

ENGROSSED SENATE  
BILL NO. 1481

By: Henry and Robinson of the  
Senate

and

Bryant of the House

[ Consumer credit - modifying charges - reverse mortgage  
transactions - codification - effective date -  
emergency ]

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

SECTION 1. AMENDATORY 14A O.S. 1991, Section 1-301, is  
amended to read as follows:

Section 1-301. In addition to definitions appearing in  
subsequent articles, in this ~~act~~ title:

(1) "Actuarial Method" means the method, defined by rules  
adopted by the Administrator, of allocating payments made on a debt  
between principal or amount financed and loan finance charge or  
credit service charge pursuant to which a payment is applied first  
to the accumulated loan finance charge or credit service charge and  
the balance is applied to the unpaid principal or unpaid amount  
financed.

(2) "Administrator" means the Administrator designated in the  
article (Article 6) on administration ~~+~~ under Section 6-103 ~~of this~~  
title.

(3) "Agreement" means the bargain of the parties in fact as  
found in their language or by implication from other circumstances  
including course of dealing or usage of trade or course of  
performance.

(4) "Agricultural purpose" means a purpose related to the  
production, harvest, exhibition, marketing, transportation,  
processing, or manufacture of agricultural products by a natural

person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance or similar purposes including surveys;
- (b) fees for preparation of a deed, settlement statement or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(6) "Conspicuous": A term or clause is "conspicuous" when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Earnings" means compensation paid or payable to an individual or for ~~his~~ the individual's account for personal services rendered or to be rendered by ~~him~~ the individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(9) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a

credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by a lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
  - (b) by the lender's payment or agreement to pay the debtor's obligations; or
  - (c) by the lender's purchase from the obligee of the debtor's obligations.
- (10) (a) "Mortgage" means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open-end credit plan, if:
- (i) the annual percentage rate at consummation of the transaction will exceed by more than ten (10) percentage points the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or
  - (ii) the total points and fees payable by the consumer at or before closing will exceed the greater of:
    - (aa) eight percent (8%) of the total loan amount;
    - or
    - (bb) Four Hundred Dollars (\$400.00).
- (b) After the two-year period beginning on the effective date of the regulations promulgated under Section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subsection, the Administrator may by rule

increase or decrease the number of percentage points specified in subparagraph (i) of paragraph (a) of this subsection, if the Administrator determines that the increase or decrease is consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of Title I of the Riegle Community Development and Regulatory Improvement Act of 1994 and is warranted by the need for credit.

Such an increase or decrease may not result in the number of percentage points referred to in this subsection being less than eight (8) percentage points or greater than twelve (12) percentage points.

In determining whether to increase or decrease the number of percentage points, the Administrator shall consult with representatives of consumers, including low-income consumers, and lenders.

(c) The amount specified in division (bb) of subparagraph (ii) of paragraph (a) of this subsection shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(d) For purposes of subparagraph (ii) of paragraph (a) of this subsection, points and fees shall include:

(i) all items included in the finance charge, except interest or the time-price differential;

(ii) all compensation paid to mortgage brokers; and

(iii) each of the charges listed in subsection (1) of Section 3-202 of this title, except an escrow for future payment of taxes, unless:

(aa) the charge is reasonable;

- (bb) the creditor receives no direct or indirect compensation; and
- (cc) the charge is paid to a third party unaffiliated with the creditor; and
- (iv) such other charges as the Administrator determines to be appropriate.

(e) The provisions of this subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(11) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

~~(11)~~ (12) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

~~(12)~~ (13) "Payable in installments" means that payment is required or permitted by agreement to be made in:

- (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a credit service charge is made;
- (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a

consumer credit sale pursuant to which no credit service charge is made; or

- (c) two or more periodic payments with respect to a debt arising from a consumer loan.

If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale, consumer lease, or consumer loan is "payable in installments."

~~(13)~~ (14) "Person" includes a natural person or an individual, and an organization, joint venture or any legal entity however organized.

~~(14)~~ (15) (a) "Person related to" with respect to an individual means:

- ~~(a)~~ (1) the spouse of the individual;
- ~~(b)~~ (2) a brother, brother-in-law, sister, sister-in-law of the individual;
- ~~(c)~~ (3) an ancestor or lineal descendant of the individual or ~~his~~ the individual's spouse; and
- ~~(d)~~ (4) any other relative, by blood or marriage, of the individual or ~~his~~ the individual's spouse who shares the same home with the individual.

(b) "Person related to" with respect to an organization means:

- ~~(a)~~ (1) a person directly or indirectly controlling, controlled by or under common control with the organization;
- ~~(b)~~ (2) an officer or director of the organization or a person performing similar

functions with respect to the organization  
or to a person related to the organization;  
~~(e)~~ (3) the spouse of a person related to the  
organization; and  
~~(d)~~ (4) a relative by blood or marriage of a  
person related to the organization who  
shares the same home with ~~him~~ such person.

~~(15)~~ (16) "Presumed" or "presumption" means that the trier of  
fact must find the existence of the fact presumed unless and until  
evidence is introduced which would support a finding of its  
nonexistence.

~~(16)~~ (17) "Residential mortgage transaction" means a  
transaction in which a mortgage, deed of trust, purchase money  
security interest arising under an installment sales contract, or  
equivalent consensual security interest is created or retained  
against the consumer's dwelling to finance the acquisition or  
initial construction of such dwelling.

(18) "Reverse mortgage transaction" means a nonrecourse  
transaction in which a mortgage, deed of trust, or equivalent  
consensual security interest is created against the consumer's  
principal dwelling:

- (a) securing one or more advances; and
- (b) with respect to which the payment of any principal,  
interest, and shared appreciation or equity is due and  
payable (other than in the case of default) only  
after:
  - (i) the transfer of the dwelling;
  - (ii) the consumer ceases to occupy the dwelling as a  
principal dwelling; or
  - (iii) the death of the consumer.

(19) "Seller credit card" means an arrangement pursuant to  
which a person gives to a buyer or lessee the privilege of using a

credit card, letter of credit or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, or:

- (a) from a person related to that person;
- (b) from others licensed or franchised to do business under ~~his~~ the person's business or trade name or designation; or
- (c) from any other persons with the consent of that person.

~~(17)~~ (20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

- (a) organized, chartered, or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and
- (b) subject to supervision by an official or agency of this state or the United States other than the Oklahoma Securities Commission.

SECTION 2. AMENDATORY 14A O.S. 1991, Section 1-303, is amended to read as follows:

Section 1-303. Definitions in this ~~act~~ title and the sections in which they appear are:

- "Actuarial method" - Section 1-301(1)
- "Administrator" - Section 1-301(2)
- "Administrator" - Section 6-103
- "Agreement" - Section 1-301(3)
- "Agricultural purpose" - Section 1-301(4)
- "Amount financed" - Section 2-111
- "Annual percentage rate" (sale) - Section 2-304(2)
- "Annual percentage rate" (loan) - Section 3-304(2)

"Cash price" - Section 2-110

"Closing costs" - Section 1-301(5)

"Conspicuous" - Section 1-301(6)

"Consumer credit insurance" - Section 4-103~~(1)~~

"Consumer credit sale" - Section 2-104

"Consumer lease" - Section 2-106

"Consumer loan" - Section 3-104

"Corresponding nominal annual percentage rate" (sale) - Section 2-304(3)

"Corresponding nominal annual percentage rate" (loan) - Section 3-304(3)

"Credit" - Section 1-301(7)

"Credit service charge" - Section 2-109

"Earnings" - Section 1-301(8)

"Federal Consumer Credit Protection Act" - Section 1-302

"Goods" - Section 2-105(1)

"Home solicitation sale" - Section 2-501

"Lender" - Section 3-107(1)

"Lender credit card or similar arrangement" - Section 1-301(9)

"License" - Section 3-503

"Loan" - Section 3-106

"Loan finance charge" - Section 3-109

"Loan primarily secured by an interest in land" - Section 3-105

"Merchandise certificate" - Section 2-105(2)

"Mortgage" - Section 1-301(10)

"Official fees" - Section 1-301~~(10)~~(11)

"Organization" - Section 1-301~~(11)~~(12)

"Payable in installments" - Section 1-301~~(12)~~(13)

"Person" - Section 1-301~~(13)~~ (14)

"Person related to" - Section 1-301~~(14)~~(15)

"Precomputed (loan)" - Section 3-107(2)

"Precomputed (sale)" - Section 2-105(7)

"Presumed" or "presumption" - Section 1-301-~~(15)~~(16)

"Principal" - Section 3-107(3)

"Residential mortgage transaction" - Section 1-301(17)

"Reverse mortgage transaction" - Section 1-301(18)

"Revolving charge account" - Section 2-108

"Revolving loan account" - Section 3-108

"Sale of goods" - Section 2-105(4)

"Sale of an interest in land" - Section 2-105(6)

"Sale of services" - Section 2-105(5)

"Seller" - Section 2-107

"Seller credit card" - Section 1-301-~~(16)~~(19)

"Services" - Section 2-105(3)

"Supervised financial organization" - Section 1-301-~~(17)~~(20)

"Supervised lender" - Section 3-501(2)

"Supervised loan" - Section 3-501(1)

SECTION 3. AMENDATORY 14A O.S. 1991, Section 2-313, is amended to read as follows:

Section 2-313. (1) No seller or lessor shall engage in this state in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit sale or consumer lease.

(2) Without limiting the generality of subsection (1) and without requiring a statement of rate of credit service charge if the credit service charge is not more than Five Dollars (\$5.00) when the amount financed does not exceed Seventy-five Dollars (\$75.00), or Seven Dollars and fifty cents (\$7.50) when the amount financed exceeds Seventy-five Dollars (\$75.00), an advertisement with respect to a consumer credit sale made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television or similar mass media, is misleading if:

- (a) it states the rate of credit service charge and the rate is not stated in the form required by the

provisions on calculation of rate to be disclosed ~~+~~  
under Section 2-304 ~~of this title~~; or

(b) it states the dollar amounts of the credit service charge or installment payments, and does not also state the rate of any credit service charge, the downpayment, if any, and the terms of repayment.

(3) In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

(6) The provisions of this section do not apply to advertisements of residential real estate except to the extent required by Administrator's rule.

(7) If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through a revolving charge account plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Administrator may require:

(a) Any fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the

plan and stated as a single amount or as a reasonable range7i

- (b) In any case in which periodic rates may be used to compute the credit service charge, the periodic rates expressed as an annual percentage rate7i
- (c) The highest annual percentage rate which may be imposed under the plan7i and
- (d) Any other information the Administrator may by rule require.

(8) If any advertisement described in subsection (7) of this section contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

(9) No advertisement described in subsection (7) of this section with respect to any home equity account may refer to such credit as "free money" or use other terms determined by the Administrator by rule to be misleading.

(10) (a) If any advertisement described in subsection (7) of this section includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered7i

(b) The annual percentage rate required to be disclosed under the paragraph (a) rate of this subsection rate must be current as of a reasonable time given the media involved7i and

(c) Any advertisement to which paragraph (a) of this subsection applies shall also state the period of time

during which the initial annual percentage rate referred to in such paragraph will be in effect.

(11) If any advertisement described in subsection (7) of this section contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

(12) For purposes of this section and Section 2-310.2 of this title, the term "balloon payment" means, with respect to any revolving charge account plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which:

- (a) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended<sup>7i</sup> and
- (b) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

(13) (a) If an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement shall clearly and conspicuously state, as applicable:

- (i) the transaction advertised is a lease;
- (ii) the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;
- (iii) that a security deposit is required;
- (iv) the number, amount, and timing of scheduled payments; and

(v) with respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

(b) No owner or employee of any entity that serves as a medium in which an advertisement appears or through which an advertisement is disseminated, shall be liable under this subsection.

(c) (i) An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of paragraph (a) of this subsection if such advertisement clearly and conspicuously:

(aa) states the information required by subparagraphs (i) and (ii) of paragraph (a) of this subsection;

(bb) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(cc) includes:

(I) a referral to:

(A) a toll-free telephone number established in accordance with subparagraph (ii) of this paragraph that may be used by consumers to obtain the information required under paragraph (a) of this subsection;

or

- (B) a written advertisement that appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning three (3) days before any such broadcast and ending ten (10) days after such broadcast and includes the information required to be disclosed under paragraph (a) of this subsection; and
  - (II) the name and dates of any publication referred to in clause (B) of subdivision (I) of this division; and
  - (dd) any other information which the Administrator determines necessary.
- (ii) In the case of a radio broadcast advertisement described in subparagraph (i) of this paragraph that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall:
  - (aa) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;
  - (bb) maintain such telephone number for a period of not less than ten (10) days, beginning on the date of any such broadcast; and
  - (cc) provide the information required under paragraph (a) of this subsection with

respect to the lease to any person who calls  
such number.

The information required to be provided in division (cc) of this  
subparagraph shall be provided verbally or, if requested by the  
consumer, in written form.

Nothing in this paragraph shall affect the requirements of law  
as such requirements apply to advertisement by any medium other than  
radio broadcast.

SECTION 4. AMENDATORY 14A O.S. 1991, Section 3-109, is  
amended to read as follows:

Section 3-109.

(1) (a) "Loan finance charge" means a finance charge composed  
of the sum of:

~~(a)~~ (i) all charges payable directly or indirectly by  
the debtor and imposed directly or indirectly by the  
lender as an incident to the extension of credit,  
including any of the following types of charges, which  
are applicable: interest or any amount payable under  
a point, discount, or other system of charges, however  
denominated, premium or other charge for any guarantee  
or insurance protecting the lender against the  
debtor's default or other credit loss; and

~~(b)~~ (ii) charges incurred for investigating the  
collateral or credit worthiness of the debtor or for  
commissions or brokerage for obtaining the credit,  
irrespective of the person to whom the charges are  
paid or payable unless the lender had no notice of the  
charges when the loan was made.

(b) The term does not include charges as a result of  
default, additional charges ~~← under Section 3-202→~~ of  
this title, delinquency charges ~~← under Section 3-203→~~  
of this title, deferral charges ~~← under Section 3-204→~~

of this title, charges of a type payable in a comparable cash transaction, or sellers points. The finance charge shall not include fees and amounts imposed by third party closing agents, including settlement agents, attorneys, and escrow and title companies, if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

- (i) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges;
- (ii) Service or carrying charge;
- (iii) Loan fee, finder's fee, or similar charge;
- (iv) Fee for an investigation or credit report;
- (v) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss; and
- (vi) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender, for delivery to the broker, whether such fees are paid in cash or financed.

(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

SECTION 5. AMENDATORY 14A O.S. 1991, Section 3-202, as amended by Section 3, Chapter 352, O.S.L. 1998 (14A O.S. Supp. 1999, 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, and any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness;
- (b) charges for insurance as described in subsection (3) of this section;
- (c) charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to ~~him~~ the debtor 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~~
- (d) a charge for processing the debtor's application for credit, including but not limited to costs of services such as credit reports, credit investigations, ~~and~~ appraisals and fees for preparation of loan-related documents; and
- (e) fees related to any pest infestation or flood hazard inspections conducted prior to closing.

(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~~ the debtor's desire to do so after written disclosure to ~~him~~ the debtor 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-202.3 of Title 14A, unless there is created a duplication in numbering, reads as follows:

The lender on a revolving loan account accessed by a lender credit card or similar arrangement may contract for and collect from the debtor an over-the-limit charge of Ten Dollars (\$10.00) for each time the debtor exceeds the designated credit limit on the account. This charge shall be in addition to all other loan finance charges, fees or additional charges which the lender may charge and collect from the debtor under Title 14A of the Oklahoma Statutes.

SECTION 7. AMENDATORY 14A O.S. 1991, Section 3-302, is amended to read as follows:

Section 3-302. (1) The disclosures required by this part, including those adopted by Administrator's rule in conformity to subsection (2) of Section 6-104 of this title, shall be made as provided by this title and as provided by rules adopted by the Administrator not inconsistent with the Federal Consumer Credit Protection Act.

(2) Without limitation to the generality of subsection (1) of this section, required disclosures:

- (a) shall be made clearly and conspicuously;
- (b) shall be in writing, a copy of which shall be delivered to the debtor;
- (c) may use terminology different from that employed in this part if it conveys substantially the same meaning;
- (d) need not be contained in a single writing or made in the order set forth in this part;
- (e) may be supplemented by additional information or explanations supplied by the lender except as otherwise provided in Section 3-306 of this title and in this section;
- (f) need be made only to the extent applicable;
- (g) shall be made on the assumption that all scheduled payments will be made when due;
- (h) will comply with this part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure;
- (i) shall disclose more conspicuously than other terms, data or information, except information relating to the identity of the lender, the terms "annual percentage rate" and "finance charge";
- (j) shall be made to the person who is obligated on a consumer loan, except that in a transaction involving

more than one debtor and which is not a transaction under Section 5-204 of this title, a disclosure statement or a copy of any evidence of indebtedness need not be given to more than one of the debtors if the person given disclosure is a primary obligor;

(k) may, in accordance with the regulations of the Administrator, be given in the form of estimates where the provider of any portion of the information required to be disclosed is not in a position to know exact information. In the case of any consumer credit transaction, with regard to a portion of the interest which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction;

(l) may, in accordance with the regulations of the Administrator, be within any tolerances for numerical disclosures, other than the annual percentage rate, determined by the Administrator to be necessary to facilitate compliance and to not result in misleading disclosures or disclosures that circumvent the purposes of this part; and

(m) shall be made by the lender or, if more than one, the lender specified in the regulations of the Administrator.

