

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 2742

By: Peters

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7
8 COMMITTEE SUBSTITUTE

9 An Act relating to consumer credit; amending 14A O.S.
10 2011, Sections 2-104, 2-106, 3-102, 3-104, 3-310, 5-
11 203 and 6-103, which relate to the Uniform Consumer
12 Credit Code; modifying definitions; modifying
13 applicability; modifying definition; providing
14 exception for certain education loans; modifying
15 disclosure procedure; requiring additional disclosure
16 for certain extensions of credit; requiring
17 additional statements if annual percentage rate
18 changes; mandating receipt of disclosure prior to
19 payment; permitting creditor to impose certain fees;
20 allowing consumer to waive or modify timing
21 requirements in certain instances; declaring
22 inapplicability; modifying certain civil liability
23 amounts; providing additional remedy; modifying
24 definition; requiring creditor notify borrower of
certain transfers; providing for codification;
providing an effective date; and declaring an
emergency.

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

SECTION 1. AMENDATORY 14A O.S. 2011, Section 2-104, is
amended to read as follows:

1 Section 2-104. (1) Except as provided in subsection (2),
2 "consumer credit sale" is a sale of goods, services or an interest
3 in land in which

4 (a) credit is granted by a person who regularly engages as
5 a seller in credit transactions of the same kind;

6 (b) the buyer is a person other than an organization;

7 (c) the goods, services or interest in land are purchased
8 primarily for a personal, family or household purpose;

9 (d) either the debt is payable in installments or a credit
10 service charge is made; and

11 (e) with respect to a sale of goods or services, the
12 amount financed does not exceed ~~Forty-five Thousand~~

13 ~~Dollars (\$45,000.00)~~ Fifty Thousand Dollars

14 (\$50,000.00). The dollar amount in this paragraph

15 shall be adjusted annually as indicated by the

16 Consumer Financial Protection Bureau by the annual

17 percentage increase in the Consumer Price Index for

18 Urban Wage Earners and Clerical Workers, as published

19 by the Bureau of Labor Statistics, rounded to the

20 nearest multiple of One Hundred Dollars (\$100.00) or

21 One Thousand Dollars (\$1,000.00) as applicable.

22 (2) Unless the sale is made subject to ~~this act~~ the Uniform
23 Consumer Credit Code by agreement (Section 2-601), "consumer credit
24 sale" does not include

- 1 (a) a sale in which the seller allows the buyer to
2 purchase goods or services pursuant to a lender credit
3 card or similar arrangement; or
4 (b) except as provided with respect to disclosure (Section
5 2-301) and debtors' remedies (Section 5-201), a sale
6 of an interest in land if the credit service charge
7 does not exceed thirteen percent (13%) per year
8 calculated according to the actuarial method on the
9 unpaid balances of the amount financed on the
10 assumption that the debt will be paid according to the
11 agreed terms and will not be paid before the end of
12 the agreed term.

13 SECTION 2. AMENDATORY 14A O.S. 2011, Section 2-106, is
14 amended to read as follows:

15 Section 2-106. (1) "Consumer lease" means a lease of goods

- 16 (a) which a lessor regularly engaged in the business of
17 leasing makes to a person, other than an organization,
18 who takes under the lease primarily for a personal,
19 family or household purpose;
20 (b) in which the amount payable under the lease does not
21 exceed ~~Forty five Thousand Dollars (\$45,000.00)~~ Fifty
22 Thousand Dollars (\$50,000.00). The dollar amount in
23 this paragraph shall be adjusted annually as indicated
24 by the Consumer Financial Protection Bureau by the

1 annual percentage increase in the Consumer Price Index
2 for Urban Wage Earners and Clerical Workers, as
3 published by the Bureau of Labor Statistics, rounded
4 to the nearest multiple of One Hundred Dollars
5 (\$100.00) or One Thousand Dollars (\$1,000.00) as
6 applicable; and

7 (c) which is for a term exceeding four (4) months.

8 (2) "Consumer lease" does not include a lease made pursuant to
9 a lender credit card or similar arrangement.

10 SECTION 3. AMENDATORY 14A O.S. 2011, Section 3-102, is
11 amended to read as follows:

12 Section 3-102. This article applies to consumer loans,
13 including supervised loans, unless otherwise provided by a section
14 of this article.

