

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 2096

By: Adelson

4  
5  
6 AS INTRODUCED

7 An Act relating to consumer credit; amending 14A O.S.  
8 2001, Section 1-301, as amended by Section 7, Chapter  
9 330, O.S.L. 2003 (14A O.S. Supp. 2007, Section 1-  
10 301), which relates to consumer loans; modifying  
11 definition of subsection 10 mortgages; and providing  
12 an effective date.

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

14 SECTION 1. AMENDATORY 14A O.S. 2001, Section 1-301, as  
15 amended by Section 7, Chapter 330, O.S.L. 2003 (14A O.S. Supp. 2007,  
16 Section 1-301), is amended to read as follows:

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

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

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

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

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

18 (5) "Closing costs" with respect to a debt secured by an  
19 interest in land ~~includes~~ means:

- 20 (a) fees or premiums for title examination, title  
21 insurance or similar purposes including surveys;
- 22 (b) fees for preparation of a deed, settlement statement  
23 or other documents;
- 24 (c) escrows for future payments of taxes and insurance;

1 (d) fees for notarizing deeds and other documents;

2 (e) appraisal fees; and

3 (f) credit reports.

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

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

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

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

21 (a) by a lender's honoring a draft or similar order for  
22 the payment of money drawn or accepted by the debtor;

23 (b) by the lender's payment or agreement to pay the  
24 debtor's obligations; or

1 (c) by the lender's purchase from the obligee of the  
2 debtor's obligations.

3 (10) (a) "Subsection 10 mortgage" means a consumer credit  
4 transaction that is secured by the consumer's  
5 principal dwelling, other than a residential mortgage  
6 transaction, a reverse mortgage transaction, or a  
7 transaction under an open-end credit plan, if:

8 (i) the annual percentage rate at consummation of the  
9 transaction will exceed by more than eight (8)  
10 percentage points for first-lien loans, or by  
11 more than ten (10) percentage points for  
12 subordinate-lien loans, the yield on treasury  
13 securities having comparable periods of maturity  
14 on the fifteenth day of the month immediately  
15 preceding the month in which the application for  
16 the extension of credit is received by the  
17 creditor; or

18 (ii) the total points and fees payable by the consumer  
19 at or before closing will exceed the greater of:

20 (aa) ~~eight percent (8%)~~ five percent (5%) of the  
21 total loan amount; or

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

23 (b) After the two-year period beginning on the effective  
24 date of the regulations promulgated under Section 155

1 of the Riegle Community Development and Regulatory  
2 Improvement Act of 1994, and no more frequently than  
3 biennially after the first increase or decrease under  
4 this subsection, the Administrator may by rule  
5 increase or decrease the number of percentage points  
6 specified in subparagraph (i) of paragraph (a) of this  
7 subsection, if the Administrator determines that the  
8 increase or decrease is consistent with the consumer  
9 protections against abusive lending provided by the  
10 amendments made by subtitle B of Title I of the Riegle  
11 Community Development and Regulatory Improvement Act  
12 of 1994 and is warranted by the need for credit.

13 Such an increase or decrease may not result in the  
14 number of percentage points referred to in this  
15 subsection being less than eight (8) percentage points  
16 or greater than twelve (12) percentage points.

17 In determining whether to increase or decrease the  
18 number of percentage points, the Administrator shall  
19 consult with representatives of consumers, including  
20 low-income consumers, and lenders.

21 (c) The amount specified in division (bb) of subparagraph  
22 (ii) of paragraph (a) of this subsection shall be  
23 adjusted annually on January 1 by the annual  
24 percentage change in the Consumer Price Index, as

1 reported on June 1 of the year preceding such  
2 adjustment.

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

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

7 (ii) all compensation paid to mortgage brokers;

8 (iii) each of the charges listed in 15 U.S.C., Section  
9 1605(e), except an escrow for future payment of  
10 taxes, unless:

11 (aa) the charge is reasonable;

12 (bb) the creditor receives no direct or indirect  
13 compensation; and

14 (cc) the charge is paid to a third party  
15 unaffiliated with the creditor;

16 (iv) premiums or other charges for credit life,  
17 accident, health, or loss-of-income insurance, or  
18 debt-cancellation coverage, whether or not the  
19 debt-cancellation coverage is insurance under  
20 applicable law, that provides for cancellation of  
21 all or part of the consumer's liability in the  
22 event of the loss of life, health, or income or  
23 in the case of accident, written in connection  
24 with the credit transaction; and

1 (v) such other charges as the Administrator  
2 determines to be appropriate.

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

7 (11) "Official fees" means:

8 (a) fees and charges prescribed by law which actually are  
9 or will be paid to public officials for determining  
10 the existence of or for perfecting, releasing, or  
11 satisfying a security interest related to a consumer  
12 credit sale, consumer lease, or consumer loan; or

13 (b) premiums payable for insurance in lieu of perfecting a  
14 security interest otherwise required by the creditor  
15 in connection with the sale, lease, or loan if the  
16 premium does not exceed the fees and charges described  
17 in paragraph (a) which would otherwise be payable.

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

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

23 (a) two or more periodic payments, excluding a down  
24 payment, with respect to a debt arising from a

1 consumer credit sale pursuant to which a credit  
2 service charge is made;

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

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

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

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

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

19 (i) the spouse of the individual;

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

22 (iii) an ancestor or lineal descendant of the  
23 individual or the individual's spouse; and  
24

1 (iv) any other relative, by blood or marriage, of  
2 the individual or the individual's spouse  
3 who shares the same home with the  
4 individual.

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

7 (1) a person directly or indirectly controlling,  
8 controlled by or under common control with  
9 the organization;

10 (2) an officer or director of the organization  
11 or a person performing similar functions  
12 with respect to the organization or to a  
13 person related to the organization;

14 (3) the spouse of a person related to the  
15 organization; and

16 (4) a relative by blood or marriage of a person  
17 related to the organization who shares the  
18 same home with such person.

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

23 (17) "Residential mortgage transaction" means a transaction in  
24 which a mortgage, deed of trust, purchase money security interest

1 arising under an installment sales contract, or equivalent  
2 consensual security interest is created or retained against the  
3 consumer's dwelling to finance the acquisition or initial  
4 construction of such dwelling.

5 (18) "Reverse mortgage transaction" means a nonrecourse  
6 transaction in which a mortgage, deed of trust, or equivalent  
7 consensual security interest is created against the consumer's  
8 principal dwelling:

9 (a) securing one or more advances; and

10 (b) with respect to which the payment of any principal,  
11 interest, and shared appreciation or equity is due and  
12 payable (other than in the case of default) only  
13 after:

14 (i) the transfer of the dwelling;

15 (ii) the consumer ceases to occupy the dwelling as a  
16 principal dwelling; or

17 (iii) the death of the consumer.

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

23 (a) from a person related to that person;

24

1 (b) from others licensed or franchised to do business  
2 under the person's business or trade name or  
3 designation; or

4 (c) from any other persons with the consent of that  
5 person.

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

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

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

17 SECTION 2. This act shall become effective November 1, 2008.

18  
19 51-2-3178 LKS 1/22/2008 5:49:02 PM  
20  
21  
22  
23  
24