

ENROLLED SENATE
BILL NO. 1091

By: Henry, Monson and Weedn of
the Senate

and

Askins, Collins, Roberts,
Kirby, Pettigrew, O'Neal
and Miller of the House

An Act relating to consumer transactions; amending 14A O.S. 1991, Sections 1-106, 3-202 and 6-104, as amended by Section 1, Chapter 51, O.S.L. 1992 (14A O.S. Supp. 1997, Section 6-104), which relate to the Consumer Credit Code, adjustments to certain amounts in the Code, credit service charges and fees, delinquency charges, and powers of the Administrator of the Commission on Consumer Credit; authorizing certain late payment fees for cable television service; requiring and specifying disclosure of certain late fees; limiting amount of certain late fees; requiring certain notice prior to collection of certain late fees; modifying statutory reference; clarifying requirements for certain administrative rules; requiring notice of changes in certain dollar amounts; requiring publication as appendix to the Oklahoma Administrative Code without rulemaking; modifying and adding allowable changes by certain lenders; prohibiting contracts for or receipt of certain charges for non-use or for payment during billing cycle; further expanding allowable charges by certain lenders; authorizing administrative rules to limit certain charges under certain circumstances; repealing 14A O.S. 1991, Section 3-202.2, which relates to fees for over-the-limit charges; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-107.2 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise specifically prohibited by law, a seller of cable television service may assess a late fee on delinquent accounts having an unpaid balance of Twelve Dollars (\$12.00) or more.

B. The seller of cable television service shall conspicuously disclose, in the contract for service and on each statement or invoice, the terms on which a late fee may be assessed by the seller including the amount of the fee.

C. No late fee shall be assessed which exceeds Six Dollars (\$6.00) or five percent (5%) of the unpaid amount, whichever is greater.

D. Prior to collecting a late fee, the seller shall give notice to the customer by first class mail to the customer's last known billing address as shown on the records of the seller of the amount of the delinquency at least ten (10) days prior to the date the fee will be imposed. The notice shall conspicuously state the place and address for making payment, the date on which the late fee will be imposed, and the amount of the late fee.

SECTION 2. AMENDATORY 14A O.S. 1991, Section 1-106, is amended to read as follows:

Section 1-106. (1) From time to time the dollar amounts in Sections 2-201(2)(a), (b) and (c), 2-203(1)(a), 2-407(1), 2-413, 3-203(1)(a), ~~Section 2 of this act~~ 3-203.1, 3-508A(2)(a), 3-508B(1), 3-510(1), 3-511(1)(a) and (b), 3-514, and 5-103(2) and (3) of the Uniform Consumer Credit Code, ~~of the Oklahoma Statutes,~~ are hereby designated as subject to change and shall change, as provided in this section and the rules of the Administrator, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the Index. The Index for December of the year 1973 shall be deemed the Reference Base Index. The dollar amounts established by rule of the Administrator in Sections 2-104(1)(e), 2-106(1)(b) and 3-104(4) in effect on January 1, 1982, shall remain in full force and effect.

(2) The designated dollar amounts shall change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent (10%) or more, but:

- (a) the portion of the percentage change in the Index in excess of a multiple of ten percent (10%) shall be disregarded and the dollar amounts shall change only in multiples of ten percent (10%) of the amounts appearing in this Code on the date of enactment; and
- (b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this Code as a result of earlier application of this section.

(3) If the Index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised Index. If a revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section shall be the one represented by the United States Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The rules of the Administrator shall ~~adopt a rule~~ announcing:

- (a) ~~on or before April 30 of each year in which dollar amounts are to change,~~ include the method for calculating the changes in dollar amounts required by subsection (2) of this section; and
- (b) ~~promptly after the changes occur,~~ be amended in accordance with the Administrative Procedures Act to include changes in the Index required by subsection

(3) of this section including, if applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index; and

(c) provide for appropriate notice to licensees and other interested persons of any changes in the dollar amounts which result from changes required by subsection (2) of this section no later than April 30 of each year. Each dollar amount subject to change as provided in this section shall be listed in an appendix to the rules of the Administrator and shall be published in the Oklahoma Administrative Code. Changes to the appendix shall be submitted to the Secretary of State prior to the annual deadline for submitting material for publication in the Code. Changes in the appendix shall not be construed as rulemaking.

