,ENGROSSED HOUSE
BILL NO. 2742 By: Peters and Pittman of the House

and

Sykes of the Senate

An Act relating to consumer credit; amending 14A O.S. 2011, Sections 2-104, 2-106, 3-102, 3-104, 3-310, 5-203 and 6-103, which relate to the Uniform Consumer Credit Code; modifying definitions; modifying applicability; modifying definition; providing exception for certain education loans; modifying disclosure procedure; requiring additional disclosure for certain extensions of credit; requiring additional statements if annual percentage rate changes; mandating receipt of disclosure prior to payment; permitting creditor to impose certain fees; allowing consumer to waive or modify timing requirements in certain instances; declaring inapplicability; modifying certain civil liability amounts; providing additional remedy; modifying 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:

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

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

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

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

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

(e) with respect to a sale of goods or services, the amount financed does not exceed ~~Forty-five Thousand Dollars ($45,000.00)~~ Fifty Thousand Dollars ($50,000.00). The dollar amount in this paragraph shall be adjusted annually as indicated by the Consumer Financial Protection Bureau by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of One Hundred Dollars ($100.00) or One Thousand Dollars ($1,000.00) as applicable.

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

(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement; or

(b) except as provided with respect to disclosure (Section 2-301) and debtors' remedies (Section 5-201), a sale of an interest in land if the credit service charge does not exceed thirteen percent (13%) per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

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

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

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

(b) in which the amount payable under the lease does not exceed ~~Forty-five Thousand Dollars ($45,000.00)~~ Fifty Thousand Dollars ($50,000.00). The dollar amount in this paragraph shall be adjusted annually as indicated by the Consumer Financial Protection Bureau by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded

to the nearest multiple of One Hundred Dollars ($100.00) or One Thousand Dollars ($1,000.00) as applicable; and

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

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

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

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

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

Section 3-104. Except with respect to a loan primarily secured by an interest in land (Section 3-105), or except with respect to loans granted by institutions of postsecondary education except that such loans by institutions of postsecondary education shall be subject to disclosure requirements pursuant to Section 3-301 and remedies for violation of disclosure provisions pursuant to Articles 5 and 6 if otherwise they meet the definition of consumer loan, a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which

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

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

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

~~(4)~~ (d) either the principal does not exceed ~~Forty-five Thousand Dollars ($45,000.00)~~ Fifty Thousand Dollars ($50,000.00), unless the loan is a private education loan as that term is defined in the Federal Consumer Credit Protection Act, or the debt is secured by an interest in land. The dollar amount in this paragraph shall be adjusted annually as indicated by the Consumer Financial Protection Bureau by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of One Hundred Dollars ($100.00) or One Thousand Dollars ($1,000.00) as applicable.

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

Section 3-310. (1) In the case of ~~a transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created or retained in the debtor's principal~~ any extension of credit that is secured by the dwelling ~~to finance the acquisition or initial construction of that dwelling, if that transaction~~ of a

consumer, which is also subject to the Real Estate Settlement Procedures Act, 12 U.S.C. Sections 2601 et seq., good-faith estimates of the disclosures required by this part shall be made in accordance with the rules of the Administrator ~~concerning estimates before the credit is extended, or~~ of Consumer Credit and shall be delivered or placed in the mail not later than three (3) business days after the ~~lender~~ creditor receives the ~~debtor's~~ consumer's written application, ~~whichever is earlier. If the disclosure statement furnished within three (3) days of the written application contains an annual percentage rate~~ which ~~is subsequently rendered inaccurate within the meaning of Section 3-304(5) (a) and (c), the lender~~ shall ~~furnish another statement at the time of settlement or consummation~~ be at least seven (7) business days before consummation of the transaction.

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

(a) state in conspicuous type size and format, the following: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application", and

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

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

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

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

(4) In any case in which the disclosure statement under subsection (1) of this section contains an annual percentage rate of

interest that is no longer accurate, the creditor shall furnish an additional corrected statement to the consumer, not later than three (3) business days before the date of consummation of the transaction.

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

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

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

(b) the consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement shall bear the signature of all consumers

entitled to receive disclosures required by this section, and

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

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

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

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

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

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

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

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

(dd) in the case of an individual action relating to an open-end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of Five Hundred Dollars ($500.00) and a maximum of Five Thousand Dollars ($5,000.00), or such higher amount as may be

appropriate in the case of an established pattern or practice of such failures; or

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

(c) in the case of a successful action to enforce the liability under paragraph (b) of this subsection or in any action in which a person is determined to have a right of rescission under Section 5-204 of this title, the costs of the action together with reasonable attorney fees as determined by the court. In determining the amount of award in any class action, the court shall consider among other relevant factors the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent

to which the creditor's failure of compliance was intentional. In connection with the disclosures required by Sections 2-310 and 3-309 of this title, a creditor shall have a liability determined under paragraph (b) of this subsection only for failing to comply with the requirements of Section 5-204 of this title, Sections 2-310(1) and 3-309(1) of this title, subsections (2)(d) through (k) of Section 2-310 of this title, and subsections (2)(d) through (k) of Section 3-309 of this title. In connection with the disclosures referred to in subsections (1) through (7) of Sections 2-310.1 and 3-309.1 of this title, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in Section 2-310.1(1)(d), Section 2-310.1(5)(a)(i), Section 3-309.1(1)(d) or Section 3-309.1(5)(a)(i) of this title or who uses the credit card or charge card. In connection with disclosures for closed-end credit, a creditor shall have a liability determined under paragraph (b) of this subsection only for failing to comply with the requirements of Section 5-204 of this title, subsections (2)(b) insofar as it requires a disclosure of the amount financed, through (f) and subsection (j) of Section 2-306 of this title, and

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

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

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

assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount actually disclosed or the dollar equivalent of the percentage rate actually disclosed, whichever is lower.

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

(4) (a) Except as otherwise specifically provided in this section, any civil action for a violation of this section or administrative proceeding for restitution which may be brought against the original creditor in any transaction may be maintained against any subsequent assignee of the original creditor in any transaction where the violation from which the alleged liability arose is apparent on the face of the

disclosure statement unless the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to, a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned or a disclosure which does not use the terms required to be used by this title.

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

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

(bb) the assignment to the assignee was voluntary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(aa) the amount of all remaining indebtedness; and

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

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

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

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

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

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

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

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

(b) the date of transfer;

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

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

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

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

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

Passed the House of Representatives the 5th day of March, 2012.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate