

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1503

By: Maddux, Cargill, DeWitt,
Tibbs and Young of the
House

and

Monson of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to consumer credit; defining term; limiting distribution of live checks unless proper disclosures are made; limiting negotiability of live checks; providing for mailing requirements of live checks; requiring honoring of live checks; amending Section 10 of Enrolled House Bill No. 1574 of the 1st Session of the 49th Oklahoma Legislature, which relates to consumer credits; modifying restrictions on certain mortgages and creditors; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-610 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) As used in this section, "live check" means any loan or extension of credit that is made available in the form of a check, draft, or any other negotiable instrument that can be deposited in a bank or used for third-party payments. "Live check" does not include a check, draft, or any other negotiable instrument provided in response to an application for credit or as a means of access to an existing loan or extension of credit, including a home equity or personal line of credit.

(2) No person shall produce, advertise, offer, sell, distribute, or otherwise transfer for use in this state any live check unless the document bears the following phrase printed in 12-

point type on the front of the document: "THIS IS A LOAN OR AN EXTENSION OF CREDIT. YOU WILL PAY CHARGES."

(3) Live checks shall only be negotiable for a period of forty-five (45) days after the date printed on the live check. Printed material accompanying the live check shall advise the consumer to void and destroy the live check if it is not going to be negotiated.

(4) Loan solicitations shall be mailed in envelopes with no indication that a negotiable instrument is contained in the mailing. Envelopes shall be marked with "do not forward" instructions to the postal service in the event that the intended addressee is no longer at the location.

(5) Any loan solicitation made through a live check shall be honored in the full amount by the issuer unless the account on which the solicitation is made is closed by the consumer prior to the date the check is cashed.

SECTION 2. AMENDATORY Section 10 of Enrolled House Bill No. 1574 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 10. (1) Limitation on terms on subsection 10 mortgages. A subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes shall not contain a demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

- (a) there is fraud or material misrepresentation by the consumer in connection with the loan;
- (b) the consumer fails to meet the repayment terms of the agreement for any outstanding balance; or
- (c) there is any action or inaction by the consumer that adversely affects the creditor's security for the loan or any right of the creditor in such security~~+~~.

(2) Restriction on activities. In connection with a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes:

- (a) a creditor shall not replace or consolidate a zero interest rate or other low-rate loan made by a governmental or nonprofit creditor with a subsection 10 mortgage within the first ten (10) years of the zero interest or other low-rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this paragraph a "low-rate loan" is a loan that carries a current interest rate two (2) percentage points or more below the current yield on United States Department of the Treasury securities with a comparable maturity;
- (b) no creditor shall recommend or encourage default on an existing loan or other debt by an obligor before or in connection with the closing or planned closing of a subsection 10 mortgage that refinances all or any portion of such existing loan or debt;
- (c) a creditor extending mortgage credit subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may not engage in a pattern or practice of extending credit subject to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. There is a presumption that a creditor has violated this subsection if the creditor engages in a pattern or practice of making subsection 10 mortgages without verifying and documenting consumers' repayment ability. A consumer shall be presumed to be able to make the scheduled

payments to repay the obligation if, at the time the loan is consummated, the total monthly debts of the consumer, including amounts owed under the loan, do not exceed fifty-five percent (55%) of the monthly gross income of the consumer as verified by the credit application, the financial statement of the consumer, a credit report, financial information provided to the creditor by or on behalf of the consumer, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed fifty-five percent (55%) of the monthly gross income of the consumer;

- (d) within one (1) year of having extended credit subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes, a creditor may not refinance any loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes to the same borrower into another loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes to the same borrower into another loan subject to subsection (10) of Section 1-301 of Title 14A of the

Oklahoma Statutes, unless the refinancing is in the borrower's interest. A creditor or assignee is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee;

(e) in connection with credit secured by the consumer's dwelling that does not meet the definition of open-end credit defined at 12 C.F.R. Section 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes; and

~~(f) a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes shall not contain a mandatory arbitration provision that:~~

~~(i) does not comply with rules set forth by a nationally recognized arbitration organization such as the American Arbitration Association,~~

~~(ii) does not require the arbitration proceeding to be conducted:~~

~~(aa) within the federal judicial district in which the subject property is located,~~

~~(bb) in the city nearest the obligor's residence where a federal district court is located,~~

~~or~~

~~(cc) at such other location as may be mutually agreed upon by the parties,~~

~~(iii) does not require the creditor to contribute at least fifty percent (50%) of the amount of any filing fee, and~~

~~(iv) does not require the creditor to pay standard daily arbitration fees, both its own and those of the obligor, for at least the first day of arbitration;~~

~~(g) a creditor or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the creditor on a subsection 10 mortgage to a nationally recognized consumer credit reporting agency. This ~~subsection~~ paragraph shall not prevent a creditor or its servicer from agreeing with the obligor not to report payment history information in the event of a resolved or unresolved dispute with the obligor and shall not apply to subsection 10 mortgages held or serviced by a creditor for less than ninety (90) days.~~

(3) Preemption. The laws of this state relating to the brokering, originating, making, servicing and collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes prescribe rules of conduct on citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions and constitute general laws of this state. Silence in the statutes of this state with respect to any act or practice in the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of brokering, originating, making, servicing or collecting of mortgage loans subject to Title

14A of the Oklahoma Statutes. It is the intent of the Legislature to entirely preempt political subdivisions from the regulation and licensing of persons engaged in the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes in this state. No political subdivision shall enact any ordinance, resolution, local regulation, rule or law that regulates, directly or indirectly, the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes, the terms of mortgage loans subject to Title 14A of the Oklahoma Statutes or that makes the eligibility of any person or entity to do business with the political subdivision dependent on the terms of mortgage loans subject to Title 14A of the Oklahoma Statutes originated or serviced by such person or entity or that imposes any reporting requirements or other obligations on a person, or its subsidiaries or affiliates engaged in the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes in this state. For purposes of this section, "political subdivision" means any county, city, town, school district, or other local governmental or public entity, located within this state.

(4) Nothing in this section shall be construed to invalidate or prohibit any ordinance, resolution, regulation, rule or law by a political subdivision to establish and administer voluntary neighborhood reinvestment programs in furtherance of the goals and purposes of the "Community Reinvestment Act of 1977", 91 Stat. 1147, 12 U.S.C.A. 2901, as amended.

(5) Nothing in this section shall be construed to invalidate any ordinance, resolution, local regulation, rule or law by a political subdivision that is required to meet the criteria for adequacy of law established by the United States Department of Housing and Urban Development in order to obtain certification as a fair housing assistance program.

SECTION 3. Section 1 of this act shall become effective July 1, 2003.

SECTION 4. Section 2 of this act shall become effective January 1, 2004.

SECTION 5. 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.

49-1-7021 DLW 05/19/03