(5) A person does not violate this act with respect to a transaction otherwise complying with this act if he relies on dollar amounts either determined according to subsection (2) of this section or appearing in the last rule of the Administrator announcing the then current dollar amounts.

SECTION 3. AMENDATORY 14A O.S. 1991, Section 3-202, is amended to read as follows:

Section 3-202. (1) In addition to the loan finance charge permitted by this part, a lender may contract for and receive the following additional charges in connection with a consumer loan:

- (a) official fees that are itemized and disclosed in accordance with rules of the Administrator, reasonable closing costs and taxes;
- (b) charges for insurance as described in subsection ~~(2)~~ (3) of this section;
- (c) ~~annual charges for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;~~
- ~~(d)~~ charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge by rule adopted by the Administrator; and
- ~~(e)~~ (d) a charge ~~to recover the costs associated with~~ for processing applications the debtor's application for credit, including but not limited to costs of services such as credit reports, credit investigations, and appraisals.

(2) In addition to the charges permitted under subsection (1) of this section, a lender may contract for and receive the following additional charges in connection with a revolving loan account accessed by a lender credit card or similar arrangement:

- (a) annual or membership fees or service charges whether assessed on an annual or other periodic basis which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement,

under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

- (b) transaction fees or charges for each separate charge or purchase under the revolving loan account;
- (c) cash advance fees for each separate cash advance under the revolving loan account;
- (d) charges for stopping payment at the debtor's request on any check, negotiable order of withdrawal or share draft written or issued by the debtor to access the revolving loan account; and
- (e) reasonable charges for services rendered or for reimbursement of expenses incurred by the lender in connection with the revolving loan account at the request of the debtor, including, but not limited to, search charges and charges for furnishing copies of documents.

(3) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

- (a) with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through whom the insurance is to be obtained; and
- (b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(4) With respect to a revolving loan account accessed by a lender or seller credit card or similar arrangement, a lender or seller may not contract for or receive any penalty, increased annual fee, or any similar fee or additional charge, because the account holder pays the account balance in full within a billing cycle, nor any fee or charge for non-use. This provision shall not prohibit a lender or seller from contracting for or receiving, with respect to the applicable portion of a billing cycle, the same annual rate of loan finance charge, as well as the same cash-advance fee, that would apply if the account balance were not paid in full within the billing cycle.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-203.2 of Title 14A, unless there is created a duplication in numbering, reads as follows:

With respect to a consumer revolving loan account accessed by a lender credit card or similar arrangement, the lender may impose and collect from the debtor the following charges, in addition to those set forth in Section 3-202 of Title 14A of the Oklahoma Statutes and notwithstanding any other provision of this act to the contrary:

- (a) A delinquency charge, in an amount not exceeding any limit imposed from time to time by rule of the Administrator, with respect to any payment due in connection with a billing cycle under the account, to be payable if the payment is not made within ten (10)

days after its due date. No more than one delinquency charge may be imposed in each billing cycle and it may be collected at any time after it accrues either independently of any payment made on the account or from a payment made if the lender discloses delinquency charges to the debtor as they are imposed and informs the debtor of the full amount that the debtor must pay for the applicable period in order to remain current on the account;

- (b) An over-limit charge, in an amount not exceeding any limit imposed from time to time by rule of the Administrator, for each time the debtor exceeds the designated credit limit on the account; and
- (c) A returned item charge, in an amount not exceeding any limit imposed from time to time by rule of the Administrator, for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the debtor in connection with the account.

SECTION 5. AMENDATORY 14A O.S. 1991, Section 6-104, as amended by Section 1, Chapter 51, O.S.L. 1992 (14A O.S. Supp. 1997, Section 6-104), is amended to read as follows:

Section 6-104. (1) In addition to other powers granted by this act, the Administrator may, within the limitations provided by law:

- (a) receive and act on complaints, take action designed to obtain voluntary compliance with this act, or commence proceedings on his own initiative;
- (b) counsel persons and groups on their rights and duties under this act;
- (c) establish programs for the education of consumers with respect to credit practices and problems;
- (d) make studies appropriate to effectuate the purposes and policies of this act and make the results available to the public; and
- (e) with commission approval adopt, amend, and repeal substantive rules when specifically authorized by this act, and adopt, amend, and repeal procedural rules to carry out the provisions of this act, all as provided by the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.

