

EHB 1585

THE STATE SENATE
Thursday, March 27, 2003

ENGROSSED

House Bill No. 1585

As Amended

ENGROSSED HOUSE BILL NO. 1585 - By: NATIONS, BRADDOCK and BLACKBURN
of the House and FISHER of the Senate.

[consumer credit code - Home Ownership and Equity
Protection Act - amending 14A O.S., Sections 1-301, 3-309.4,
3-401, 5-202 and 5-203 - codification - noncodification -
effective date]

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

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

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

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

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

1 the balance is applied to the unpaid principal or unpaid amount
2 financed.

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

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

10 (4) "Agricultural purpose" means a purpose related to the
11 production, harvest, exhibition, marketing, transportation,
12 processing, or manufacture of agricultural products by a natural
13 person who cultivates, plants, propagates, or nurtures the
14 agricultural products. "Agricultural products" includes
15 agricultural, horticultural, viticultural, and dairy products,
16 livestock, wildlife, poultry, bees, forest products, fish and
17 shellfish, and any products thereof, including processed and
18 manufactured products, and any and all products raised or produced
19 on farms and any processed or manufactured products thereof.

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

22 (a) fees or premiums for title examination, title
23 insurance or similar purposes including surveys;

- 1 (b) fees for preparation of a deed, settlement statement
2 or other documents;
3 (c) escrows for future payments of taxes and insurance;
4 (d) fees for notarizing deeds and other documents;
5 (e) appraisal fees; and
6 (f) credit reports.

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

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

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

19 (9) "Lender credit card or similar arrangement" means an
20 arrangement or loan agreement, other than a seller credit card,
21 pursuant to which a lender gives a debtor the privilege of using a
22 credit card, letter of credit, or other credit confirmation or
23 identification in transactions out of which debt arises:

- 1 (a) by a lender's honoring a draft or similar order for
2 the payment of money drawn or accepted by the debtor;
3 (b) by the lender's payment or agreement to pay the
4 debtor's obligations; or
5 (c) by the lender's purchase from the obligee of the
6 debtor's obligations.

- 7 (10) (a) "Subsection 10 mortgage" means a consumer credit
8 transaction that is secured by the consumer's
9 principal dwelling, other than a residential mortgage
10 transaction, a reverse mortgage transaction, or a
11 transaction under an open-end credit plan, if:
12 (i) the annual percentage rate at consummation of the
13 transaction will exceed by more than ~~ten (10)~~
14 eight (8) percentage points for first-lien loans,
15 or by more than ten (10) percentage points for
16 subordinate-lien loans, the yield on treasury
17 securities having comparable periods of maturity
18 on the fifteenth day of the month immediately
19 preceding the month in which the application for
20 the extension of credit is received by the
21 creditor; or
22 (ii) the total points and fees payable by the consumer
23 at or before closing will exceed the greater of:

1 (aa) eight percent (8%) of the total loan amount;

2 or

3 (bb) Four Hundred Dollars (\$400.00).

4 (b) After the two-year period beginning on the effective
5 date of the regulations promulgated under Section 155
6 of the Riegle Community Development and Regulatory
7 Improvement Act of 1994, and no more frequently than
8 biennially after the first increase or decrease under
9 this subsection, the Administrator may by rule
10 increase or decrease the number of percentage points
11 specified in subparagraph (i) of paragraph (a) of this
12 subsection, if the Administrator determines that the
13 increase or decrease is consistent with the consumer
14 protections against abusive lending provided by the
15 amendments made by subtitle B of Title I of the Riegle
16 Community Development and Regulatory Improvement Act
17 of 1994 and is warranted by the need for credit.
18 Such an increase or decrease may not result in the
19 number of percentage points referred to in this
20 subsection being less than eight (8) percentage points
21 or greater than twelve (12) percentage points.
22 In determining whether to increase or decrease the
23 number of percentage points, the Administrator shall

1 consult with representatives of consumers, including
2 low-income consumers, and lenders.

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

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

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

13 (ii) all compensation paid to mortgage brokers; ~~and~~

14 (iii) each of the charges listed in 15 U.S.C., Section
15 1605(e), except an escrow for future payment of
16 taxes, unless:

17 (aa) the charge is reasonable;

18 (bb) the creditor receives no direct or indirect
19 compensation; and

20 (cc) the charge is paid to a third party
21 unaffiliated with the creditor; ~~and~~

22 (iv) premiums or other charges for credit life,
23 accident, health, or loss-of-income insurance, or

1 debt-cancellation coverage, whether or not the
2 debt-cancellation coverage is insurance under
3 applicable law, that provides for cancellation of
4 all or part of the consumer's liability in the
5 event of the loss of life, health, or income or
6 in the case of accident, written in connection
7 with the credit transaction; and

8 (v) such other charges as the Administrator
9 determines to be appropriate.

