

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1585

By: Nations

COMMITTEE SUBSTITUTE

An Act relating to the consumer credit code; creating the Oklahoma Home Ownership and Equity Protection Act; amending 14A O.S. 2001, Sections 1-301, 3-309.4, 3-401, 5-202 and 5-203, which relate to the Uniform Consumer Credit Code; modifying definitions; prohibiting certain fees and charges on certain home loans; limiting and prohibiting certain practices on certain home loans; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma Home Ownership and Equity Protection Act".

SECTION 2. AMENDATORY 14A O.S. 2001, Section 1-301, is amended to read as follows:

Section 1-301. In addition to definitions appearing in subsequent articles, in this 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 the individual's account for personal services rendered or to be rendered by 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) "Subsection 10 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)~~ eight (8) percentage points for first-lien loans, or by more than ten (10) percentage points for subordinate-lien loans, 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 15 U.S.C., Section 1605(e), 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) premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage, whether or not the debt-cancellation coverage is insurance under applicable law, that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction; and
  - (v) 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.

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

(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."

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

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

- (i) the spouse of the individual;
- (ii) a brother, brother-in-law, sister, sister-in-law of the individual;
- (iii) an ancestor or lineal descendant of the individual or the individual's spouse; and
- (iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

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

- (1) a person directly or indirectly controlling, controlled by or under common control with the organization;
- (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;
- (3) the spouse of a person related to the organization; and
- (4) a relative by blood or marriage of a person related to the organization who shares the same home with such person.

(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.

(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 the person's business or trade name or designation; or
- (c) from any other persons with the consent of that person.



(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 3. AMENDATORY 14A O.S. 2001, Section 3-309.4, is amended to read as follows:

Section 3-309.4 (1) ~~(a)~~ In addition to other disclosures required under ~~Title 14A of the Oklahoma Statutes~~ this title, for each subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title, the creditor shall provide the following disclosures in conspicuous type size:

- ~~(i)~~ (a) "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application"; ~~and~~
- ~~(ii)~~ (b) "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)~~ (c) 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)~~ (d) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, the amount of any balloon 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. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under subparagraph (e) of this section;

(e) for a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than One Hundred Dollars (\$100.00) above or below the amount required to be disclosed; and

(f) "mortgage loan rates, closing costs and fees vary based on many factors. These include your credit history and financial circumstances, your employment history, the loan-to-value that is represented by your home and the amount of the loan you have requested, and the type of property that will secure your loan. The loan rate and fees could also vary based on which creditor or broker you select. As a borrower, you should shop around and compare loan rates and fees. You should also consider talking to a qualified,

independent credit counselor or other experienced financial advisor regarding the rate, fees and provisions of this mortgage loan before you proceed. A list of qualified, independent counselors is available by calling the Oklahoma Department of Consumer Credit or the Oklahoma State Banking Department. Remember: property taxes and homeowner's insurance are your responsibility, and not all creditors provide escrow services that enable them to make those payments on your behalf. You should ask your creditor about these services. Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

- (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 subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 subsection 10 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 subsection 10 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 subsection 10 mortgage is consummated; and

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

(4) A subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title 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 make a payment to a contractor under a home improvement contract from amounts extended as credit under a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title, 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.

(9) Any subsection 10 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~~ this title.

(10) 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.

(11) (a) The Administrator may, by regulation or order, exempt specific subsection 10 mortgage products or categories of subsection 10 mortgages from any or all of the prohibitions specified in subsections (3) through (8) 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) subsection 10 mortgage loans that the Board of Governors of the Federal Reserve System has found to be unfair, deceptive, or designed to evade the provisions of this section; and
- (ii) refinancing of subsection 10 mortgage loans that the Board of Governors of the Federal Reserve System has found to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

SECTION 4. AMENDATORY 14A O.S. 2001, Section 3-401, is amended to read as follows:

Section 3-401. This part applies to consumer loans. ~~In~~  
~~addition,~~ Section 3-309.3 of Part 3 of this article contains certain  
limitations upon the terms of extensions of credit under revolving  
loan account plans which are subject to either a fixed or a variable  
rate and are secured by a consumer's principal dwelling. In  
addition, Section 3-309.4 of Part 3 of this article contains certain  
limitations upon the terms of extensions of credit under a  
subsection 10 mortgage referred to in subsection (10) of Section 1-  
301 of this title.