(3) Subject to subsection (1) of this section and except for loans made by telephone or mail pursuant to Section 3-305 of this title, loans made pursuant to a binding commitment pursuant to

subsection (3) of Section 3-306 of this title, a residential mortgage transaction pursuant to Section 3-310 of this title and such other transactions as provided by rule of the Administrator in conformity to subsection (2) of Section 6-104 of this title:

- (a) the disclosures required by this part shall be made before credit is extended, but may be made in the loan, refinancing, or consolidation agreement, or other evidence of indebtedness to be signed by the debtor if, to the extent required by rule of the Administrator, in closed-end credit they are conspicuously segregated from all other terms, data, or information provided; and
- (b) if an evidence of indebtedness is signed by the debtor, the lender shall give ~~him~~ the debtor a copy when the writing is signed.

(4) Except as provided with respect to rescission by a debtor pursuant to Section 5-204 of this title and civil liability for violations of disclosure provisions pursuant to subsection (4) of Section 5-203 of this title, written acknowledgment of receipt by a debtor to whom a statement is required to be given pursuant to this part:

- (a) in an action or proceeding by or against the original lender, creates a presumption that the statement was given; and
- (b) in an action or proceeding by or against an assignee without knowledge to the contrary when ~~he~~ the assignee acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this part.

(5) The information required by Section 3-309.1 of this title shall:

- (a) be disclosed in the form and manner which the Administrator shall prescribe by rule; and
- (b) as applicable be placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

(6) In the rules prescribed under paragraph (a) of subsection (5) of this section, the Administrator shall require that the disclosure of such information shall, to the extent the Administrator determines to be practicable and appropriate, be in the form of a table which:

- (a) contains clear and concise headings for each item of such information; and
- (b) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

(7) In prescribing the form of the table under subsection (6) of this section the Administrator may:

- (a) list the items required to be included in the table in a different order than the order in which such items are set forth in subsection (1) or (5) (a) of Section 3-309.1 of this title; and
- (b) subject to subsection (8) of this section, employ terminology which is different than the terminology which is employed in subsections (1) through (6) of Section 3-309.1 of this title if such terminology conveys substantially the same meaning.

(8) Either the heading or the statement under the heading which relates to the time period referred to in paragraphs (g) and (h) of subsection (1) of Section 3-309.1 of this title shall contain the term "grace period".

- (9) (a) Except as provided in paragraph (b), the disclosures required under subsection (1) of Section 3-309.2 of this title with respect to any revolving loan account plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (3) of Section 3-309.2 of this title shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.
- (b) In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection (1) of Section 3-309.2 of this title and the pamphlet required under subsection (3) of Section 3-309.2 of this title shall be provided by the creditor before the end of the three-day period beginning on the date the creditor receives a completed application from a consumer.
- (c) Except as provided in paragraph (b) of this subsection, the disclosures required under subsection (1) of Section 3-309.2 of this title shall be provided on or with any application to establish an account under a revolving loan account plan which provides for any extension of credit which is secured by the consumer's principal dwelling.
- (d) The disclosures required under subsection (1) of Section 3-309.2 of this title shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the

disclosures on a separate form, in accordance with rules of the Administrator.

- (e) The disclosures required by paragraphs (e), (f) and (g) of subsection (1) of Section 3-309.2 of this title shall precede all of the other required disclosures.
- (f) Whether or not the disclosures required under subsection (1) of Section 3-309.2 of this title are provided on the application form, the variable rate information described in paragraph (b) of subsection (1) ~~(b)~~ of Section 3-309.2 of this title may be provided separately from the other information required to be disclosed.
- (g) In preparing the table required under subparagraph (vii) of paragraph (b) of subsection (1) ~~(b) (vii)~~ of Section 3-309.2 of this title, the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

SECTION 8. AMENDATORY 14A O.S. 1991, Section 3-304, is amended to read as follows:

Section 3-304. (1) Except as otherwise specifically provided, if a lender is required to give to a debtor a statement of the rate of the loan finance charge ~~he~~, the lender shall state the rate in terms of an annual percentage rate as defined in subsection (2) or in terms of a corresponding nominal annual percentage rate as defined in subsection (3), whichever is appropriate.

(2) "Annual percentage rate"

- (a) with respect to a consumer loan other than one made pursuant to a revolving loan account, is either:
  - (i) that nominal annual percentage rate which, when applied to the unpaid balances of the principal calculated according to the actuarial method,

will yield a sum equal to the amount of the loan finance charge; or

(ii) that rate determined by any method prescribed by rule by the Administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph (i);

(b) with respect to a consumer loan made pursuant to a revolving loan account, is the quotient expressed as a percentage of the total loan finance charge for the period to which it relates divided by the amount upon which the loan finance charge for that period is based, multiplied by the number of these periods in a year.

(3) "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the loan finance charge for one billing cycle or other period pursuant to a revolving loan account multiplied by the number of billing cycles or periods in a year.

(4) If a lender is permitted to make the same loan finance charge for all principal amounts within a specified range ~~+~~ under subsection (5) of Section 3-201 ~~of this title~~ or for all balances within a specified range ~~+~~ under subsection (4) of Section 3-201 and subsection (5) of Section 3-508A ~~of this title~~, ~~he~~ the lender shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual principal amount or balance is included.

(5) A statement of rate complies with this part if it does not vary from the accurately computed rate by more than the following tolerances:

- (a) the annual percentage rate may be rounded to the nearest quarter of one percent ( $1/4$  of 1%) or may fall within a tolerance not greater than one-eighth of one percent ( $1/8$  of 1%) more or less than the actual rate for consumer loans payable in substantially equal installments when a lender determines the total loan finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by rule by the Administrator;
- (b) the Administrator may authorize by rule the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (a) by not more than the tolerances the Administrator may allow; the Administrator may not allow a tolerance greater than eight percent (8%) of that rate except to simplify compliance where irregular payments are involved; and
- (c) in case a lender determines the annual percentage rate in a manner other than as described in paragraph (a) or (b), the Administrator may authorize by rule other reasonable tolerances.

(6) In connection with credit transactions not under an open-end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge:

- (a) shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge:
  - (i) does not vary from the actual finance charge by more than One Hundred Dollars (\$100.00); or

(ii) is greater than the amount required to be disclosed under this title; and

(b) shall be treated as being accurate for purposes of Section 5-204 of this title if:

(i) except as provided in subparagraph (ii) of this paragraph, the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent (1/2 of 1%) of the total amount of credit extended; or

(ii) in the case of a transaction, other than a mortgage referred to in subsection (10) of Section 1-301 of this title, which:

(aa) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in subsection (17) of Section 1-301 of this title, or is any subsequent refinancing of such a transaction; and

(bb) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent (1%) of the total amount of credit extended.

SECTION 9. AMENDATORY 14A O.S. 1991, Section 3-306, is amended to read as follows:

Section 3-306. (1) This section applies to a consumer loan not made pursuant to a revolving loan account ~~← under Section 3-309→~~ of this title.

(2) The lender shall give to the debtor the following information:

- (a) The identity of the lender required to make disclosure.
- (b) (i) The amount financed, using that term, which shall be the amount of credit of which the debtor has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with the rule of the Administrator:
  - (aa) take the principal amount of the loan;
  - (bb) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the debtor, including the cost of any items excluded from the finance charge pursuant to Section 3-202 of this title; and
  - (cc) subtract any charges which are part of the finance charge but which will be paid by the debtor before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.
- (ii) In conjunction with the disclosure of the amount financed, a lender shall provide a statement of the debtor's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the debtor to indicate whether the debtor wants a written itemization of the amount financed. Upon receiving an affirmative indication, the lender shall provide, at the time other disclosures are

required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

- (aa) the amount that is or will be paid directly to the debtor;
- (bb) the amount that is or will be credited to the debtor's account to discharge obligations owed to the lender;
- (cc) each amount that is or will be paid to third persons by the lender on the debtor's behalf, together with an identification of or reference to the third person; and
- (dd) the total amount of any charges described in the ~~preceding~~ division (cc) of subparagraph (i) ~~(cc)~~ of this paragraph.

- (c) The "finance charge", not itemized, using that term.
- (d) The finance charge expressed as an "annual percentage rate", using that term. This shall not be required if the amount financed does not exceed Seventy-five Dollars (\$75.00) and the finance charge does not exceed Five Dollars (\$5.00), or if the amount financed exceeds Seventy-five Dollars (\$75.00) and the finance charge does not exceed Seven Dollars and fifty cents (\$7.50).
- (e) The sum of the amount financed and the finance charge, which shall be termed the "total of payments".
- (f) The number, amount, and due dates or period of payments scheduled to repay the total of payments.
- (g) Descriptive explanations of the terms "amount financed", "finance charge", "annual percentage rate"

and "total of payments", as specified by the Administrator.