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

14 (11) "Official fees" means:

- 15 (a) fees and charges prescribed by law which actually are
16 or will be paid to public officials for determining
17 the existence of or for perfecting, releasing, or
18 satisfying a security interest related to a consumer
19 credit sale, consumer lease, or consumer loan; or
20 (b) premiums payable for insurance in lieu of perfecting a
21 security interest otherwise required by the creditor
22 in connection with the sale, lease, or loan if the

1 premium does not exceed the fees and charges described
2 in paragraph (a) which would otherwise be payable.

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

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

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

12 (b) four or more periodic payments, excluding a down
13 payment, with respect to a debt arising from a
14 consumer credit sale pursuant to which no credit
15 service charge is made; or

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

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

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

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

6 (i) the spouse of the individual;

7 (ii) a brother, brother-in-law, sister, sister-
8 in-law of the individual;

9 (iii) an ancestor or lineal descendant of the
10 individual or the individual's spouse; and

11 (iv) any other relative, by blood or marriage, of
12 the individual or the individual's spouse
13 who shares the same home with the
14 individual.

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

17 (1) a person directly or indirectly controlling,
18 controlled by or under common control with
19 the organization;

20 (2) an officer or director of the organization
21 or a person performing similar functions
22 with respect to the organization or to a
23 person related to the organization;

1 payable (other than in the case of default) only
2 after:

- 3 (i) the transfer of the dwelling;
- 4 (ii) the consumer ceases to occupy the dwelling as a
5 principal dwelling; or
- 6 (iii) the death of the consumer.

7 (19) "Seller credit card" means an arrangement pursuant to
8 which a person gives to a buyer or lessee the privilege of using a
9 credit card, letter of credit or other credit confirmation or
10 identification primarily for the purpose of purchasing or leasing
11 goods or services from that person, or:

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

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

- 21 (a) organized, chartered, or holding an authorization
22 certificate under the laws of this state or of the
23 United States which authorizes the person to make

1 loans and to receive deposits, including a savings,
2 share, certificate or deposit account; and

3 (b) subject to supervision by an official or agency of
4 this state or the United States other than the
5 Oklahoma Securities Commission.

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

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

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

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

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

1 more than One Hundred Dollars (\$100.00) above or below
2 the amount required to be disclosed; and
3 (f) "mortgage loan rates, closing costs and fees vary
4 based on many factors. These include your credit
5 history and financial circumstances, your employment
6 history, the loan-to-value that is represented by your
7 home and the amount of the loan you have requested,
8 and the type of property that will secure your loan.
9 The loan rate and fees could also vary based on which
10 creditor or broker you select. As a borrower, you
11 should shop around and compare loan rates and fees.
12 You should also consider talking to a qualified,
13 independent credit counselor or other experienced
14 financial advisor regarding the rate, fees and
15 provisions of this mortgage loan before you proceed.
16 A list of qualified, independent counselors is
17 available by calling the Oklahoma Department of
18 Consumer Credit or the Oklahoma State Banking
19 Department. Remember: property taxes and homeowner's
20 insurance are your responsibility, and not all
21 creditors provide escrow services that enable them to
22 make those payments on your behalf. You should ask
23 your creditor about these services. Your payments on

1 existing debts contribute to your credit ratings. You
2 should not accept any advice to ignore your regular
3 payments to your existing creditors."

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

7 (b) (i) After providing the disclosures required by this
8 section, a creditor may not change the terms of
9 the extension of credit if such changes make the
10 disclosures inaccurate, unless new disclosures
11 are provided that meet the requirements of this
12 section.

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

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

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

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

21 (II) the creditor and consumer certify in
22 writing that the new disclosures were
23 provided by telephone, by not later than

1 three (3) days prior to the date of
2 consummation of the transaction.

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

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

16 (ii) For purposes of this subsection, any method of
17 computing a refund of unearned scheduled interest
18 is a prepayment penalty if it is less favorable
19 to the consumer than the actuarial method, as
20 that term is defined in Section 933(d) of the
21 Housing and Community Development Act of 1992.

