

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 1565

By: Monson of the Senate

and

Nations of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to consumer credit; amending Sections 2, 3, 4, 6, 8, 9, 10 and 18, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Sections 3102, 3103, 3104, 3106, 3108, 3109, 3110 and 3118), which relate to the Deferred Deposit Lending Act; defining term; providing for application of act; requiring specified notice; requiring specified information be included in certain document; modifying prohibited act and prohibiting certain act; providing exception to fees which may be charged by a lender; modifying number of databases which may be approved by Administrator of Consumer Credit; authorizing lender to charge specified fee; providing for repayment plan under specified conditions and containing specified terms; modifying limit on number of certain deferred deposit loans; deleting requirement for consumer credit counseling under specific circumstances; deleting requirement that Administrator maintain list of consumer credit counselors, that certain debtors contact counselors and that counselors provide certain written statement; directing use of certain funds for consumer counseling and education; requiring lender to pay specified amount for deposit into Oklahoma Deferred Deposit Lending Regulatory Revolving Fund; authorizing Administrator to establish schedule for payments; providing for use of certain funds for specified program; specifying criteria for program and requiring bid process for selection; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3102), is amended to read as follows:

Section 3102. As used in ~~this act~~ the Deferred Deposit Lending Act:

1. "Administrative Procedures Act" means the general act of this state governing administrative procedures and is cited in Section 250 et seq. of Title 75 of the Oklahoma Statutes;

2. "Administrator" means the Administrator as defined in the Uniform Consumer Credit Code;

3. "Business instrument" means a draft, check or evidence of the proceeds paid to a debtor in a deferred deposit loan transaction by a deferred deposit lender;

4. "Consecutive loan" means a new deferred deposit loan that any lender enters into with a debtor no later than seven (7) days after the date on which a previous deferred deposit loan made to the same debtor is paid in full;

5. "Debtor" means the ~~signer~~ signer of an instrument which is initially payable to a deferred deposit lender;

~~5.~~ 6. "Deferred deposit lender" or "lender" means any person licensed under this act to make deferred deposit loans, including an assignee of the lender's right to payment, but use of the term does not itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment;

~~6.~~ 7. "Deferred deposit loan" means a transaction whereby a lender makes a cash advance to a debtor not as part of a revolving loan account as defined in Section 3-108 of Title 14A of the Oklahoma Statutes and, for a finance charge or other consideration, does the following:

- a. accepts a dated instrument from the debtor,
- b. agrees to hold the instrument for a period of time prior to negotiation, deposit or presentation of the instrument for payment, and
- c. advances to the debtor, credits to the debtor's account, or pays to another person on the debtor's behalf, the amount of the instrument, less the finance charge permitted by this act;

~~7.~~ 8. "Finance charge" means the finance charge as defined in Regulation Z;

~~8.~~ 9. "Instrument" means a personal check, negotiable order of withdrawal, or authorization to transfer or withdraw funds from a deposit account of the debtor signed by the debtor and made payable to a deferred deposit lender in a deferred deposit loan subject to this act;

~~9.~~ 10. "Licensed location" means the place of business where a lender is allowed to make deferred deposit loans under a license issued pursuant to this act;

~~10.~~ 11. "Licensee" means a person licensed to make deferred deposit loans pursuant to this act;

~~11.~~ 12. "Loan amount" means the principal which the debtor actually receives after signing an instrument payable initially to a deferred deposit lender;

~~12.~~ 13. "Person" includes a natural person, an individual, organization, partnership, corporation, joint venture, trust, association or any other legal entity, however organized;

~~13.~~ 14. "Principal of a deferred deposit loan" means the total of the net amount paid to, receivable by or paid or payable for the account of the debtor;

~~14.~~ 15. "Regulation Z" means Title 160, Chapter 45 of the Oklahoma Administrative Code, adopted in conformity with the Consumer Credit Protection Act, Public Law 90-321, 82 Stat. 146, as amended, including the amendments to the Federal Consumer Credit Protection Act in the Truth in Lending Simplification and Reform Act, Public Law 96-221, 94 Stat. 168-185; and

~~15.~~ 16. "Renewal" means a transaction in which a debtor pays in cash the finance charge payable under a deferred deposit loan and refinances all or part of the unpaid balance of the principal of the deferred deposit loan with a new deferred deposit loan. A transaction is also considered a renewal if a debtor pays off an

existing deferred deposit loan with the proceeds of a deferred deposit loan from another lender.