- (h) Where the credit is secured, a statement that a security interest has been taken in (i) the property which is purchased as part of the credit transaction, or (ii) property not purchased as part of the credit transaction identified by item or type.
- (i) Any dollar charge or percentage amount which may be imposed by a lender solely on account of a late payment, other than a deferral or extension charge.
- (j) A statement indicating whether or not the debtor is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.
- (k) A statement that the debtor should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.
- (l) In any transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created or retained against the debtor's dwelling to finance the acquisition or initial construction of the dwelling, a statement indicating whether a subsequent purchaser or assignee of the debtor may assume the debt obligation on its original terms and conditions.

(m) In the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Administrator for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a ten-thousand-dollar loan originated at a recent interest rate, as determined by the Administrator, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.

(3) Except as rules of the Administrator may provide, if a lender makes a binding commitment to make a consumer loan by allowing the debtor to draw on the lender and at the time the commitment is made the amount of the loan has not been determined, the lender shall then give to the debtor a statement of the terms under which the loan will be made, including the rate of the loan finance charge calculated in accordance with the provisions on calculation of rate ~~( under Section 3-304)~~ of this title. If the rate of the loan finance charge varies according to the amount of the loan, the lender shall state the minimum and maximum annual percentage rates which would be applicable to the amounts which could be drawn pursuant to the commitment. If additional charges ~~( under Section 3-202)~~ of this title may be made, the lender shall also state the conditions under which the charges may be made, the amount or method of computing the charges, and a brief description or identification of the charges. Within a reasonable time after the loan is made, and in any event on or before the due date of the

first installment, the lender shall give the information required by this section.

SECTION 10. AMENDATORY 14A O.S. 1991, Section 3-309.3, is amended to read as follows:

Section 3-309.3 (1) In the case of extensions of credit under a revolving loan account plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

(2) A creditor may not unilaterally terminate any account under a revolving loan account plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of:

- (a) fraud or material misrepresentation on the part of the consumer in connection with the account;
- (b) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or
- (c) any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor in such security.

This subsection does not apply to reverse mortgage transactions.

- (3) (a) No revolving loan account plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under subsection (1) of Section 3-309.2 of this title or any other term, except a change in

insignificant terms such as the address of the creditor for billing purposes.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a creditor may make any of the following changes:

- (i) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate,
- (ii) Prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling,
- (iii) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances,
- (iv) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement,
- (v) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which:

- (aa) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement, or
  - (bb) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than one hundred twenty percent (120%) of the amount of the credit limit applicable to the account.
- (vi) Any change that will benefit the consumer.
- (c) Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under a revolving loan account plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of subparagraph (iv) of paragraph (b)~~(iv)~~ of this subsection.
- (d) (i) For purposes of subparagraph (vi) of paragraph (b)~~(vi)~~ of this subsection, a change shall be deemed to benefit the consumer if the change is unequivocally beneficial to the consumer and the change is beneficial through the entire term of the agreement,
- (ii) The Administrator may, by rule, determine categories of changes that benefit the consumer.

(4) If any term or condition described in subsection (1) of Section 3-309.2 of this title which is disclosed to a consumer in connection with an application to open an account under a revolving loan account plan described in such section, other than a variable feature of the plan, changes before the account is opened, and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

(5) (a) No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any revolving loan account plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the three-day period beginning on the date such consumer receives the disclosure required under subsection (1) of Section 2-310.2 of this title and the pamphlet required under subsection (3) of Section 2-310.2 of this title with respect to such application.

(b) For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (a) of this subsection are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be three (3) business days after the date of mailing by the creditor.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-309.4 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) (a) In addition to other disclosures required under Title 14A of the Oklahoma Statutes, for each mortgage referred to in subsection (10) of Section 1-301 of

Title 14A of the Oklahoma Statutes, the creditor shall provide the following disclosures in conspicuous type size:

(i) "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application"; and

(ii) "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(b) In addition to the disclosures required under paragraph (a) of this subsection, the creditor shall disclose:

(i) in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or

(ii) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to Section 1204 of the Competitive Equality Banking Act of 1987.

(2) (a) The disclosures required by this section shall be given not less than three (3) business days prior to consummation of the transaction.

(b) (i) After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures

are provided that meet the requirements of this section.

(ii) A creditor may provide new disclosures pursuant to subparagraph (i) of this paragraph by telephone, if:

(aa) the change is initiated by the consumer; and

(bb) at the consummation of the transaction under which the credit is extended:

(I) the creditor provides to the consumer the new disclosures, in writing; and

(II) the creditor and consumer certify in writing that the new disclosures were provided by telephone, by not later than three (3) days prior to the date of consummation of the transaction.

(c) The Administrator may, if the Administrator finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in the regulations.

(3) (a) (i) A mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due.

(ii) For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method, as

that term is defined in Section 933(d) of the Housing and Community Development Act of 1992.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph, a mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may contain a prepayment penalty, including terms calculating a refund by a method that is not prohibited under Section 933(d) of the Housing and Community Development Act of 1992 for the transaction in question if:

(i) at the time the mortgage is consummated:

(aa) the consumer is not liable for an amount of monthly indebtedness payments, including the amount of credit extended or to be extended under the transaction, that is greater than fifty percent (50%) of the monthly gross income of the consumer; and

(bb) the income and expenses of the consumer are verified by a financial statement signed by the consumer, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the consumer, which verification may be in the form of a copy of a pay stub or other payment record supplied by the consumer;

(ii) the penalty applies only to a prepayment made with amounts obtained by the consumer by means other than a refinancing by the creditor under the mortgage, or an affiliate of that creditor;

(iii) the penalty does not apply after the end of the five-year period beginning on the date on which the mortgage is consummated; and

(iv) the penalty is not prohibited under other applicable law.

(4) A mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate shall be computed by any method that is not less favorable than the actuarial method, as that term is defined in Section 933(d) of the Housing and Community Development Act of 1992.

(5) A mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes having a term of less than five (5) years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.

(6) A mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(7) A mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

(8) A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes based on the consumers' collateral without regard to the

consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

(9) A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes, other than:

- (a) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or
- (b) at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

(10) Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of Section 5-204 of Title 14A of the Oklahoma Statutes.

(11) For purposes of this section, the term "affiliate" has the same meaning as in Section 2(k) of the Bank Holding Company Act of 1956.

- (12) (a) The Administrator may, by regulation or order, exempt specific mortgage products or categories of mortgages from any or all of the prohibitions specified in subsections (3) through (9) of this section, if the Administrator finds that the exemption:
- (i) is in the interest of the borrowing public; and
  - (ii) will apply only to products that maintain and strengthen home ownership and equity protection.
- (b) The Administrator, by regulation or order, shall prohibit acts or practices in connection with:

- (i) mortgage loans that the Administrator finds to be unfair, deceptive, or designed to evade the provisions of this section; and
- (ii) refinancing of mortgage loans that the Administrator finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-309.5 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) In addition to the disclosures required under Title 14A of the Oklahoma Statutes, for each reverse mortgage, the creditor shall, not less than three (3) days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include:

- (a) statements of the annual interest rates for not less than three projected appreciation rates and not less than three credit transaction periods, as determined by the Administrator, including:
  - (i) a short-term reverse mortgage;
  - (ii) a term equaling the actuarial life expectancy of the consumer; and
  - (iii) such longer term as the Administrator deems appropriate; and
- (b) a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure

required under this section or has signed an application for the reverse mortgage.

(2) In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (1) of this section, the creditor shall take into account:

- (a) any shared appreciation or equity that the lender will, by contract, be entitled to receive;
- (b) all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;
- (c) all payments to and for the benefit of the consumer, including, in the case in which an associated annuity is purchased, whether or not required by the lender as a condition of making the reverse mortgage, the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and
- (d) any limitation on the liability of the consumer under reverse mortgage transactions, such as nonrecourse limits and equity conservation agreements.

SECTION 13. AMENDATORY 14A O.S. 1991, Section 3-502, is amended to read as follows:

Section 3-502. (1) Unless a person is a supervised financial organization or has first obtained a license from the Administrator authorizing ~~him~~ the person to make supervised loans, ~~he~~ a person shall not engage in the business of:

~~(1)~~ (a) making supervised loans; or

~~(2)~~ (b) taking assignments and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans.

(2) In addition to civil and criminal penalties, the Administrator may initiate administrative action against an unlicensed person as if the person held a license if the person is found to be engaging in the business of making supervised loans.

SECTION 14. AMENDATORY 14A O.S. 1991, Section 3-503, is amended to read as follows:

Section 3-503. (1) Application for a license shall be under oath, shall give the approximate location from which the business is to be conducted, and shall contain such relevant information as the Administrator may require. When making application for one or more licenses, the applicant shall pay ~~Two Hundred Dollars (\$200.00)~~ Two Hundred Twenty-five Dollars (\$225.00) to the Administrator as an investigation fee and One Hundred Fifty Dollars (\$150.00) for each license as the annual fee provided in this part for the current calendar year, provided if a license is granted after June 30, in any year, such fee shall be Seventy-five Dollars (\$75.00) for that year.