22 (b) Notwithstanding the provisions of subparagraph (a) of
23 this paragraph, a subsection 10 mortgage referred to

1 in subsection (10) of Section 1-301 of ~~Title 14A of~~
2 ~~the Oklahoma Statutes~~ this title may contain a
3 prepayment penalty, including terms calculating a
4 refund by a method that is not prohibited under
5 Section 933(d) of the Housing and Community
6 Development Act of 1992 for the transaction in
7 question if:

8 (i) at the time the subsection 10 mortgage is
9 consummated:

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

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

- 1 (ii) the penalty applies only to a prepayment made
2 with amounts obtained by the consumer by means
3 other than a refinancing by the creditor under
4 the subsection 10 mortgage, or an affiliate of
5 that creditor;
- 6 (iii) the penalty does not apply after the end of the
7 five-year period beginning on the date on which
8 the subsection 10 mortgage is consummated; and
- 9 (iv) the penalty is not prohibited under other
10 applicable law.

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

22 (5) A subsection 10 mortgage referred to in subsection (10) of
23 Section 1-301 of ~~Title 14A of the Oklahoma Statutes~~ this title

1 having a term of less than five (5) years may not include terms
2 under which the aggregate amount of the regular periodic payments
3 would not fully amortize the outstanding principal balance.

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

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

14 (8) A creditor shall not make a payment to a contractor under a
15 home improvement contract from amounts extended as credit under a
16 subsection 10 mortgage referred to in subsection (10) of Section 1-
17 301 of ~~Title 14A of the Oklahoma Statutes~~ this title, other than:

18 (a) in the form of an instrument that is payable to the
19 consumer or jointly to the consumer and the
20 contractor; or

21 (b) at the election of the consumer, by a third party
22 escrow agent in accordance with terms established in a
23 written agreement signed by the consumer, the

1 creditor, and the contractor before the date of
2 payment.

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

7 (10) For purposes of this section, the term "affiliate" has the
8 same meaning as in Section 2(k) of the Bank Holding Company Act of
9 1956.

10 (11) (a) The Administrator may, by regulation or order, exempt
11 specific subsection 10 mortgage products or categories
12 of subsection 10 mortgages from any or all of the
13 prohibitions specified in subsections (3) through (8)
14 of this section, if the Administrator finds that the
15 exemption:

16 (i) is in the interest of the borrowing public; and
17 (ii) will apply only to products that maintain and
18 strengthen home ownership and equity protection.

19 (b) The Administrator, by regulation or order, shall
20 prohibit acts or practices in connection with:

21 (i) subsection 10 mortgage loans that the Board of
22 Governors of the Federal Reserve System has found

1 to be unfair, deceptive, or designed to evade the
2 provisions of this section; and

3 (ii) refinancing of subsection 10 mortgage loans that
4 the Board of Governors of the Federal Reserve
5 System has found to be associated with abusive
6 lending practices, or that are otherwise not in
7 the interest of the borrower.

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

10 Section 3-401. This part applies to consumer loans. ~~In~~
11 ~~addition,~~ Section 3-309.3 of Part 3 of this article contains certain
12 limitations upon the terms of extensions of credit under revolving
13 loan account plans which are subject to either a fixed or a variable
14 rate and are secured by a consumer's principal dwelling. In
15 addition, Section 3-309.4 of Part 3 of this article contains certain
16 limitations upon the terms of extensions of credit under a
17 subsection 10 mortgage referred to in subsection (10) of Section 1-
18 301 of this title.

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

22 (1) Limitation on terms on subsection 10 mortgages. A
23 subsection 10 mortgage referred to in subsection (10) of Section 1-

1 301 of Title 14A of the Oklahoma Statutes shall not contain a demand
2 feature that permits the creditor to terminate the loan in advance
3 of the original maturity date and to demand repayment of the entire
4 outstanding balance, except in the following circumstances:

5 (a) there is fraud or material misrepresentation by the
6 consumer in connection with the loan;

7 (b) the consumer fails to meet the repayment terms of the
8 agreement for any outstanding balance; or

9 (c) there is any action or inaction by the consumer that
10 adversely affects the creditor's security for the loan
11 or, any right of the creditor in such security;

12 (2) Restriction on activities. In connection with a subsection
13 10 mortgage referred to in subsection (10) of Section 1-301 of Title
14 14A of the Oklahoma Statutes:

15 (a) a creditor shall not replace or consolidate a zero
16 interest rate or other low-rate loan made by a
17 governmental or nonprofit creditor with a subsection
18 10 mortgage within the first ten (10) years of the
19 zero interest or other low-rate loan unless the
20 current holder of the loan consents in writing to the
21 refinancing. For purposes of this paragraph a "low-
22 rate loan" is a loan that carries a current interest
23 rate two (2) percentage points or more below the

1 current yield on United States Department of the
2 Treasury securities with a comparable maturity;
3 (b) no creditor shall recommend or encourage default on an
4 existing loan or other debt by an obligor before or in
5 connection with the closing or planned closing of a
6 subsection 10 mortgage that refinances all or any
7 portion of such existing loan or debt;
8 (c) a creditor extending mortgage credit subject to
9 subsection (10) of Section 1-301 of Title 14A of the
10 Oklahoma Statutes may not engage in a pattern or
11 practice of extending credit subject to a consumer
12 based on the consumer's collateral without regard to
13 the consumer's repayment ability, including the
14 consumer's current and expected income, current
15 obligations, and employment. There is a presumption
16 that a creditor has violated this subsection if the
17 creditor engages in a pattern or practice of making
18 subsection 10 mortgages without verifying and
19 documenting consumers' repayment ability;
20 (d) within one (1) year of having extended credit subject
21 to subsection (10) of Section 1-301 of Title 14A of
22 the Oklahoma Statutes, a creditor may not refinance
23 any loan subject to subsection (10) of Section 1-301

1 of Title 14A of the Oklahoma Statutes to the same
2 borrower into another loan subject to subsection (10)
3 of Section 1-301 of Title 14A of the Oklahoma
4 Statutes, unless the refinancing is in the borrower's
5 interest. An assignee holding or servicing an
6 extension of mortgage credit subject to subsection
7 (10) of Section 1-301 of Title 14A of the Oklahoma
8 Statutes shall not, for the remainder of the one-year
9 period following the date of origination of the
10 credit, refinance any loan subject to subsection (10)
11 of Section 1-301 of Title 14A of the Oklahoma Statutes
12 to the same borrower into another loan subject to
13 subsection (10) of Section 1-301 of Title 14A of the
14 Oklahoma Statutes, unless the refinancing is in the
15 borrower's interest. A creditor or assignee is
16 prohibited from engaging in acts or practices to evade
17 this provision, including a pattern or practice of
18 arranging for the refinancing of its own loans by
19 affiliated or unaffiliated creditors, or modifying a
20 loan agreement, whether or not the existing loan is
21 satisfied and replaced by the new loan, and charging a
22 fee;

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

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

- 12 (i) does not comply with rules set forth by a
13 nationally recognized arbitration organization
14 such as the American Arbitration Association,
- 15 (ii) does not require the arbitration proceeding to be
16 conducted:

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

19 (bb) in the city nearest the obligor's residence
20 where a federal district court is located,
21 or

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

1 (iii) does not require the creditor to contribute at
2 least fifty percent (50%) of the amount of any
3 filing fee, and
4 (iv) does not require the creditor to pay standard
5 daily arbitration fees, both its own and those of
6 the obligor, for at least the first day of
7 arbitration;

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

19 (3) Preemption. The laws of this state relating to the
20 brokering, originating, making, servicing and collecting of mortgage
21 loans subject to Title 14A of the Oklahoma Statutes prescribe rules
22 of conduct on citizens generally, comprise a comprehensive
23 regulatory framework intended to operate uniformly throughout the

1 state under the same circumstances and conditions and constitute
2 general laws of this state. Silence in the statutes of this state
3 with respect to any act or practice in the brokering, originating,
4 making, servicing or collecting of mortgage loans subject to Title
5 14A of the Oklahoma Statutes shall not be interpreted to mean that
6 the state has not completely occupied the field or has only set
7 minimum standards in its regulation of brokering, originating,
8 making, servicing or collecting of mortgage loans subject to Title
9 14A of the Oklahoma Statutes. It is the intent of the Legislature
10 to entirely preempt political subdivisions from the regulation and
11 licensing of persons engaged in the brokering, originating, making,
12 servicing or collecting of mortgage loans subject to Title 14A of
13 the Oklahoma Statutes in this state. No political subdivision shall
14 enact any ordinance, resolution, local regulation, rule or law that
15 regulates, directly or indirectly, the brokering, originating,
16 making, servicing or collecting of mortgage loans subject to Title
17 14A of the Oklahoma Statutes, the terms of mortgage loans subject to
18 Title 14A of the Oklahoma Statutes or that makes the eligibility of
19 any person or entity to do business with the political subdivision
20 dependent on the terms of mortgage loans subject to Title 14A of the
21 Oklahoma Statutes originated or serviced by such person or entity or
22 that imposes any reporting requirements or other obligations on a
23 person, or its subsidiaries or affiliates engaged in the brokering,

