ENROLLED HOUSE
BILL NO. 1574

By: Dorman, Piatt, Adkins, Armes, Benge, Blackwell, Calvey, Cargill, DeWitt, Jones, Liotta, Peters, Peterson, Roggow, Steele, Winchester and Wright of the House

and

Coffee of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 2085, 2086, 2088, and 2089, as amended by Sections 3, 4, 5 and 6, Chapter 469, O.S.L. 2002, and Section 8, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2002, Sections 2085, 2086, 2088, 2089 and 2092), which relate to the Mortgage Broker Licensure Act; modifying licensing criteria for mortgage loan originator; deleting certain contract requirement; modifying prohibition against receipt of fees under certain circumstances; expanding investigative authority of Administrator of Consumer Credit; modifying application of penalty; deleting certain mortgage broker application requirement; amending 14A O.S. 2001, Sections 1-301, 3-309.4, 3-401, 5-202 and 5-203, which relate to consumer credit; providing short title; modifying definition; modifying disclosure requirements for certain mortgages; modifying allowable amount of certain penalty; authorizing certain prepayment penalty; clarifying statutory provisions; providing restrictions on certain mortgages and creditors; preempting other laws on certain subjects; construing act; restricting certain refinancing activities; restricting sale of certain insurance; providing for certain liability; establishing certain statute of limitations; modifying statutory references; providing for codification; providing for noncodification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 2085, as amended by Section 3, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2002, Section 2085), is amended to read as follows:

Section 2085. A. 1. A person of good moral character who:

a. has at least three (3) years' experience in the residential mortgage loan industry as a mortgage loan originator or mortgage broker or real estate sales, title or lending industry during the five (5) years immediately preceding the time of application, or

b. has satisfactorily completed applicable educational requirements as established by rule of the Commission on Consumer Credit during the three (3) years immediately preceding the time of application, and

c. has passed a mortgage broker test pursuant to Section ~~8~~ 2092 of this ~~act~~ title not more than one (1) year preceding the time of application,

may make application to the Administrator of Consumer Credit for a mortgage broker license.

2. Application for a mortgage broker license shall be made upon forms prescribed by the Administrator and shall be accompanied by a nonrefundable application fee as set by rule of the Commission. The Commission or Administrator may require additional information on the experience, background, honesty, truthfulness, integrity and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the Administrator may require information as to the honesty, truthfulness, integrity and competency of any officer, director, shareholder or other interested party of the applicant.

3. Upon approval by the Administrator of the application and payment of the license fee provided for in the Mortgage Broker Licensure Act the Administrator shall issue to the applicant a license which shall authorize the applicant to act as a mortgage broker.

4. If a licensee is a person other than a natural person, the license issued entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under the provisions of this article. For purposes of this paragraph, an employee does not include an independent contractor. A responsible individual shall be a resident of this state, shall be in active management of the activities of the licensee governed by the Mortgage Broker Licensure Act and shall meet the qualifications set forth in this subsection for a licensee.

5. A licensee shall notify the Administrator that its responsible individual will cease to be in active management of the activities of the licensee within ten (10) days of knowledge of that fact. The licensee has ninety (90) days after the notification is received by the Administrator within which to replace the responsible individual with a qualified replacement and to notify

the Administrator of the replacement. If the license is not placed under active management of a qualified responsible individual and if notice is not given to the Administrator within the ninety-day period, the license shall expire.

6. A licensee shall not employ any person unless the licensee:

a. conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring the employee, and

b. keeps a record of the background investigation for a minimum of two (2) years after termination of the employee from employment with the licensee.

7. A license is not transferable nor may it be assigned and control of a licensee may not be acquired through a stock purchase or other device without the prior written consent of the Administrator. Written consent shall not be given if the Administrator finds that any of the grounds for denial, revocation or suspension of a license as set forth in Section 2088 of this title are applicable to the acquiring person. For purposes of this paragraph, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares of a licensed corporation, partnership, association or trust.