(2) Every licensee shall maintain on file with the Administrator a written appointment of a resident of this state as ~~his~~ the agent for service of all judicial or other process or legal notice, unless the licensee has appointed an agent under another statute of this state. In case of noncompliance, such service may be made on the Administrator.

(3) Every applicant shall, also, at the time of filing such application, file with the Administrator, if ~~he so requires~~ required, a bond satisfactory to ~~him~~ the Administrator and in an amount not to exceed Five Thousand Dollars (\$5,000.00) for the first license and One Thousand Dollars (\$1,000.00) for each additional license with a surety company qualified to do business in this state as surety, whose total liability in the aggregate shall not exceed the amount of such bond so fixed. The ~~said~~ bond shall run to the state for the use of the state and of any person or persons who may

have cause of action against the obligor of ~~said~~ the bond under the provisions of this ~~act~~ title. Such bond shall be conditional that ~~said~~ the obligor will faithfully conform to and abide by the provisions of this ~~act~~ title and to all rules ~~and regulations~~ lawfully made by the Administrator hereunder and will pay to the state and to any such person or persons any and all amounts of money that may become due or owing to the state or to such person or persons from such obligor under and by virtue of the provisions of this ~~act~~ title during the calendar year for which ~~said~~ the bond is given.

(4) As part of the investigation, the Administrator shall conduct a national criminal history check pursuant to subsection B of Section 150.9 of Title 74 of the Oklahoma Statutes. The applicant shall furnish to the Administrator a complete set of the applicant's fingerprints that shall be certified by an authorized law enforcement officer.

SECTION 15. AMENDATORY 14A O.S. 1991, Section 3-504, as amended by Section 5, Chapter 288, O.S.L. 1997 (14A O.S. Supp. 1999, 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~~ the Administrator 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~~ title, and the applicant has available for the operation of such business net assets of at least Twenty-five Thousand Dollars (\$25,000.00), ~~he~~ the Administrator shall grant such application and issue to the applicant a license which shall be ~~his~~ the applicant's license and authority to make supervised loans under the provisions of this ~~act~~ title.

(2) If the Administrator shall not so find, ~~he~~ the Administrator 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~~ the 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~~ Each application for a license shall be granted or denied within ~~sixty (60)~~ ninety (90) 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 or the independent hearing examiner.

(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~~ the licensee, 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. There shall be a late fee of Fifty Dollars (\$50.00) for a late application for renewal of a license received after December 1. The fee for a duplicate or amended license shall be Twenty-five Dollars (\$25.00).

(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~~ title. 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~~ an office to another location ~~he,~~ the licensee 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~~ title who shall violate any provision hereof shall be subject to forfeiture of each license held by ~~him~~ the licensee 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~~ the Attorney General's attention, to file suit for such forfeiture of charter and cancellation of the license in a district court in Oklahoma County.

SECTION 16. AMENDATORY 14A O.S. 1991, Section 3-505, is amended to read as follows:

Section 3-505. (1) The Administrator or the independent hearing examiner may, after notice and hearing, censure, probate, suspend ~~or~~, revoke or refuse to renew any license if ~~he~~ the Administrator or the independent hearing examiner finds that:

- (a) The licensee has failed to pay the annual license fee imposed by this ~~act~~ title, or an examination fee, investigation fee or other fee or charge imposed by the Administrator under the authority of this ~~act~~ title, ~~or that~~
- (b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this ~~act~~ title or any regulation or order lawfully made pursuant to and within the authority of this ~~act~~ title, ~~or that~~
- (c) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have

justified the Administrator or the independent hearing examiner in refusing to issue such license, or

(d) The licensee acting as a mortgage broker as defined in the Mortgage Broker Licensure Act has violated the Mortgage Broker Licensure Act.

(2) The hearing shall be held upon not less than twenty (20) days' notice in writing setting forth the time and place thereof and a concise statement of the facts alleged to sustain the ~~suspension or revocation~~ administrative action, and its effective date shall be set forth in a written order accompanied by finding of fact and a copy thereof shall be forthwith delivered to the licensee. A final order signed by an independent hearing examiner, after hearing, shall be a final agency action, notwithstanding the provisions of Section 311 of Title 75 of the Oklahoma Statutes. Such order, finding, and the evidence considered by the Administrator or the independent hearing examiner shall be filed with the public records of the Administrator.

(3) Any licensee may surrender any license by delivering it to the Administrator with written notice of its surrender, but such surrender shall not affect ~~his~~ the administrative, civil or criminal liability for acts committed prior thereto.

(4) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(5) The Administrator or the independent hearing examiner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Administrator or the independent hearing examiner in refusing originally to issue such license under this part.

(6) If the Administrator or the independent hearing examiner determines that the conduct is such that it may be a detriment to

the public, the license of such supervised lender may be suspended pending hearing. If at a hearing, the person presiding determines that a license which was suspended prior to the hearing shall be placed on probation, suspended or revoked, the period shall be deemed to have begun on the date the license was suspended pending the hearing.

(7) In addition to any applicable cease and desist, censure, probation, suspension or revocation or refusal to renew a license, a licensee may be subject to an administrative fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00) for each violation nor to exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction.

(8) Every licensee shall notify the Administrator of the conviction of or plea of guilty or nolo contendere to any felony or to a misdemeanor involving moral turpitude within thirty (30) days after the plea is taken and also within thirty (30) days of the entering of an order of judgment and sentencing and shall notify the Administrator of any administrative action taken against the licensee in another state within thirty (30) days of the entering of the administrative order in that state.

SECTION 17. AMENDATORY 14A O.S. 1991, Section 3-506, as last amended by Section 9, Chapter 329, O.S.L. 1993 (14A O.S. Supp. 1999, Section 3-506), is amended to read as follows:

Section 3-506. (1) At such times as the Administrator shall deem necessary, the Administrator or ~~his~~ a duly authorized representative shall make an examination of the place or places of business of each licensee and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such licensee insofar as they pertain to the business regulated by this ~~act~~ title. In the course of such examination, the Administrator or ~~his~~ the duly authorized representative shall have

free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Administrator or ~~his~~ the duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Administrator is authorized or required by this ~~act~~ title to consider, investigate, or secure information. Any licensee who shall fail or refuse to let the Administrator or ~~his~~ the duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this ~~act~~ title and such failure or refusal shall constitute grounds for the ~~suspension or revocation of~~ administrative action against such license. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Administrator an amount assessed by the Administrator to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, not to exceed Three Hundred Dollars (\$300.00); provided, however, that for any examination which lasts in excess of eight (8) hours, the Administrator shall charge an additional fee of Fifty Dollars (\$50.00) per hour for each examiner required to complete such an examination; provided, further, that the Administrator may waive the examination fee for any examination which takes one (1) hour or less. If an examination fee is due and is not paid upon completion of an examination, the Administrator shall bill the licensee, and there shall be a late fee of Fifty Dollars (\$50.00) if the amount due is not received within fifteen (15) days of the invoice date. No licensee shall be assessed and charged ~~an examination~~ a total fee in excess of ~~Six Hundred Dollars (\$600.00)~~ Six Hundred Fifty Dollars (\$650.00) for each licensed office in any one (1) calendar year.

(2) For the purpose of discovering violations of this ~~act~~ title or of securing information required hereunder, the Administrator or ~~his~~ a duly authorized representative may investigate the books, accounts, papers, correspondence and records of any licensee or other person whom the Administrator has reasonable cause to believe is violating any provision of this ~~act~~ title whether or not such person shall claim to be within the authority or scope of this part. For the purpose of this part any person who advertises for, solicits or holds ~~himself~~ out as willing to make loans on which the loan finance charge exceeds ten percent (10%) per year as determined according to the provisions on loan finance charges for consumer loans, Section 3-201 of this title, shall be presumed to be engaged in the business of making supervised loans.

(3) Each licensee shall keep or make available in this state such books and records relating to loans made under this ~~act~~ title as are necessary to enable the Administrator to determine whether the licensee is complying with this ~~act~~ title. Such books and records shall be consistent with accepted accounting practices.

(4) Each licensee shall preserve or make available such books and records in this state relating to each of its loans for four (4) years from the date of the loan, or two (2) years from the date of the final entry made thereon, whichever is later. Each licensee's system of records shall be accepted if it discloses such information as may be reasonably required under this ~~act~~ title. All obligations signed by borrowers shall be kept at an office in this state designated by the licensee, except when transferred under an agreement which gives the Administrator access thereto.

(5) Each licensee shall, annually on or before the first day of May ~~or other date thereafter fixed by the Administrator~~, file a report with the Administrator setting forth such relevant information as the Administrator may reasonably require concerning the business and operations during the preceding calendar year for

each licensed place of business conducted by such licensee with the state. Such report shall be made under oath and shall be in the form prescribed by the Administrator, who shall make and publish annually a consolidated analysis and recapitulation of such reports, but the individual reports shall be held confidential. There shall be a late fee of Twenty-five Dollars (\$25.00) for any annual report received after May 1.