1 originating, making, servicing or collecting of mortgage loans
2 subject to Title 14A of the Oklahoma Statutes in this state. For
3 purposes of this section, "political subdivision" means any county,
4 city, town, school district, or other local governmental or public
5 entity, located within this state.

6 (4) Nothing in this section shall be construed to invalidate or
7 prohibit any ordinance, resolution, regulation, rule or law by a
8 political subdivision to establish and administer voluntary
9 neighborhood reinvestment programs in furtherance of the goals and
10 purposes of the "Community Reinvestment Act of 1977", 91 Stat. 1147,
11 12 U.S.C.A. 2901, as amended.

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

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

21 A creditor shall not sell any individual or group credit life,
22 accident and health or unemployment insurance product on a prepaid
23 single premium basis in conjunction with a subsection 10 mortgage

1 referred to in subsection (10) of Section 1-301 of Title 14A of the
2 Oklahoma Statutes unless the following conditions are met:

3 (a) if a creditor offers any individual or group credit
4 life, accident and health or unemployment insurance
5 product purchased on a prepaid single premium basis in
6 conjunction with a subsection 10 mortgage, the
7 creditor shall offer the obligor the option of
8 purchasing all such insurance on a monthly premium
9 basis, if such option is available;

10 (b) a creditor shall not sell credit life, accident and
11 health or unemployment insurance products in
12 conjunction with a subsection 10 mortgage other than
13 where the insurance premiums are calculated, earned
14 and paid on a monthly or other regular, periodic basis
15 without providing a separate disclosure with a copy
16 acknowledged by the obligor no later than the time of
17 closing in a form substantially similar to the
18 following:

19 "Insurance Notice To Obligor
20 You have elected to buy credit life, accident and
21 health and/or unemployment insurance in conjunction
22 with this mortgage loan. The cost of this insurance
23 is being prepaid, and it is being financed at the

1 interest rate provided for in the loan. This
2 insurance is not required as a condition of closing
3 this loan, and it has been included with the loan at
4 your request.

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

10 If you cancel your insurance within thirty (30) days
11 of the date of your loan, then you will receive either
12 a full refund or a credit against your loan account.

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

18 Credit Insurance Cancellation

19 I (we) request that the creditor cancel the _____
20 insurance that I (we) purchased in conjunction with my
21 (our) mortgage loan dated _____.

22 _____

23 Today's Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Borrower”

(c) this subsection shall not apply to credit life, accident and health or unemployment insurance sold by the creditor for which the obligor chooses the beneficiary and it is someone other than the creditor.

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

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

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

16 (3) Any creditor or servicer who fails to comply with any
17 requirement for subsection 10 mortgages under Section 5 of this act,
18 with respect to any person is liable to that person in an amount
19 equal to the sum of all finance charges and fees paid by the
20 consumer, unless the creditor demonstrates that the failure to
21 comply is not material. No action pursuant to this subsection may
22 be brought more than one (1) year after the due date of the last

1 scheduled payment of the agreement with respect to which the
2 violation occurred.

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

12 ~~(4)~~ (5) If a debtor is entitled to a refund and a person liable
13 to the debtor refuses to make a refund within a reasonable time
14 after demand, the debtor may recover from that person a penalty in
15 an amount determined by a court not exceeding the greater of either
16 the amount of the credit service or loan finance charge or ten times
17 the amount of the excess charge. If the creditor has made an excess
18 charge in deliberate violation of or in reckless disregard for this
19 act, the penalty may be recovered even though the creditor has
20 refunded the excess charge. No penalty pursuant to this subsection
21 may be recovered if a court has ordered a similar penalty assessed
22 against the same person in a civil action by the Administrator
23 (Section 6-113 of this title). With respect to excess charges

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

9 ~~(5)~~ (6) Except as otherwise provided, no violation of this act
10 impairs rights on a debt.