15 SECTION 4. AMENDATORY 14A O.S. 2011, Section 3-104, is
16 amended to read as follows:

17 Section 3-104. Except with respect to a loan primarily secured
18 by an interest in land (Section 3-105), or except with respect to
19 loans granted by institutions of postsecondary education except that
20 such loans by institutions of postsecondary education shall be
21 subject to disclosure requirements pursuant to Section 3-301 and
22 remedies for violation of disclosure provisions pursuant to Articles
23 5 and 6 if otherwise they meet the definition of consumer loan, a
24

1 "consumer loan" is a loan made by a person regularly engaged in the
2 business of making loans in which

3 ~~(1)~~ (a) the debtor is a person other than an organization;

4 ~~(2)~~ (b) the debt is incurred primarily for a personal, family
5 or household purpose;

6 ~~(3)~~ (c) either the debt is payable in installments or a loan
7 finance charge is made; and

8 ~~(4)~~ (d) either the principal does not exceed ~~Forty-five~~

9 ~~Thousand Dollars (\$45,000.00)~~ Fifty Thousand Dollars

10 (\$50,000.00), unless the loan is a private education

11 loan as that term is defined in the Federal Consumer

12 Credit Protection Act, or the debt is secured by an

13 interest in land. The dollar amount in this paragraph

14 shall be adjusted annually as indicated by the

15 Consumer Financial Protection Bureau by the annual

16 percentage increase in the Consumer Price Index for

17 Urban Wage Earners and Clerical Workers, as published

18 by the Bureau of Labor Statistics, rounded to the

19 nearest multiple of One Hundred Dollars (\$100.00) or

20 One Thousand Dollars (\$1,000.00) as applicable.

21 SECTION 5. AMENDATORY 14A O.S. 2011, Section 3-310, is
22 amended to read as follows:

23 Section 3-310. (1) In the case of ~~a transaction in which a~~

24 ~~mortgage, deed of trust, or equivalent consensual security interest~~

1 ~~is created or retained in the debtor's principal~~ any extension of
2 credit that is secured by the dwelling to finance the acquisition or
3 ~~initial construction of that dwelling, if that transaction~~ of a
4 consumer, which is also subject to the Real Estate Settlement
5 Procedures Act, 12 U.S.C. Sections 2601 et seq., good-faith
6 estimates of the disclosures required by this part shall be made in
7 accordance with the rules of the Administrator ~~concerning estimates~~
8 ~~before the credit is extended, or~~ of Consumer Credit and shall be
9 delivered or placed in the mail not later than three (3) business
10 days after the ~~lender~~ creditor receives the ~~debtor's~~ consumer's
11 written application, ~~whichever is earlier. If the disclosure~~
12 ~~statement furnished within three (3) days of the written application~~
13 ~~contains an annual percentage rate which is subsequently rendered~~
14 ~~inaccurate within the meaning of Section 3-304(5) (a) and (c), the~~
15 ~~lender shall furnish another statement at the time of settlement or~~
16 ~~consummation~~ be at least seven (7) business days before consummation
17 of the transaction.

18 (2) In the case of an extension of credit that is secured by
19 the dwelling of a consumer, the disclosures provided for in
20 subsection (1) of this section shall be in addition to the other
21 disclosures required by this part and shall:

22 (a) state in conspicuous type size and format, the
23 following: "You are not required to complete this
24

1 agreement merely because you have received these
2 disclosures or signed a loan application", and

3 (b) be provided in the form of final disclosures at the
4 time of consummation of the transaction, in the form
5 and manner prescribed by this section.

6 (3) In the case of an extension of credit that is secured by
7 the dwelling of a consumer, under which the annual rate of interest
8 is variable, or with respect to which the regular payments may
9 otherwise be variable, in addition to the other disclosures required
10 by this part, the disclosures provided under this section shall do
11 the following:

12 (a) label the payment schedule as follows: "Payment
13 Schedule: Payments will vary based on Interest Rate
14 Changes", and

15 (b) state in conspicuous type size and format examples of
16 adjustments to the regular required payment on the
17 extension of credit based on the change in interest
18 rates specified by the contract for such extension of
19 credit. Among the examples required to be provided is
20 an example that reflects the maximum payment amount of
21 the regular required payments on the extension of
22 credit, based on the maximum interest rate allowed
23 under the contract, in accordance with rules of the
24 Administrator.

1 (4) In any case in which the disclosure statement under
2 subsection (1) of this section contains an annual percentage rate of
3 interest that is no longer accurate, the creditor shall furnish an
4 additional corrected statement to the consumer, not later than three
5 (3) business days before the date of consummation of the
6 transaction.

7 (5) The consumer shall receive the required disclosures before
8 paying any fee to the creditor or other person in connection with
9 the consumer's application for an extension of credit that is
10 secured by the dwelling of a consumer. If the disclosures are
11 mailed to the consumer, the consumer is considered to have received
12 them three (3) business days after they are mailed. A creditor or
13 other person may impose a fee for obtaining the consumer's credit
14 report before the consumer has received the disclosures under this
15 section, provided the fee is bona fide and reasonable in amount.

16 (6) To expedite the consummation of a transaction, if the
17 consumer determines that the extension of credit is needed to meet a
18 bona fide personal financial emergency, the consumer may waive or
19 modify the timing requirements for disclosures under subsection (1)
20 of this section, provided that:

21 (a) the term "bona fide personal emergency" may be further
22 defined by rules of the Administrator,

23 (b) the consumer provides to the creditor a dated, written
24 statement describing the emergency and specifically

1 waiving or modifying those timing requirements, which
2 statement shall bear the signature of all consumers
3 entitled to receive disclosures required by this
4 section, and

5 (c) the creditor provides to the consumers at or before
6 the time of such waiver or modification, the final
7 disclosures required by this part.

8 (7) The requirements set forth in subsections (1) through (5)
9 of this section shall not apply in the case of an extension of
10 credit relating to a plan described in 11 U.S.C. Section 101(53D).

11 SECTION 6. AMENDATORY 14A O.S. 2011, Section 5-203, is
12 amended to read as follows:

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

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

23 (b) (i) (aa) in the case of an individual action twice
24 the amount of the credit service or loan

1 finance charge in connection with the
2 transaction,

3 (bb) in the case of an individual action relating
4 to a consumer lease twenty-five percent
5 (25%) of the total amount of monthly
6 payments under the lease but the liability
7 pursuant to this part of this paragraph
8 shall be not less than One Hundred Dollars
9 (\$100.00) nor more than One Thousand Dollars
10 (\$1,000.00), ~~or~~

11 (cc) in the case of an individual action relating
12 to a credit transaction not under an open-
13 end credit plan that is secured by real
14 property or a dwelling, not less than ~~Two~~
15 ~~Hundred Dollars (\$200.00)~~ Four Hundred
16 Dollars (\$400.00) or greater than ~~Two~~
17 ~~Thousand Dollars (\$2,000.00)~~ Four Thousand
18 Dollars (\$4,000.00), or

19 (dd) in the case of an individual action relating
20 to an open-end consumer credit plan that is
21 not secured by real property or a dwelling,
22 twice the amount of any finance charge in
23 connection with the transaction, with a
24 minimum of Five Hundred Dollars (\$500.00)

1 and a maximum of Five Thousand Dollars
2 (\$5,000.00), or such higher amount as may be
3 appropriate in the case of an established
4 pattern or practice of such failures; or

5 (ii) in the case of a class action, an amount the
6 court may allow, except that as to each member of
7 the class no minimum recovery shall be applicable
8 and the total recovery other than for actual
9 damages in any class action or series of class
10 actions arising out of the same failure to comply
11 by the same creditor shall not be more than the
12 lesser of Five Hundred Thousand Dollars
13 (\$500,000.00) or one percent (1%) of the net
14 worth of the creditor;

15 (c) in the case of a successful action to enforce the
16 liability under paragraph (b) of this subsection or in
17 any action in which a person is determined to have a
18 right of rescission under Section 5-204 of this title,
19 the costs of the action together with reasonable
20 attorney fees as determined by the court. In
21 determining the amount of award in any class action,
22 the court shall consider among other relevant factors
23 the amount of any actual damages awarded, the
24 frequency and persistence of failures of compliance by

1 the creditor, the resources of the creditor, the
2 number of persons adversely affected, and the extent
3 to which the creditor's failure of compliance was
4 intentional. In connection with the disclosures
5 required by Sections 2-310 and 3-309 of this title, a
6 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, Sections 2-310(1) and 3-309(1) of this title,
10 subsections (2)(d) through (k) of Section 2-310 of
11 this title, and subsections (2)(d) through (k) of
12 Section 3-309 of this title. In connection with the
13 disclosures referred to in subsections (1) through (7)
14 of Sections 2-310.1 and 3-309.1 of this title, a card
15 issuer shall have a liability under this section only
16 to a cardholder who pays a fee described in Section 2-
17 310.1(1)(d), Section 2-310.1(5)(a)(i), Section 3-
18 309.1(1)(d) or Section 3-309.1(5)(a)(i) of this title
19 or who uses the credit card or charge card. In
20 connection with disclosures for closed-end credit, a
21 creditor shall have a liability determined under
22 paragraph (b) of this subsection only for failing to
23 comply with the requirements of Section 5-204 of this
24 title, subsections (2)(b) insofar as it requires a