SECTION 2. AMENDATORY Section 3, Chapter 240, O.S.L. 2003 (68 O.S. Supp. 2003, Section 3103), is amended to read as follows:

Section 3103. A. The scope of this act shall not apply to a supervised lender licensed under the Uniform Consumer Credit Code. Further, nothing in this act shall modify, affect, alter, change or restrict practices or operations of supervised lenders under the Uniform Consumer Credit Code, rules of the Oklahoma Department of Consumer Credit or rules or interpretations of the Administrator of the Department of Consumer Credit.

B. Except as otherwise provided in subsection A of this section, the provisions of this act shall apply to all deferred deposit loans made; provided, the following lenders shall not be subject to the licensing requirements of this act:

1. A bank, savings institution, credit union or farm credit system organized under and regulated by the laws of the United States or any state;

2. Government or governmental agencies or instrumentalities; or

3. Pawnbrokers engaged in pawn transactions as defined in the Oklahoma Pawnshop Act.

C. The provisions of this act shall apply to transactions if the lender, wherever located, enters into the transaction with the debtor by mail, brochure, telephone, print, radio, television, Internet, or any other means.

SECTION 3. AMENDATORY Section 4, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3104), is amended to read as follows:

Section 3104. A. Each deferred deposit loan shall be documented by a written agreement executed by both the lender and the debtor. The written agreement shall contain the name or trade

name of the lender, the license number of the lender, the toll-free telephone number of the Department of Consumer Credit, the transaction date, the loan amount, and a statement of the total amount of fees charged. The written agreement must expressly authorize the lender to defer presentment or deposit of the instrument until a specific date; provided, unless the debtor has entered into an installment payment plan pursuant to Section 3109 of this title, such date shall be not later than forty-five (45) days from the date the instrument is accepted by the lender.

B. The disclosure of the credit terms of a deferred deposit loan shall be according to and governed by the requirements of Regulation Z. The definitions and requirements of that act, regulation and commentary shall apply to deferred deposit loans as if those provisions are fully set out in this act.

C. A completed copy of the written agreement and "Notice of Cancellation" form as prescribed by the Administrator shall be given to and acknowledged in writing by the debtor when the written agreement is signed.

D. A lender may pay the proceeds of a deferred deposit loan to the debtor by a business instrument, money order or cash. A lender may not charge the debtor an additional fee for cashing the lender's business instrument.

E. A lender shall provide the following notices in a prominent place on each deferred deposit loan agreement in at least twelve-point type:

"A deferred deposit loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs."

"You have the right to rescind this deferred deposit loan no later than 5 p.m. of the next business day following this loan transaction."

"If you enter into a deferred deposit loan and three consecutive deferred deposit loans, you have the right to pay off the fourth loan pursuant to an installment payment plan, subject to certain conditions."

F. A lender shall post at the licensed location a notice of the charges, terms, and effective annual percentage rate for deferred deposit loans made by the lender.

G. Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least twelve-point type to read:

"This is a deferred deposit loan instrument regulated by the Oklahoma Department of Consumer Credit, Title 59, Sections 3101 et seq. and any holder of this check takes it subject to all claims and defenses of the originator."

and shall include the address and toll-free telephone number of the Department of Consumer Credit.

H. At the time a debtor enters into a deferred deposit loan transaction, the lender shall provide the debtor with a pamphlet, approved by the Administrator of Consumer Credit, describing the availability of debt management and credit counseling services, the debtor's right to an installment payment plan and the debtor's rights and responsibilities in the transaction. The pamphlet shall indicate a toll-free telephone number for the Administrator that the debtor may contact to receive information relating to debt management and credit counseling services.

