended to read as follows:

Section 3-509. A lender may not, whether acting independently or in concert with one or more other lenders, use multiple agreements or split a loan (including any refinancing thereof) into multiple loans with intent to obtain a higher rate or amount of loan finance charge under Section 3-508A or 3-508B, whichever is appropriate, than would otherwise be permitted by this article

or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of loan finance charge provided for in agreements or split loans in violation of this section are excess charges for the purposes of the provisions on effect of violation on rights of parties (Section 5-202) and the provisions on civil actions by Administrator (Section 6-113).

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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