(2) The Administrator shall adopt rules not inconsistent with the Federal Consumer Credit Protection Act, 15 U.S.C., Section 601 et seq., to assure a meaningful disclosure of terms so that a prospective debtor or lessee will be able to compare more readily the various terms available to him and to avoid the uninformed use of credit. These rules may supersede any provisions of this act which are inconsistent with the Federal Consumer Credit Protection Act and may contain classifications, differentiations or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this act which in the judgment of the Administrator are necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this act relating to disclosure of terms. The Administrator also shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this act and to aid the buyer, debtor or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising the forms, consideration of the use by creditors or lessors of data processing or similar automated

equipment shall be given. No creditor or lessor need use any model form or clause published by the Administrator. Any rule of the Administrator or amendment requiring any disclosure which differs from a disclosure previously required shall have an effective date of that October 1 which follows by at least six (6) months the date of promulgation, except that the Administrator may lengthen the period to facilitate creditors or lessors adjusting forms to accommodate new or changed requirements or shorten the period when he makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. A creditor or lessor may, in accordance with any guidelines of the Administrator, comply with a newly promulgated disclosure requirement prior to its effective date.

(3) To keep the Administrator's rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code, Section 1-101 et seq. of this title, the Administrator, so far as is consistent with the purposes, policies and provisions of this act, shall:

- (a) before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and
- (b) in adopting, amending, and repealing rules, take into consideration:
 - (i) the regulations so prescribed by the Board of Governors of the Federal Reserve System; and
 - (ii) the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

(4) Except for refund of an excess charge, no liability is imposed under this act for an act done or omitted in conformity with a rule of the Administrator or written opinion of the Administrator stating rights and duties issued on his own motion or in response to a request under paragraph (b) of subsection (1) of this section notwithstanding that after the act or omission the rule or opinion may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this act with respect to other than numerical disclosures if the creditor or lessor uses any appropriate model form or clause as published by the Administrator or uses any model form or clause and changes it by deleting any information not required by this act or rearranging the format if in doing so the substance, clarity or meaningful sequence of the disclosure is not affected. The opinions of the Administrator shall be compiled and published no less often than annually.

(5) The Administrator shall report annually on or before January 1 to the Governor and Legislature on the operation of his office, on the use of consumer credit in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the Administrator is authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this act, a statement of the number and percentages of offices which are periodically investigated or

examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, a statement of the extent to which the rules of the Administrator pursuant to this act are not in harmony with the regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act or the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code and the reasons for such variations, and a general statement of the activities of his office and of others to promote the purposes of this act. The report shall not identify the creditors against whom action is taken by the Administrator.

(6) The Administrator shall have the authority to adopt rules, not inconsistent with the provisions of this act, to limit the amount of the additional charges that lenders are permitted to impose under subsection (2) of Section 3-202 of this title and Section 4 of this act. The Administrator shall:

- (a) before promulgating, amending or repealing rules pursuant to this section, conduct research and make appropriate studies to determine:
 - (i) the dollar amount of such charges being collected by out-of-state credit card issuers from residents of this state; and
 - (ii) whether credit card lenders located in this state are imposing charges pursuant to subsection (2) of Section 3-202 of this title and Section 4 of this act which are unreasonable or excessive as compared to those being imposed by out-of-state credit card lenders;
- (b) in promulgating, amending or repealing rules pursuant to this section, take into consideration whether limits on the additional charges permitted under Section 5 of this act would:
 - (i) place credit card lenders located in this state at a competitive disadvantage as compared to out-of-state credit card lenders;
 - (ii) require credit card lenders located in this state to impose higher loan finance charges; or
 - (iii) impede the growth of the credit card lending industry in this state; and
- (c) adopt rules limiting the dollar amounts of the additional charges permitted under subsection (2) of Section 3-202 of this title and Section 4 of this act in the event that the Administrator determines that such limits are necessary to protect debtors in this state from being subjected to charges which are unreasonable or excessive as compared to the prevailing charges being imposed by out-of-state credit card lenders.

SECTION 6. REPEALER 14A O.S. 1991, Section 3-202.2, is hereby repealed.

SECTION 7. Sections 1 through 5 of this act shall become effective July 1, 1998.

SECTION 8. 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.

Passed the Senate the 28th day of May, 1998.

President of the Senate

Passed the House of Representatives the 29th day of May, 1998.

Speaker of the House of
Representatives