SECTION 4. AMENDATORY Section 6, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3106), is amended to read as follows:

Section 3106. A deferred deposit lender shall not:

1. Charge fees other than, or in excess of those authorized by ~~this act~~ the Deferred Deposit Lending Act;

2. Make deferred deposit loans at unlicensed locations;
3. Alter or delete the date on an instrument after it has been accepted by the lender pursuant to a deferred deposit loan;
4. Accept an undated instrument or an instrument dated on a date other than the date of the deferred deposit loan;
5. Accept an instrument unless the account on which the instrument is drawn is a legitimate, open and active account;
6. Require a debtor to provide security for the deferred deposit loan or require a debtor to provide a guaranty from another person;
7. Advance a loan amount greater than Five Hundred Dollars (\$500.00) to a borrower in one deferred deposit loan transaction exclusive of the finance charge allowed in Section ~~§~~ 3108 of this ~~act~~ title;
8. Engage in a deferred deposit loan with a term of less than ~~thirteen (13)~~ twelve (12) days or more than forty-five (45) days;
9. Negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender;
10. Negotiate any instrument presented by a borrower if the borrower has redeemed the instrument by paying the full amount due under the deferred deposit loan;
11. Make any charge for insurance in connection with a deferred deposit loan transaction;
12. Refuse the borrower's right to rescind the deferred deposit loan at any time between the time of the deferred deposit loan transaction and 5 p.m. of the next business day following the deferred deposit loan transaction;
13. Charge the borrower an additional finance charge or fee for cashing a lender's business instrument, if the lender pays the proceeds from the loan transaction in the form of a business instrument; ~~or~~

14. Require or accept more than one dated instrument per deferred deposit loan; or

15. Refuse the borrower's right to enter into an installment payment plan, pursuant to this act.

SECTION 5. AMENDATORY Section 8, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3108), is amended to read as follows:

Section 3108. A. Regardless of any other law governing the imposition of interest, fees, loan finance charges or the extension of credit, a deferred deposit lender may charge a finance charge for each deferred deposit loan that does not exceed Fifteen Dollars (\$15.00) for every One Hundred Dollars (\$100.00) advanced up to the first Three Hundred Dollars (\$300.00) of the amount advanced; for the advance amounts in excess of Three Hundred Dollars (\$300.00), the lender may charge an additional finance charge of Ten Dollars (\$10.00) for every One Hundred Dollars (\$100.00) advanced in excess of Three Hundred Dollars (\$300.00). The credit terms of the deferred deposit loan shall be disclosed in accordance with Regulation Z, including the terms "finance charge" and "annual percentage rate". The finance charge under this subsection shall be deemed fully earned as of the date of the transaction. Except for a fee for a dishonored instrument and the actual database verification fee pursuant to subparagraph b of paragraph 2 of subsection B of Section 3109 of this title, the lender may charge only those charges expressly authorized in this subsection in connection with a deferred deposit loan.

B. If an instrument held by a lender as a result of a deferred deposit loan is returned to the lender from a payor financial institution due to insufficient funds, a closed account or a stop payment order, the lender shall have the right to exercise all civil means authorized by law to collect the amount of the instrument. In addition, the lender may contract for and collect a dishonored

instrument charge, not to exceed Twenty-five Dollars (\$25.00); however, a dishonored instrument charge shall not be allowed if the instrument is dishonored by a financial institution, or the debtor places a stop payment order, due to forgery or theft of the instrument.

SECTION 6. AMENDATORY Section 9, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3109), is amended to read as follows:

Section 3109. A. A lender may not enter into a renewal of a deferred deposit loan transaction.

B. Upon any application being made for a deferred deposit loan, the lender shall determine if the applicant has any outstanding deferred deposit loans as follows:

1. The applicant shall be required to sign an affidavit stating whether the applicant has any deferred deposit loans outstanding with the lender or any other deferred deposit lender and if so, the status of each such loan; and

2. The lender shall be required to verify the accuracy of the affidavit through commercially reasonable means. A lender's method of so verifying shall be considered in compliance with the provisions of this section if the verification method includes a manual investigation or an electronic query of:

- a. the lender's own records, including both records maintained at the location where the loan is being applied for and records maintained at other locations that are owned and operated by the lender or the lender's affiliates, and
- b. ~~a~~ any private database approved by the Administrator of Consumer Credit, if the lender subscribes to such a database; provided, all lenders shall be required to subscribe to such a database or otherwise obtain the required information in a manner approved by the

Administrator not later than July 1, 2004. The lender may charge the applicant a fee for database verification not to exceed the actual fee charged to the lender by the database provider.

If the lender determines that the applicant has more than one outstanding deferred deposit loan, the loan applied for shall not be made.

