

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2711:

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AS INTRODUCED

An Act relating to consumer credit; amending 14A O.S. 2001, Section 1-301, as amended by Section 7, Chapter 330, O.S.L. 2003 (14A O.S. Supp. 2003, Section 1-301), which relates to consumer loans; modifying definition of subsection 10 mortgages; and providing an effective date.

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

SECTION 1. AMENDATORY 14A O.S. 2001, Section 1-301, as amended by Section 7, Chapter 330, O.S.L. 2003 (14A O.S. Supp. 2003, 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 eight (8) percentage points for first-lien loans, or by more than ten (10) eight (8) 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%)~~ six percent (6%) 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;
- (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;
- (iv) premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage, whether or not the debt-cancellation coverage is insurance under applicable law, that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction; and
- (v) such other charges as the Administrator determines to be appropriate.

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

(11) "Official fees" means:

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

in connection with the sale, lease, or loan if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

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

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

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

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

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

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

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

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

(i) the spouse of the individual;

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

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

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

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

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

(18) "Reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent

consensual security interest is created against the consumer's principal dwelling:

- (a) securing one or more advances; and
- (b) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after:
 - (i) the transfer of the dwelling;
 - (ii) the consumer ceases to occupy the dwelling as a principal dwelling; or
 - (iii) the death of the consumer.

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

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

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

- (a) organized, chartered, or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

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

SECTION 2. This act shall become effective November 1, 2004.

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