(6) The Administrator may promulgate rules necessary for the enforcement of this ~~act~~ title and consistent with all of its provisions. ~~Each such rule shall refer to the part, section or subsection to which it applies. Before adopting a rule the Administrator shall give every licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed rule. At the hearing, any licensee or other person may be heard and introduce evidence, data, or arguments or place the same on file. The Administrator shall adopt and promulgate every rule in written form stating the date of adoption and the date of promulgation. Each rule shall be entered in a permanent book which shall be a public record and be kept in the Administrator's office. A copy of every rule shall be mailed to each licensee and no rule shall become effective until the expiration of at least twenty (20) days after such mailing.~~

(7) On application of any person and payment of the costs therefor, the Administrator shall furnish under ~~his~~ the Administrator's seal and signed by ~~him~~ the Administrator or ~~his assistants~~ an assistant, a certificate of good standing or a certified copy of any license, rule or order.

(8) Any transcript of any hearing held by the Administrator or the independent hearing examiner under this ~~act~~ title shall be a public record and open to inspection at all reasonable times.

(9) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator or a representative may apply to a court for an order compelling compliance, as provided by the Administrative Procedures Act.

(10) There shall be assessed, in addition to any other penalties provided for by law, an administrative service fee of Twenty-five Dollars (\$25.00) for each check returned to the Department of Consumer Credit or any agent thereof by reason of the refusal of the bank upon which such check was drawn to honor the same. However, the fee provided in this subsection shall not be assessed for any check returned because of "insufficient funds" unless the check has been presented to the bank two times and payment declined by the bank.

SECTION 18. AMENDATORY 14A O.S. 1991, Section 5-203, is amended to read as follows:

Section 5-203. (1) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed by the provisions on disclosure (Part 3), other than the provisions on advertising pursuant to Sections 2-313 and 3-312 of Article 2 of this title and Article 3 of this title, or with any requirement imposed by the provision on the right to rescind pursuant to Section 5-204 of this title, with respect to any person is liable to that person in an amount equal to the sum of:

(a) any actual damage sustained by that person as a result of the failure;

(b) (i) (aa) in the case of an individual action twice the amount of the credit service or loan finance charge in connection with the transaction, ~~or~~

(bb) in the case of an individual action relating to a consumer lease twenty-five percent

(25%) of the total amount of monthly payments under the lease but the liability pursuant to this part of this paragraph shall be not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)~~+~~ or

(cc) in the case of an individual action relating to a credit transaction not under an open-end credit plan that is secured by real property or a dwelling, not less than Two Hundred Dollars (\$200.00) or greater than Two Thousand Dollars (\$2,000.00); or

(ii) in the case of a class action, an amount the court may allow, except that as to each member of the class no minimum recovery shall be applicable and the total recovery other than for actual damages in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of Five Hundred Thousand Dollars (\$500,000.00) or one percent (1%) of the net worth of the creditor; ~~and~~

(c) in the case of a successful action to enforce the liability under paragraph (b) of this subsection or in any action in which a person is determined to have a right of rescission under Section 5-204 of this title, the costs of the action together with reasonable attorney's fees as determined by the court. In determining the amount of award in any class action, the court shall consider among other relevant factors the amount of any actual damages awarded, the frequency and persistence of failures of compliance by

the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures required by Sections 2-310 and 3-309 of this title, a creditor shall have a liability determined under paragraph (b) of this subsection only for failing to comply with the requirements of Section 5-204 of this title, Sections 2-310(1) and 3-309(1) of this title, subsections (2) (d) through (k) of Section 2-310 of this title, and subsections (2) (d) through (k) of Section 3-309 of this title. In connection with the disclosures referred to in subsections (1) through (7) of Sections 2-310.1 and 3-309.1 of this title, a card issuer shall have a liability under this section only to a card holder who pays a fee described in Section 2-310.1(1) (d), Section 2-310.1(5) (a) (i), Section 3-309.1(1) (d) or Section 3-309.1(5) (a) (i) of this title or who uses the credit card or charge card. In connection with disclosures for closed-end credit, a creditor shall have a liability determined under paragraph (b) of this subsection only for failing to comply with the requirements of Section 5-204 of this title, subsections (2) (b) insofar as it requires a disclosure of the amount financed, through (f) and subsection (j) of Section 2-306 of this title, and subsections (2) (b) insofar as it requires a disclosure of the amount financed, through (f) and subsection (h) of Section 3-306 of this title. With respect to any failure to make disclosure, liability shall be imposed only upon the creditor required to make disclosure, except as provided in subsection (3) of Section 2-302

of this title, subsection (3) of Section 3-302 of this title and otherwise in this section; and

(d) in the case of a failure to comply with any requirement under Section 11 of this act, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

(2) A creditor or assignee has no liability under this section, Section 5-302 of this title or Article 6 of this title in relation to disclosure if within sixty (60) days after discovering an error whether pursuant to a final written examination report or notice issued under subsection (4) of Section 6-105~~(4)~~ of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount actually disclosed or the dollar equivalent of the percentage rate actually disclosed, whichever is lower.

(3) A creditor or assignee may not be held liable in any action brought under this section or Section 5-204 of this title for a violation of this ~~act~~ title if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. A bona fide error includes, but is not limited to, a clerical, calculation, computer malfunction and programming, and printing error, but not an error of legal judgment with respect to a person's disclosure obligations under this title.

(4) (a) Except as otherwise specifically provided in this section, any civil action for a violation of this section or administrative proceeding for restitution which may be brought against the original creditor in any transaction may be maintained against any subsequent assignee of the original creditor in any transaction where the violation from which the alleged liability arose is apparent on the face of the disclosure statement unless the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to, a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned or a disclosure which does not use the terms required to be used by this title.

(b) (i) Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any administrative proceeding against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if:

(aa) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

(bb) the assignment to the assignee was voluntary.

(ii) For the purpose of this section, a violation is apparent on the face of the disclosure statement if:

- (aa) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or
- (bb) the disclosure statement does not use the terms or format required to be used by this title.

(5) Any person who has the right to rescind a transaction under Section 5-204 of this title may rescind the transaction as against any assignee of the obligation.

(6) No action pursuant to this section may be brought more than one (1) year after the date of the occurrence of the violation.

(7) (a) In this section, "creditor" includes sellers, lessors, lenders, persons who regularly offer to lease or arrange to lease under consumer leases and any other person required to make disclosures under Part 3 of either Article 2 or Article 3 of this title.

(b) (i) A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

(ii) A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of

the owner of the obligation or the master servicer of the obligation.

(iii) For purposes of this subsection, the term "servicer" has the same meaning as in Section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.

(iv) This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

(8) Where there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery under paragraph (b) of subsection (1)(b) of this section for a violation of this title.

(9) The multiple failure to disclose to any person any information required under this title to be disclosed in connection with a single account under an open-end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by Section 5-204 of this title.

(10) A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to that person under paragraph b of subsection (1) ~~(b)~~ of this section against any amount owed by that person unless the amount of the creditor's or assignee's liability has been determined by judgment of a court of competent jurisdiction in an action to which the person was a party. This subsection does not bar a person then in default on the obligation from asserting a violation of disclosure requirements as an original action or as a defense or counterclaim to an action to collect amounts owed by the person brought by another person liable

under this title if the claim is not time barred, or as a setoff or defense in accordance with Section 5-205 of this title.

(11) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one (1) year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this title in an action to collect the debt which was brought more than one (1) year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by law. An action to enforce a violation of Section 11 of this act may also be brought by the Attorney General in any appropriate United States district court, or any other court of competent jurisdiction, not later than three (3) years after the date on which the violation occurs. The Attorney General shall provide written notice of any such civil action to the Administrator and shall provide the Administrator with a copy of the complaint. If prior notice is not feasible, the Attorney General shall provide notice to the Administrator immediately upon instituting the action. The Administrator may:

(a) Intervene in the action;

(b) Upon intervening:

(i) remove the action to the appropriate United States district court, if it was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(c) File a petition for appeal.

(12) (a) Any person who purchases or is otherwise assigned a mortgage referred to in subsection (10) of Section 1-301 of this title shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the

mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this title, the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a mortgage referred to in subsection (10) of Section 1-301 of this title. The preceding sentence does not affect rights of a consumer under paragraph (a) of subsection (4) or subsection (5) of this section or any other provision of this title.

(b) Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (a) of this subsection may not exceed:

(i) with respect to actions based upon a violation of this title, the amount specified in subsection (1) of this section; and

(ii) with respect to all other causes of action, the sum of:

(aa) the amount of all remaining indebtedness; and

(bb) the total amount paid by the consumer in connection with the transaction.