C. A deferred deposit loan transaction is completed when the lender presents the instrument for payment or initiates an ACH debit to the debtor's bank account to collect on the instrument, or the debtor redeems the instrument by paying the full amount of the instrument to the lender. Once the debtor has completed the deferred deposit loan transaction, the lender may enter into a new deferred deposit loan agreement with the debtor, and the new deferred deposit loan transaction shall not be deemed to be a renewal of the previous deferred deposit loan; provided, a new deferred deposit loan made within thirteen (13) calendar days after a previous deferred deposit loan has been entered into between the lender and the debtor shall be considered a renewal and shall not be made.

D. If a debtor enters into a third consecutive loan, the lender shall provide the consumer an option to repay such loan and each consecutive loan pursuant to a written repayment plan subject to the following terms:

1. The debtor shall request the repayment plan, either orally or in writing, prior to the due date of the loan;

2. The debtor shall repay the loan in four equal installments with one installment due on each of the next four dates on which the customer receives regular wages or compensation from an employer, pursuant to a written repayment plan agreement;

3. The consumer shall pay a processing fee of ten percent (10%) of the principal amount of the loan per loan not to exceed Fifteen Dollars (\$15.00) for administration of the payment plan;

4. The consumer shall agree not to enter into any additional deferred presentment loans during the repayment plan term and for a period of fifteen (15) days after termination of the repayment plan term; and

5. Upon positive completion of the repayment plan, the lender shall report the debtor's positive payment history to at least one national consumer credit reporting agency.

E. A lender shall negotiate or present an instrument for payment only if the instrument is endorsed with the actual business name of the lender.

~~E.~~ F. Prior to the lender negotiating or presenting the instrument, the debtor shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the debtor pays to the lender the unpaid balance of the principal and all accrued fees and charges.

SECTION 7. AMENDATORY Section 10, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3110), is amended to read as follows:

Section 3110. ~~A.~~ A. After the debtor has entered into a fifth consecutive deferred deposit loan, a lender shall not make a deferred deposit loan to a debtor if a debtor is applying for a sixth or subsequent deferred deposit loan in a ninety-day period, unless the debtor has undergone consumer credit counseling within the preceding six-month period.

~~B.~~ The Administrator of Consumer Credit shall maintain a list of approved consumer credit counselors. In order to meet the requirement to undergo consumer credit counseling as provided in this section, a debtor shall be required to contact an approved counselor, either in person or by telephone. The counselor shall

~~provide a written statement to the debtor that such contact has been made. Such statement shall be provided to the lender as part of the application for the deferred deposit loan until 8:00 a.m. on the second business day after the fifth consecutive deferred deposit loan has been paid in full.~~

SECTION 8. AMENDATORY Section 18, Chapter 240, O.S.L. 2003 (59 O.S. Supp. 2003, Section 3118), is amended to read as follows:

Section 3118. There is hereby created in the State Treasury a revolving fund for the Commission on Consumer Credit to be designated the "Oklahoma Deferred Deposit Lending Regulatory Revolving Fund". The fund shall consist of all monies received by the Administrator of Consumer Credit as license fees, examination fees, investigation fees, application fees, fees imposed for consumer credit counseling education and any administrative fines imposed pursuant to the Deferred Deposit Lending Act. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the Administrator. Monies accruing to the credit of this fund are hereby appropriated and may be budgeted and expended by the Administrator upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3119 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Each lender shall pay five cents (\$0.05) for each deferred deposit loan entered into to be deposited into the Oklahoma Deferred Deposit Lending Regulatory Revolving Fund. The schedule for payment shall be determined by the Administrator of Consumer Credit. Lenders shall be prohibited from including such payment in the fees

and charges provided for under Section 3108 of Title 59 of the Oklahoma Statutes.

B. All funds collected pursuant to this section shall be paid by the Administrator to a third-party, Oklahoma-based consumer credit counseling provider with a verifiable history of work with both industry and consumers in the appropriate field for a program of research and implementation of voluntary consumer counseling and education specifically designed for consumers utilizing deferred deposit loans. The program shall be:

1. Selected by a bid process, pursuant to the Oklahoma Central Purchasing Act; and

2. Designed in consultation with representatives of both the industry and consumers.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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