8. The licensee is liable for any damage caused by any employees while acting within the scope of employment as an employee of the licensee.

9. The examination and course of study requirements of this section may be waived by the Administrator for any person applying for a license who, within six (6) months immediately prior to the submission of the application to the Administrator, has been a licensee or a responsible person pursuant to the Mortgage Broker Licensure Act.

B. A license issued under this act shall be valid for a period of three (3) years, unless otherwise revoked or suspended by the Administrator.

C. The Administrator, on determining that the applicant is qualified and upon payment of the fees by the applicant, shall issue a license to the applicant which is evidenced by a continuous certificate. The Administrator shall grant or deny a license within thirty (30) days after receipt of the completed application and appropriate fees. An applicant who has been denied a license may not reapply for the license for sixty (60) days from the date of the previous application.

D. A licensee shall pay the renewal fee on or before December 31. Licenses not renewed by December 31 will be suspended and the licensee shall not act as a mortgage broker until the license is renewed or a new license is issued pursuant to the Mortgage Broker Licensure Act. A person may renew a suspended license by paying the renewal fee plus Twenty-five Dollars ($25.00) for each day after December 31 that a license renewal fee is not received by the Administrator and making application for renewal in the manner prescribed by the Administrator. Licenses which are not renewed by February 1 of the subsequent year shall expire. A license shall not

be granted to the holder of an expired license except as provided in the Mortgage Broker Licensure Act for the issuance of an original license.

E. On or before December 31, a licensee may request inactive status for the following license year, and the license shall be placed on inactive status after payment to the Administrator of the inactive status renewal fee prescribed in this section and the surrender of the license to the Administrator. During inactive status, an inactive licensee shall not act as a mortgage broker. A licensee may not be on inactive status for more than two (2) consecutive years, nor for more than four (4) years in any ten-year period. The license is deemed expired for violation of any of the limitations of this subsection.

F. An inactive licensee may return to active status notwithstanding the requirement of this section by making a request in writing to the Administrator for reactivation and paying the prorated portion of the annual fee that would have been charged to the licensee to maintain normal active status. The licensee shall also provide the Administrator with proof that the licensee meets all of the other requirements for acting as a mortgage broker.

G. A licensee shall prominently display the mortgage broker license in the office of the mortgage broker.

H. Every licensed mortgage broker shall designate and maintain a principal place of business in this state for the transaction of business. The license shall specify the address of the principal place of business. If a licensee wishes to maintain one or more locations for the transaction of business in addition to a principal place of business, the licensee shall first obtain a branch office license from the Administrator and designate a person for each branch office to oversee the operations of that branch office. The licensee shall submit a fee as set forth in this section for each branch office license issued. If the Administrator determines that the applicant is qualified, the Administrator shall issue a branch office license indicating the address of the branch office. The licensee shall conspicuously display the branch office license in the branch office. If the address of the principal place of business or of any branch office is changed, the licensee shall immediately notify the Administrator of the change and the Administrator shall endorse the change of address on the license for a fee as prescribed in this section.

I. 1. Initial and renewal license fees shall be Three Hundred Dollars ($300.00) for each three-year period.

2. Branch office fees shall be One Hundred Fifty Dollars ($150.00) for each three-year period.

3. Inactive status fees shall be Fifty Dollars ($50.00) for each year.

4. A fee of Ten Dollars ($10.00) shall be charged for each change of address on a branch office license.

5. Individual and renewal license fees for a mortgage loan originator license shall be One Hundred Dollars ($100.00) for each three-year period.

These fees shall be deposited in the Oklahoma Mortgage Brokers Recovery Fund.

J. A person may be denied a license for any of the causes set forth in subsection B of Section 2088 of this title.

K. A mortgage broker who held a current license as of July 1, 2003, which was issued under the Mortgage Broker Licensure Act shall be granted an initial license by the Administrator pursuant to the provisions of this section.