(c) The amount of damages that may be awarded under subparagraph (ii) of paragraph (b) of this subsection shall be reduced by the amount of any damages awarded under subparagraph (i) of paragraph (b) of this subsection.

(d) Any person who sells or otherwise assigns a mortgage referred to in subsection (10) of Section 1-301 of this title shall include a prominent notice of the

potential liability under this subsection as determined by the Administrator.

SECTION 19. AMENDATORY 14A O.S. 1991, Section 5-204, is amended to read as follows:

Section 5-204. (1) Except as otherwise provided in this section, in the case of a consumer credit sale or consumer loan, including opening or increasing the credit limit for an open-end credit plan, with respect to which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any real or personal property which is used as the principal dwelling of the person to whom credit is extended, each person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest, shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures as defined in subsection (7) of this section, whichever is later, by notifying the creditor, in accordance with rules of the Administrator, of ~~his~~ the person's intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with rules of the Administrator, in a transaction subject to this section the rights of the person having the right of rescission under this section. The creditor shall also provide, in accordance with rules of the Administrator, appropriate forms and an adequate opportunity to a person having the right of rescission to exercise ~~his~~ the right to rescind any transaction subject to this section. If the required notice and material disclosures are not delivered, the right to rescind shall expire no later than three (3) years after the date of consummation of the transaction giving rise to the right of rescission, or upon sale of the property, whichever occurs first;

except that if the Administrator or any other appropriate agency institutes a proceeding to enforce the provisions of this section within three (3) years after the date of consummation of the transaction and finds a violation of this section and the right to rescind is based in whole or in part on any matter involved in such proceeding, then the right of rescission shall expire three (3) years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one (1) year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(2) When the right of rescission is exercised under subsection (1) of this section, the debtor or person exercising the right of rescission is not liable for any credit service charge, loan finance charge or other charge, and any security interest given, including any such interest arising by operation of law, becomes void upon the rescission. Within twenty (20) days after receipt of a notice of rescission, the creditor shall return any money or property given as earnest money, down payment or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the person exercising the right of rescission, such person may retain possession of it. Upon the performance of the creditor's obligations under this section, the person exercising the right of rescission shall tender to the creditor all property delivered by the creditor in the consumer credit transaction, except that if return of the property in kind would be impractical or inequitable, tender of its reasonable value shall be made. Tender shall be made at the location of the property or at the principal dwelling of the person exercising the right of rescission, at ~~his~~ the option of the person. If the creditor does not take possession of the property within twenty (20) days after tender by the person exercising the right of rescission, such person

may keep it without further obligation. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(3) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosure required under this ~~act~~ title by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(4) The person entitled to exercise the right of rescission may modify or waive the right to rescind if that person determines that the extension of credit is necessary in order to meet a bona fide personal financial emergency. To modify or waive the right, the person shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all of the persons entitled to rescind. Printed forms for this purpose are prohibited.

(5) This section does not apply to the creation or retention of a consensual lien against a principal dwelling to finance the acquisition or initial construction of that dwelling; a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property; a transaction in which an agency of a state is the creditor; or advances under a preexisting open-end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(6) In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under Section 5-203 of this title for violations of this title not relating to the right to rescind.

(7) The term "material disclosures" means the disclosure, as required by this ~~act~~ title, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

(8) An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Administrator, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(9) (a) Notwithstanding the provisions of Section 5-206 of this title, and subject to the time period provided in subsection (1) of this section, in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if:

- (i) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or
- (ii) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the

Administrator or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

- (b) Notwithstanding the provisions of subsection (6) of Section 3-304 of this title, and subject to the time period provided in subsection (1) of this section, for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than Thirty-five Dollars (\$35.00) or is greater than the amount required to be disclosed under this title.
- (c) Nothing in this subsection affects a consumer's right of rescission in recoupment under law.
- (d) This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-206 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) For any closed-end consumer credit transaction that is secured by real property or a dwelling, that is subject to Title 14A of the Oklahoma Statutes, and that is consummated before September 30, 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under Title 14A of the Oklahoma Statutes for, and a consumer shall have no extended

rescission rights under subsection (1) of Section 5-204 of Title 14A of the Oklahoma Statutes with respect to:

- (a) the creditor's treatment, for disclosure purpose, of:
  - (i) taxes described in paragraph (a) of subsection (1) of Section 3-202 of Title 14A of the Oklahoma Statutes;
  - (ii) fees described in paragraphs (d) and (e) of subsection (1) of Section 3-202 of Title 14A of the Oklahoma Statutes;
  - (iii) fees and amounts referred to in the third sentence of paragraph (b) of subsection (1) of Section 3-109 of Title 14A of the Oklahoma Statutes; or
  - (iv) borrower-paid mortgage broker fees referred to in subparagraph (vi) of paragraph (b) of subsection (1) of Section 3-109 of Title 14A of the Oklahoma Statutes;
- (b) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under Section 5-204 of Title 14A of the Oklahoma Statutes if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Administrator or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or
- (c) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed:
  - (i) may be treated as accurate for purposes of this title if the amount disclosed as the finance charge does not vary from the actual finance

charge by more than Two Hundred Dollars  
(\$200.00);

(ii) may, under paragraph (b) of subsection (6) of  
Section 3-304 of Title 14A of the Oklahoma  
Statutes, be treated as accurate for purposes of  
Section 5-204 of Title 14A of the Oklahoma  
Statutes; or

(iii) is greater than the amount or percentage required  
to be disclosed under Title 14A of the Oklahoma  
Statutes.

(2) Subsection (1) of this section shall not apply to:

(a) any individual action or counterclaim brought under  
Title 14A of the Oklahoma Statutes which was filed  
before June 1, 1995;

(b) any class action brought under Title 14A of the  
Oklahoma Statutes for which a final order certifying a  
class was entered before January 1, 1995;

(c) the named individual plaintiffs in any class action  
brought under Title 14A of the Oklahoma Statutes which  
was filed before June 1, 1995; or

(d) any consumer credit transaction with respect to which  
a timely notice of rescission was sent to the creditor  
before June 1, 1995.

SECTION 21. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 5-516 of Title 14A, unless there  
is created a duplication in numbering, reads as follows:

(1) There is hereby created in the State Treasury a revolving  
fund for the Department of Consumer Credit to be designated the  
"Consumer Information Revolving Fund". The fund shall be a  
continuing fund, not subject to fiscal year limitations, and shall  
consist of monies specified in subsection (2) of this section. All  
monies accruing to the credit of the fund are hereby appropriated

and may be budgeted and expended by the Department of Consumer Credit to further consumer understanding of the terms of credit transactions. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

(2) When a supervised lender is required by the Administrator to make refunds under Title 14A of the Oklahoma Statutes, any amount that cannot be delivered to the individual consumer due to an inability to locate the individual after reasonable efforts shall be deposited in the Consumer Information Revolving Fund.

SECTION 22. AMENDATORY 14A O.S. 1991, Section 6-104, as last amended by Section 5, Chapter 352, O.S.L. 1998 (14A O.S. Supp. 1999, Section 6-104), is amended to read as follows:

Section 6-104. (1) In addition to other powers granted by this ~~act~~ title, 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~~ title, or commence proceedings on ~~his~~ the Administrator's own initiative;
- (b) counsel persons and groups on their rights and duties under this ~~act~~ title;
- (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~~ title 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~~ title, and adopt, amend, and repeal procedural rules to carry out the provisions of this ~~act~~ title,

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~~ debtors or ~~lessee~~ lessees will be able to compare more readily the various terms available to ~~him~~ them and to avoid the uninformed use of credit. These rules may supersede any provisions of this ~~act~~ title 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~~ title 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~~ title 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~~ title 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~~ the Administrator 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~~ title, 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~~ title 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~~ the Administrator's 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~~ title 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~~ title 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~~ the Administrator's 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~~ the Administrator's office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this ~~act~~ title, 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~~ the Administrator's 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~~ title 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~~ the Administrator's office and of others to promote the purposes of this ~~act~~ title. 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~~ title, 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 subsection (2) of Section 3-202 of this title 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

~~(e)~~ (b) 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 23. AMENDATORY 14A O.S. 1991, Section 6-105, is amended to read as follows:

Section 6-105. (1) With respect to supervised financial organizations, the powers of examination and investigation ~~+~~ under Sections 3-506 and 6-106~~+~~ of this title and administrative enforcement ~~+~~ under Section 6-108~~+~~ of this title shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this ~~act~~ title may be exercised by ~~him~~ the Administrator with respect to a supervised financial organization.

(2) If the Administrator receives a complaint or other information concerning noncompliance with this ~~act~~ title by a supervised financial organization, ~~he~~ the Administrator shall inform the official or agency having supervisory authority over the organization concerned. The Administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The Administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this ~~act~~ title. They may

jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them is otherwise empowered to take the action.