1 disclosure of the amount financed, through (f) and
2 subsection (j) of Section 2-306 of this title, and
3 subsections (2) (b) insofar as it requires a disclosure
4 of the amount financed, through (f), ~~and~~ subsection
5 (h) of Section 3-306 of this title, and subsections
6 (2) and (3) of Section 3-310 of this title. With
7 respect to any failure to make disclosure, liability
8 shall be imposed only upon the creditor required to
9 make disclosure, except as provided in subsection (3)
10 of Section 2-302 of this title, subsection (3) of
11 Section 3-302 of this title and otherwise in this
12 section; and

13 (d) in the case of a failure to comply with any
14 requirement under Section 3-309.4 of this title, an
15 amount equal to the sum of all finance charges and
16 fees paid by the consumer, unless the creditor
17 demonstrates that the failure to comply is not
18 material.

19 (2) A creditor or assignee has no liability under this section,
20 Section 5-302 of this title or Article 6 of this title in relation
21 to disclosure if within sixty (60) days after discovering an error
22 whether pursuant to a final written examination report or notice
23 issued under subsection (4) of Section 6-105 of this title or
24 through the creditor's or assignee's own procedures, and prior to

1 the institution of an action under this section or the receipt of
2 written notice of the error from the obligor, the creditor or
3 assignee notifies the person concerned of the error and makes
4 whatever adjustments in the appropriate account are necessary to
5 assure that the person will not be required to pay a credit service
6 charge or loan finance charge in excess of the amount actually
7 disclosed or the dollar equivalent of the percentage rate actually
8 disclosed, whichever is lower.

9 (3) A creditor or assignee may not be held liable in any action
10 brought under this section or Section 5-204 of this title for a
11 violation of this title if the creditor or assignee shows by a
12 preponderance of evidence that the violation was not intentional and
13 resulted from a bona fide error notwithstanding the maintenance of
14 procedures reasonably adapted to avoid the error. A bona fide error
15 includes, but is not limited to, a clerical, calculation, computer
16 malfunction and programming, and printing error, but not an error of
17 legal judgment with respect to a person's disclosure obligations
18 under this title.

19 (4) (a) Except as otherwise specifically provided in this
20 section, any civil action for a violation of this
21 section or administrative proceeding for restitution
22 which may be brought against the original creditor in
23 any transaction may be maintained against any
24 subsequent assignee of the original creditor in any

1 transaction where the violation from which the alleged
2 liability arose is apparent on the face of the
3 disclosure statement unless the assignment was
4 involuntary. For the purpose of this section, a
5 violation apparent on the face of the disclosure
6 statement includes, but is not limited to, a
7 disclosure which can be determined to be incomplete or
8 inaccurate from the face of the disclosure statement
9 or other documents assigned or a disclosure which does
10 not use the terms required to be used by this title.

11 (b) (i) Except as otherwise specifically provided in this
12 title, any civil action against a creditor for a
13 violation of this title, and any administrative
14 proceeding against a creditor, with respect to a
15 consumer credit transaction secured by real
16 property may be maintained against any assignee
17 of such creditor only if:

18 (aa) the violation for which such action or
19 proceeding is brought is apparent on the
20 face of the disclosure statement provided in
21 connection with such transaction pursuant to
22 this title; and

23 (bb) the assignment to the assignee was
24 voluntary.

1 (ii) For the purpose of this section, a violation is
2 apparent on the face of the disclosure statement
3 if:

4 (aa) the disclosure can be determined to be
5 incomplete or inaccurate by a comparison
6 among the disclosure statement, any
7 itemization of the amount financed, the
8 note, or any other disclosure of
9 disbursement; or

10 (bb) the disclosure statement does not use the
11 terms or format required to be used by this
12 title.

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

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

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

23 (b) (i) A servicer of a consumer obligation arising from
24 a consumer credit transaction shall not be

1 treated as an assignee of such obligation for
2 purposes of this section unless the servicer is
3 or was the owner of the obligation.