L. To be eligible to be a licensed mortgage loan originator, a person must make application to the Administrator of Consumer Credit. The person making application must meet the following criteria:

1. The person must be an individual who is at least ~~twenty-one (21)~~ eighteen (18) years of age;

2. The person must be a citizen of the United States of America or a lawfully admitted alien;

3. The person must designate in the application the name of the licensed mortgage broker sponsoring the mortgage loan originator;

4. The person must have at least eighteen (18) months of experience as a mortgage loan originator as evidenced by documentary proof of full-time employment as a mortgage loan originator with a licensed mortgage broker or a person exempt from licensure under Section 2083 of this title, or passes a mortgage loan originator test pursuant to Section ~~8~~ 2092 of this ~~act~~ title not more than one (1) year preceding the application; and

5. The person has not been convicted of a criminal offense the Administrator determines directly relates to the occupation of a mortgage loan originator.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 2086, as amended by Section 4, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2002, Section 2086), is amended to read as follows:

Section 2086. A. A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public.

B. ~~Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.~~

~~C.~~ 1. Upon receipt of a loan application and before the receipt of any monies from a borrower, a mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, or specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule of the Commission on Consumer Credit.

2. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable.

3. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

~~D.~~ C. If a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. The mortgage broker must provide the copies or transmit the documents within five (5) business days after the borrower has made the request in writing.

~~E.~~ D. 1. Except as otherwise permitted by this subsection, ~~a~~ no mortgage broker or mortgage loan originator shall ~~not~~ receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

2. A mortgage broker may solicit or receive fees for third-party provider goods or services in advance. The mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 2088, as amended by Section 5, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2002, Section 2088), is amended to read as follows:

Section 2088. A. The Administrator of Consumer Credit may upon his or her own motion, and shall upon written complaint filed by any person, investigate the business transactions of any mortgage broker or mortgage loan originator and, after notice and hearing, may, for any cause as set forth in subsection B of this section, impose the following sanctions:

1. Reprimand;

2. Probation for a specified period of time;

3. Suspension of license for specified periods of time;

4. Revocation of license;

5. Imposition of an administrative fine which shall be not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) for each violation nor exceed Five Thousand Dollars ($5,000.00) for all violations resulting from a single incident or transaction;

6. Restitution of actual damages suffered by the complaining person; or

7. Any combination of sanctions as provided for by paragraphs 1 through 6 of this subsection.

B. Cause shall be established upon clear and convincing evidence that any mortgage broker, mortgage loan originator or employee of a mortgage broker or mortgage loan originator has performed or has attempted to perform, or is performing or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for license;

2. Making substantial misrepresentations or false promises in the conduct of business as a mortgage broker or through advertising;

3. Failing to escrow, account for, or remit monies or documents as required by this act;

4. Commingling monies as prohibited by this act;

5. Having been convicted in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C., Section 3601 et seq.;

6. Having been convicted in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

7. Failing to pay the fees or obtain a license as required under the Mortgage Broker Licensure Act or to comply with an order lawfully issued pursuant to the Mortgage Broker Licensure Act; or

8. Having violated any provision of the Mortgage Broker Licensure Act.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 2089, as amended by Section 6, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2002, Section 2089), is amended to read as follows:

Section 2089. A. In addition to any other penalties provided by law, any person without a license as required by the Mortgage Broker Licensure Act who engages in the business of a mortgage broker or mortgage loan originator or who willingly and knowingly violates any provision of the Mortgage Broker Licensure Act, upon conviction, shall be guilty of a misdemeanor which shall be punishable by a fine of not more than One Thousand Dollars ($1,000.00) for each violation. Each violation shall be a separate offense under this section.