(4) (a) In carrying out their enforcement activities each agency having administrative responsibility with respect to persons subject to this ~~act~~ title, including the Administrator, in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of such disclosure error and are authorized in accordance with the provisions of this subsection to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. For the purposes of this subsection, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in calculating any adjustment<sub>7</sub>:

(i) each agency shall apply:

(aa) with respect to the annual percentage rate, a tolerance of one-quarter of one percent (1/4 of 1%) more or less than the actual rate, determined without regard to tolerance rules for other purposes, and

(bb) with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under

this subsection for the annual percentage rate; except that:

(ii) with respect to transactions consummated after two (2) years following March 31, 1980, each agency shall apply:

(aa) for transactions that have a scheduled amortization of ten (10) years or less, with respect to the annual percentage rate, a tolerance not to exceed one-quarter of one percent (1/4 of 1%) more or less than the actual rate, determined without regard to tolerance rules for other purposes, but in no event a tolerance of less than the tolerances allowed for other purposes,

(bb) for transactions that have a scheduled amortization of more than ten (10) years, with respect to the annual percentage rate, only such tolerances as are allowed for other purposes, and

(cc) for all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(iii) In connection with credit transactions not under an open-end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge:

(aa) shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge:

(I) does not vary from the actual finance charge by more than One Hundred Dollars (\$100.00); or

(II) is greater than the amount required to be disclosed under this title; and

(bb) shall be treated as being accurate for purposes of Section 5-204 of this title if:

(I) except as provided in subparagraph (ii) of this paragraph, the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent (1/2 of 1%) of the total amount of credit extended; or

(II) in the case of a transaction, other than a mortgage referred to in subsection (10) of Section 1-301 of this title, which:

(A) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in subsection (17) of Section 1-301 of this title, or is any subsequent refinancing of such a transaction; and

(B) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent (1%) of the total amount of credit extended.

- (b) Each agency shall require such an adjustment when it determines that such disclosure error resulted from:
- (i) a clear and consistent pattern or practice of violations,
  - (ii) gross negligence, or
  - (iii) a willful violation which was intended to mislead the person to whom the credit was extended.

Notwithstanding the preceding sentence, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, an agency need not require such an adjustment if it determines that such disclosure error:

- (aa) resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures concerning consumer credit insurance, property and liability insurance, and official fees, in which event the agency may require such remedial action as it determines to be equitable, except that for transactions consummated after two (2) years following March 31, 1980, such an adjustment shall be ordered for violations of disclosure of consumer credit insurance;
- (bb) involved a disclosed amount which was ten percent (10%) or less of the amount that should have been disclosed and in cases where the error involved a disclosed finance charge, the annual percentage rate was disclosed correctly, and in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly; in which event

the agency may require such adjustment as it determines to be equitable;

(cc) involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the agency may require such adjustment as it determines to be equitable; or

(dd) resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the buyer, debtor or lessee and that have not misled or otherwise deceived the buyer, debtor or lessee.

In the case of other such disclosure errors, each agency may require such an adjustment.

(c) Notwithstanding ~~subparagraph~~ the provisions of paragraph (b) of this subsection, no adjustment shall be ordered:

(i) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but in any such case, the agency may require a partial adjustment in an amount which does not have such an impact except that with respect to any transaction consummated after March 1, 1980, the agency shall require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be reasonable,

(ii) if the amount of the adjustment would be less than One Dollar (\$1.00), except that if more than one (1) year has elapsed since the date of the

violation, the agency may require that such amount be paid to the Administrator, or

(iii) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two (2) years after the violation, or in the case of any other extension of credit, as follows:

(aa) with respect to creditors that are subject to examination by the agencies referred to in this section, except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in connection with transactions consummated after the date of the examination in which such practices were first identified;

(bb) with respect to creditors that are not subject to examination, except in connection with transactions that are consummated after May 10, 1978; and

(cc) in no event after the later of the expiration of the life of the credit extension, or two (2) years after the agreement to extend credit was consummated.

- (d) Notwithstanding any other provision of this subsection ~~(4)~~, an adjustment under this subsection may be required by an agency only by an order issued in accordance with cease and desist procedures either as prescribed in a statute governing that agency or in Section 6-108 of this title.
- (e) Except as otherwise specifically provided in this subsection, no agency may require a creditor to make dollar adjustments for disclosure errors in any requirements under this title.
- (f) A creditor shall not be subject to an order to make an adjustment, if within sixty (60) days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.
- (g) Notwithstanding the second sentence of paragraph (a) of this subsection ~~(4)(a)~~, and divisions (aa) and (bb) of subparagraph (iii) of paragraph (c) of this subsection ~~(4)(c)(iii)(aa)~~, and subsection ~~(4)(c)(iii)(bb)~~, each agency shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one-quarter of one percent (1/4 of 1%) less than the actual rate, determined without regard to tolerance rules for other purposes, except in the case of an irregular mortgage lending transaction, with respect to any transaction

consummated between January 1, 1977, and April 1, 1980.

- (h) The Administrator may prescribe guidelines and interpretations to govern agency action under this subsection ~~(4)~~.

SECTION 24. AMENDATORY 14A O.S. 1991, Section 6-108, is amended to read as follows:

Section 6-108. (1) After notice and hearing, the Administrator or the independent hearing examiner may order a creditor or a person acting in ~~his~~ the creditor's behalf to cease and desist from engaging in violations of this act. ~~A respondent aggrieved by an order of the Administrator may obtain judicial review of the order as provided by the general act of this state governing administrative procedures (Title 75, Oklahoma Statutes, Chapters 7 and 8). In such a review proceeding, the Administrator may apply for an order enforcing his order~~ title. A final order signed by an independent hearing examiner, after hearing, shall be a final agency action, notwithstanding the provisions of Section 311 of Title 75 of the Oklahoma Statutes.

(2) If the Administrator or the independent hearing examiner determines that the conduct is such that it may be a detriment to the public, the licensee or a person acting in the creditor's behalf may be ordered to cease and desist from engaging in violations of this title pending hearing.

(3) A respondent aggrieved by an order of the Administrator or the independent hearing examiner may obtain judicial review of the order as provided by the Administrative Procedures Act. In such a review proceeding, the Administrator or a representative may apply for a decree enforcing the order. All such proceedings shall be conducted and the court's authority in review shall be exercised in accordance with the provisions of the ~~general act of this state~~

~~governing administrative procedures~~ Administrative Procedures Act,  
with the following additions:

- (a) the court may grant any temporary relief or restraining order it deems just;
- (b) if the court affirms or modifies the order, it shall enter a decree enforcing and requiring compliance with the order as affirmed or as modified;
- (c) an objection to the order not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown; and
- (d) the ~~Administrator's~~ copy of the testimony from the administrative hearing shall be available at reasonable times to all parties for examination without cost.

~~(3)~~ (4) If no proceeding for review has been filed within the time specified by law, the Administrator or a representative may obtain from a court having jurisdiction over the respondent a decree for enforcement of ~~its~~ the order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within the time specified by law, and that the respondent is subject to the jurisdiction of the court.

~~(4)~~ (5) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the Administrator or a representative may not issue an order pursuant to this section but may bring a civil action for an injunction ~~← under Section 6-111~~ of this title.

SECTION 25. AMENDATORY 14A O.S. 1991, Section 6-201, is amended to read as follows:

Section 6-201. This part applies to a person other than a supervised financial organization or a person holding a license to make supervised loans issued under Part 5 of Article 3 of this ~~act~~

title, engaged in making in this state consumer credit sales, consumer leases, or consumer loans ~~and or~~ to a person ~~having an office or place of business in this state~~ who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases or loans.

SECTION 26. AMENDATORY 14A O.S. 1991, Section 6-504, is amended to read as follows:

Section 6-504. ~~Chairman~~ Chair - Meetings - Quorum - Minutes - Reports - Records - Rules and Regulations.

The Commission shall select a ~~chairman~~ chair and is hereby authorized to adopt rules for conducting its proceedings. A majority of the voting members shall constitute a quorum for transacting Commission business. The Commission shall meet ~~monthly~~ at least four times each calendar year on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the ~~chairman~~ chair or by any two members. Complete minutes of each meeting shall be kept and filed in the Department of Consumer Credit and shall be available for public inspection during reasonable office hours. The Commission shall report annually to the Governor and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The report shall contain a summary of the minutes of the meetings held during the year, legislative recommendations, a summary of violations of the Uniform Consumer Credit Code and action taken thereon, and such other data and information as may be deemed necessary or appropriate. Each member of the Commission shall have unrestricted access to all offices and records of the Department. ~~The Commission may review, repeal, amend or modify any rule or regulation adopted or promulgated by the Administrator.~~

SECTION 27. REPEALER Section 4, Chapter 352, O.S.L. 1998 (14A O.S. Supp. 1999, Section 3-203.2), is hereby repealed.

SECTION 28. This act shall become effective July 1, 2000.

SECTION 29. 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 8th day of March, 2000.

\_\_\_\_\_  
President of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2000.

\_\_\_\_\_  
Speaker of the House of  
Representatives