11 ~~(6)~~ (7) If an employer discharges an employee in violation of
12 the provisions prohibiting discharge (Section 5-106 of this title),
13 the employee may within thirty (30) days bring a civil action for
14 recovery of wages lost as a result of the violation and for an order
15 requiring the reinstatement of the employee. Damages recoverable
16 shall not exceed lost wages for six (6) weeks.

17 ~~(7)~~ (8) If the creditor establishes by a preponderance of
18 evidence that a violation is unintentional or the result of a bona
19 fide error no liability is imposed under subsections (1), (2),
20 ~~(4)~~ (5) of this section and the validity of the transaction is not
21 affected.

1 ~~(8)~~ (9) In any case in which it is found that a creditor has
2 violated this act, the court may award reasonable ~~attorney's~~
3 attorney fees incurred by the debtor.

4 SECTION 8. AMENDATORY 14a O.S. 2001, Section 5-203, is
5 amended to read as follows:

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

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

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

21 (bb) in the case of an individual action relating
22 to a consumer lease twenty-five percent
23 (25%) of the total amount of monthly

1 payments under the lease but the liability
2 pursuant to this part of this paragraph
3 shall be not less than One Hundred Dollars
4 (\$100.00) nor more than One Thousand Dollars
5 (\$1,000.00), or
6 (cc) in the case of an individual action relating
7 to a credit transaction not under an open-
8 end credit plan that is secured by real
9 property or a dwelling, not less than Two
10 Hundred Dollars (\$200.00) or greater than
11 Two Thousand Dollars (\$2,000.00); or
12 (ii) in the case of a class action, an amount the
13 court may allow, except that as to each member of
14 the class no minimum recovery shall be applicable
15 and the total recovery other than for actual
16 damages in any class action or series of class
17 actions arising out of the same failure to comply
18 by the same creditor shall not be more than the
19 lesser of Five Hundred Thousand Dollars
20 (\$500,000.00) or one percent (1%) of the net
21 worth of the creditor;
22 (c) in the case of a successful action to enforce the
23 liability under paragraph (b) of this subsection or in

1 any action in which a person is determined to have a
2 right of rescission under Section 5-204 of this title,
3 the costs of the action together with reasonable
4 ~~attorney's~~ attorney fees as determined by the court.
5 In determining the amount of award in any class
6 action, the court shall consider among other relevant
7 factors the amount of any actual damages awarded, the
8 frequency and persistence of failures of compliance by
9 the creditor, the resources of the creditor, the
10 number of persons adversely affected, and the extent
11 to which the creditor's failure of compliance was
12 intentional. In connection with the disclosures
13 required by Sections 2-310 and 3-309 of this title, a
14 creditor shall have a liability determined under
15 paragraph (b) of this subsection only for failing to
16 comply with the requirements of Section 5-204 of this
17 title, Sections 2-310(1) and 3-309(1) of this title,
18 subsections (2)(d) through (k) of Section 2-310 of
19 this title, and subsections (2)(d) through (k) of
20 Section 3-309 of this title. In connection with the
21 disclosures referred to in subsections (1) through (7)
22 of Sections 2-310.1 and 3-309.1 of this title, a card
23 issuer shall have a liability under this section only

1 to a ~~card holder~~ cardholder who pays a fee described
2 in Section 2-310.1(1)(d), Section 2-310.1(5)(a)(i),
3 Section 3-309.1(1)(d) or Section 3-309.1(5)(a)(i) of
4 this title or who uses the credit card or charge card.
5 In connection with disclosures for closed-end credit,
6 a creditor shall have a liability determined under
7 paragraph (b) of this subsection only for failing to
8 comply with the requirements of Section 5-204 of this
9 title, subsections (2)(b) insofar as it requires a
10 disclosure of the amount financed, through (f) and
11 subsection (j) of Section 2-306 of this title, and
12 subsections (2)(b) insofar as it requires a disclosure
13 of the amount financed, through (f) and subsection (h)
14 of Section 3-306 of this title. With respect to any
15 failure to make disclosure, liability shall be imposed
16 only upon the creditor required to make disclosure,
17 except as provided in subsection (3) of Section 2-302
18 of this title, subsection (3) of Section 3-302 of this
19 title and otherwise in this section; and
20 (d) in the case of a failure to comply with any
21 requirement under Section ~~12~~ 3-309.4 of this ~~act~~
22 title, an amount equal to the sum of all finance
23 charges and fees paid by the consumer, unless the

1 creditor demonstrates that the failure to comply is
2 not material.