4 (ii) A servicer of a consumer obligation arising from
5 a consumer credit transaction shall not be
6 treated as the owner of the obligation for
7 purposes of this section on the basis of an
8 assignment of the obligation from the creditor or
9 another assignee to the servicer solely for the
10 administrative convenience of the servicer in
11 servicing the obligation. Upon written request
12 by the obligor, the servicer shall provide the
13 obligor, to the best knowledge of the servicer,
14 with the name, address, and telephone number of
15 the owner of the obligation or the master
16 servicer of the obligation.

17 (iii) For purposes of this subsection, the term
18 "servicer" has the same meaning as in Section
19 6(i)(2) of the Real Estate Settlement Procedures
20 Act of 1974.

21 (iv) This subsection shall apply to all consumer
22 credit transactions in existence or consummated
23 on or after September 30, 1995.
24

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

5 (9) The multiple failure to disclose to any person any
6 information required under this title to be disclosed in connection
7 with a single account under an open-end consumer credit plan, other
8 single consumer credit sale, consumer loan, consumer lease, or other
9 extension of consumer credit shall entitle the person to a single
10 recovery under this section but continued failure to disclose after
11 a recovery has been granted shall give rise to rights to additional
12 recoveries. This subsection does not bar any remedy permitted by
13 Section 5-204 of this title.

14 (10) A person may not take any action to offset any amount for
15 which a creditor or assignee is potentially liable to that person
16 under paragraph b of subsection (1) of this section against any
17 amount owed by that person unless the amount of the creditor's or
18 assignee's liability has been determined by judgment of a court of
19 competent jurisdiction in an action to which the person was a party.
20 This subsection does not bar a person then in default on the
21 obligation from asserting a violation of disclosure requirements as
22 an original action or as a defense or counterclaim to an action to
23 collect amounts owed by the person brought by another person liable
24

1 under this title if the claim is not time barred, or as a setoff or
2 defense in accordance with Section 5-205 of this title.

3 (11) (a) Any person who purchases or is otherwise assigned a
4 mortgage referred to in subsection (10) of Section 1-
5 301 of this title shall be subject to all claims and
6 defenses with respect to that mortgage that the
7 consumer could assert against the creditor of the
8 mortgage, unless the purchaser or assignee
9 demonstrates, by a preponderance of the evidence, that
10 a reasonable person exercising ordinary due diligence,
11 could not determine, based on the documentation
12 required by this title, the itemization of the amount
13 financed, and other disclosure of disbursements that
14 the mortgage was a mortgage referred to in subsection
15 (10) of Section 1-301 of this title. The preceding
16 sentence does not affect rights of a consumer under
17 paragraph (a) of subsection (4) or subsection (5) of
18 this section or any other provision of this title.

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

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

1 (ii) with respect to all other causes of action, the
2 sum of:

3 (aa) the amount of all remaining indebtedness;

4 and

5 (bb) the total amount paid by the consumer in
6 connection with the transaction.

7 (c) The amount of damages that may be awarded under
8 subparagraph (ii) of paragraph (b) of this subsection
9 shall be reduced by the amount of any damages awarded
10 under subparagraph (i) of paragraph (b) of this
11 subsection.

12 (d) Any person who sells or otherwise assigns a mortgage
13 referred to in subsection (10) of Section 1-301 of
14 this title shall include a prominent notice of the
15 potential liability under this subsection as
16 determined by the Administrator.

17 SECTION 7. AMENDATORY 14A O.S. 2011, Section 6-103, is
18 amended to read as follows:

19 Section 6-103. "Administrator" means the Administrator of
20 ~~Consumer Affairs as provided in Article 6, Part 5~~ Credit.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3-313 of Title 14A, unless there
23 is created a duplication in numbering, reads as follows:

1 Not later than thirty (30) days after the date on which a
2 residential mortgage loan is sold or otherwise transferred or
3 assigned to a third party, the creditor that is the new owner or
4 assignee of the debt shall notify the borrower in writing of such
5 transfer, including:

6 (a) the identity, address and telephone number of the new
7 creditor;

8 (b) the date of transfer;

9 (c) how to reach an agent or party having authority to act
10 on behalf of the new creditor;

11 (d) the location of the place where transfer of ownership
12 of the debt is recorded; and

13 (e) any other relevant information regarding the new
14 creditor.

15 SECTION 9. This act shall become effective July 1, 2012.

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

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21 53-2-9694 EK 02/23/12
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