SECTION 5. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 3-410 of Title 14A, unless there  
is created a duplication in numbering, reads as follows:

(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;
- (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. §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;

(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 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-113 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A creditor shall not sell any individual or group credit life, accident and health or unemployment insurance product on a prepaid single premium basis in conjunction with a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes unless the following conditions are met:

- (a) if a creditor offers any individual or group credit life, accident and health or unemployment insurance product purchased on a prepaid single premium basis in conjunction with a subsection 10 mortgage, the creditor shall offer the obligor the option of purchasing all such insurance on a monthly premium basis, if such option is available;
- (b) a creditor shall not sell credit life, accident and health or unemployment insurance products in conjunction with a subsection 10 mortgage other than where the insurance premiums are calculated, earned and paid on a monthly or other regular, periodic basis without providing a separate disclosure with a copy acknowledged by the obligor no later than the time of closing in a form substantially similar to the following:

"Insurance Notice To Obligor

You have elected to buy credit life, accident and health and/or unemployment insurance in conjunction with this mortgage loan. The cost of this insurance is being prepaid, and it is being financed at the interest rate provided for in the loan. This insurance is not required as a condition of closing this loan, and it has been included with the loan at your request.

You have the right at any time to cancel any or all such policies purchased in conjunction with this loan. You may cancel your policy or policies by signing and returning a copy of this notice to your creditor or you may contact your creditor directly.

If you cancel your insurance within thirty (30) days of the date of your loan, then you will receive either a full refund or a credit against your loan account. If you cancel your insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium. You must cancel within thirty (30) days of the date of the loan to receive a full refund.

Credit Insurance Cancellation

I (we) request that the creditor cancel the \_\_\_\_\_ insurance that I (we) purchased in conjunction with my (our) mortgage loan dated \_\_\_\_\_.

\_\_\_\_\_  
Today's Date

\_\_\_\_\_  
Borrower"

(c) this subsection shall not apply to credit life, accident and health or unemployment insurance sold by

the creditor for which the obligor chooses the beneficiary and it is someone other than the creditor.

SECTION 7. AMENDATORY 14A O.S. 2001, Section 5-202, is amended to read as follows:

Section 5-202. (1) If a creditor has violated the provisions of this act applying to certain negotiable instruments (Section 2-403 of this title), or limitations on the schedule of payments or loan term for supervised loans (Section 3-512 of this title), the debtor is not obligated to pay the credit service charge or loan finance charge and has a right to recover from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this act applying to authority to make supervised loans (Section 3-502 of this title), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one (1) year after the due date

of the last scheduled payment of the agreement pursuant to which the charge was paid.

(3) Any creditor or servicer who fails to comply with any requirement for subsection 10 mortgages under Section 5 of this act, with respect to any person is liable to that person in 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. No action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(4) A debtor is not obligated to pay a charge in excess of that allowed by this act, and if ~~he~~ the debtor has paid an excess charge ~~he~~ the debtor has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

~~(4)~~ (5) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the Administrator (Section 6-113 of this title). With respect to excess charges



arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

~~(5)~~ (6) Except as otherwise provided, no violation of this act impairs rights on a debt.

~~(6)~~ (7) If an employer discharges an employee in violation of the provisions prohibiting discharge (Section 5-106 of this title), the employee may within thirty (30) days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks.

~~(7)~~ (8) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error no liability is imposed under subsections (1), (2)~~7~~ and ~~(4)~~ (5) of this section and the validity of the transaction is not affected.

~~(8)~~ (9) In any case in which it is found that a creditor has violated this act, the court may award reasonable ~~attorney's~~ attorney fees incurred by the debtor.

SECTION 8. AMENDATORY 14a O.S. 2001, 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 of Article 2 of this title 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,

(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;

- (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~~ attorney 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~~ cardholder 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 ~~42~~ 3-309.4 of this ~~act~~ title, 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 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 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) 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) 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) (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 9. This act shall become effective January 1, 2004.

49-1-6154

DLW

02/13/03