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

17 (3) A creditor or assignee may not be held liable in any action
18 brought under this section or Section 5-204 of this title for a
19 violation of this title if the creditor or assignee shows by a
20 preponderance of evidence that the violation was not intentional and
21 resulted from a bona fide error notwithstanding the maintenance of
22 procedures reasonably adapted to avoid the error. A bona fide error
23 includes, but is not limited to, a clerical, calculation, computer

1 malfunction and programming, and printing error, but not an error of
2 legal judgment with respect to a person's disclosure obligations
3 under this title.

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

20 (b) (i) Except as otherwise specifically provided in this
21 title, any civil action against a creditor for a
22 violation of this title, and any administrative
23 proceeding against a creditor, with respect to a

1 consumer credit transaction secured by real
2 property may be maintained against any assignee
3 of such creditor only if:

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

9 (bb) the assignment to the assignee was
10 voluntary.

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

14 (aa) the disclosure can be determined to be
15 incomplete or inaccurate by a comparison
16 among the disclosure statement, any
17 itemization of the amount financed, the
18 note, or any other disclosure of
19 disbursement; or

20 (bb) the disclosure statement does not use the
21 terms or format required to be used by this
22 title.

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

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

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

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

16 (ii) A servicer of a consumer obligation arising from
17 a consumer credit transaction shall not be
18 treated as the owner of the obligation for
19 purposes of this section on the basis of an
20 assignment of the obligation from the creditor or
21 another assignee to the servicer solely for the
22 administrative convenience of the servicer in
23 servicing the obligation. Upon written request

1 by the obligor, the servicer shall provide the
2 obligor, to the best knowledge of the servicer,
3 with the name, address, and telephone number of
4 the owner of the obligation or the master
5 servicer of the obligation.

6 (iii) For purposes of this subsection, the term
7 "servicer" has the same meaning as in Section
8 6(i)(2) of the Real Estate Settlement Procedures
9 Act of 1974.

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

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

17 (9) The multiple failure to disclose to any person any
18 information required under this title to be disclosed in connection
19 with a single account under an open-end consumer credit plan, other
20 single consumer credit sale, consumer loan, consumer lease, or other
21 extension of consumer credit shall entitle the person to a single
22 recovery under this section but continued failure to disclose after
23 a recovery has been granted shall give rise to rights to additional

1 recoveries. This subsection does not bar any remedy permitted by
2 Section 5-204 of this title.

3 (10) A person may not take any action to offset any amount for
4 which a creditor or assignee is potentially liable to that person
5 under paragraph b of subsection (1) of this section against any
6 amount owed by that person unless the amount of the creditor's or
7 assignee's liability has been determined by judgment of a court of
8 competent jurisdiction in an action to which the person was a party.
9 This subsection does not bar a person then in default on the
10 obligation from asserting a violation of disclosure requirements as
11 an original action or as a defense or counterclaim to an action to
12 collect amounts owed by the person brought by another person liable
13 under this title if the claim is not time barred, or as a setoff or
14 defense in accordance with Section 5-205 of this title.

15 (11) (a) Any person who purchases or is otherwise assigned a
16 mortgage referred to in subsection (10) of Section 1-
17 301 of this title shall be subject to all claims and
18 defenses with respect to that mortgage that the
19 consumer could assert against the creditor of the
20 mortgage, unless the purchaser or assignee
21 demonstrates, by a preponderance of the evidence, that
22 a reasonable person exercising ordinary due diligence,
23 could not determine, based on the documentation

1 required by this title, the itemization of the amount
2 financed, and other disclosure of disbursements that
3 the mortgage was a mortgage referred to in subsection
4 (10) of Section 1-301 of this title. The preceding
5 sentence does not affect rights of a consumer under
6 paragraph (a) of subsection (4) or subsection (5) of
7 this section or any other provision of this title.

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

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

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

16 (aa) the amount of all remaining indebtedness;

17 and

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

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

1 under subparagraph (i) of paragraph (b) of this
2 subsection.

3 (d) Any person who sells or otherwise assigns a mortgage
4 referred to in subsection (10) of Section 1-301 of
5 this title shall include a prominent notice of the
6 potential liability under this subsection as
7 determined by the Administrator.

8 SECTION 9. This act shall become effective January 1, 2004.

9 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-25-03 - DO PASS,
10 As Amended.