B. In addition to any civil or criminal actions authorized by law, the Administrator of Consumer Credit, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of the Mortgage Broker Licensure Act has allegedly occurred for an order enjoining or restraining the person from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 5. AMENDATORY Section 8, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2002, Section 2092), is amended to read as follows:

Section 2092. A. The Administrator of consumer credit shall appoint the Mortgage Broker Advisory Committee to serve as a testing committee to create, periodically update and establish standards for passing a test for mortgage brokers and all mortgage loan originators. The test is subject to the approval of the Administrator.

B. Each applicant for an original license as a mortgage broker or as a mortgage loan originator, before issuance of the license, shall personally take and pass the written test given under the supervision of the Administrator. The test must reasonably examine the applicant's knowledge of:

1. The obligations between principal and agent, the applicable canons of business ethics, the provisions of the Mortgage Broker Licensure Act and the rules adopted under the Mortgage Broker Licensure Act;

2. The arithmetical computations common to mortgage brokerage;

3. The principles of real estate lending; and

4. The general purposes and legal effect of mortgages, deeds of trust and security agreements.

C. The Administrator shall administer the test to applicants for licenses not less than once every three (3) months. The Administrator shall reasonably prescribe the time, place and conduct of testing and collect a fee for administration of the test to be assessed to all persons taking the test. The fee is One Hundred Fifty Dollars ($150.00) per testing. An applicant may not take the test more than two times within a twelve-month period.

D. All tests shall be given, conducted and graded in a fair and impartial manner and without unfair discrimination between individuals tested. The Administrator shall inform the applicant of the result of the test within thirty (30) business days.

E. For testing purposes, the Administrator shall prepare a handbook for mortgage brokers and mortgage loan originators and distribute the handbook to all applicants for a fee that shall not exceed the actual cost of producing and distributing the handbook.

F. For the purposes of this section, "applicant" means a person who has submitted a completed application in the form prescribed by law. ~~In the case of a mortgage broker, the application must be accompanied by a letter of inquiry to a surety company authorized to do business in this state regarding procurement of a bond pursuant to the requirements of the Mortgage Broker Licensure Act, to be issued upon completion of all requirements for the granting of a license under the Mortgage Broker Licensure Act.~~

SECTION 6. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 6 through 14 of this act shall be known and may be cited as the "Oklahoma Home Ownership and Equity Protection Act".

SECTION 7. 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) <u>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</u>

<u>(v)</u> 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 8. 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 exceed in the aggregate more than:

(aa) two percent (2%) of the loan amount prepaid in the first twelve (12) months after the subsection 10 mortgage is consummated, or

(bb) one percent (1%) of the loan amount prepaid in the second twelve (12) months after the subsection 10 mortgage is consummated;

(iv) the penalty does not apply after the end of the ~~five~~ two-year period beginning on the date on which the subsection 10 mortgage is consummated; and

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

(c) Notwithstanding the provisions of subparagraph (a) or (b) of this paragraph, a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of this title consummated with funds advanced directly or indirectly from a Federal Home Loan Bank may contain a prepayment penalty.

(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 9. 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 10. 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. 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;

(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 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-411 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A creditor may not refinance any consumer loan to the same borrower into a 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. Factors to be considered in determining whether the refinancing is in the borrower's interest include, but are not limited to, whether:

(a) the borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;

(b) there is a change in the amortization period of the new loan;

(c) the borrower receives cash in excess of the costs and fees of refinancing;

(d) the borrower's note rate of interest is reduced;

(e) there is a change from an adjustable to a fixed rate loan, taking into account costs and fees; or

(f) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.

A creditor 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.

SECTION 12. 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 13. 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 10 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)~~,~~ 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 14. 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 ~~12~~ 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 15. Sections 1 through 5 of this act shall become effective July 1, 2003.

SECTION 16. Sections 6 through 14 of this act shall become effective January 1, 2004.

SECTION 17. 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 House of Representatives the 14th day of May, 2003.

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Presiding Officer of the House
of Representatives

Passed the Senate the 22nd day of May, 2003.

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Presiding Officer of the Senate