

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2742

By: Peters of the House

and

Sykes of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

13 (e) with respect to a sale of goods or services, the
14 amount financed does not exceed ~~Forty-five Thousand~~
15 ~~Dollars (\$45,000.00)~~ Fifty Thousand Dollars
16 (\$50,000.00). The dollar amount in this paragraph
17 shall be adjusted annually as indicated by the
18 Consumer Financial Protection Bureau by the annual
19 percentage increase in the Consumer Price Index for
20 Urban Wage Earners and Clerical Workers, as published
21 by the Bureau of Labor Statistics, rounded to the
22 nearest multiple of One Hundred Dollars (\$100.00) or
23 One Thousand Dollars (\$1,000.00) as applicable.

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

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

7 (b) except as provided with respect to disclosure (Section
8 2-301) and debtors' remedies (Section 5-201), a sale
9 of an interest in land if the credit service charge
10 does not exceed thirteen percent (13%) per year
11 calculated according to the actuarial method on the
12 unpaid balances of the amount financed on the
13 assumption that the debt will be paid according to the
14 agreed terms and will not be paid before the end of
15 the agreed term.

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

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

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

1 (b) in which the amount payable under the lease does not
2 exceed ~~Forty-five Thousand Dollars (\$45,000.00)~~ Fifty
3 Thousand Dollars (\$50,000.00). The dollar amount in
4 this paragraph shall be adjusted annually as indicated
5 by the Consumer Financial Protection Bureau by the
6 annual percentage increase in the Consumer Price Index
7 for Urban Wage Earners and Clerical Workers, as
8 published by the Bureau of Labor Statistics, rounded
9 to the nearest multiple of One Hundred Dollars
10 (\$100.00) or One Thousand Dollars (\$1,000.00) as
11 applicable; and

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

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

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

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

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

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

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

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

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

13 ~~(4)~~ (d) either the principal does not exceed ~~Forty-five~~
14 ~~Thousand Dollars (\$45,000.00)~~ Fifty Thousand Dollars
15 (\$50,000.00), unless the loan is a private education
16 loan as that term is defined in the Federal Consumer
17 Credit Protection Act, or the debt is secured by an
18 interest in land. The dollar amount in this paragraph
19 shall be adjusted annually as indicated by the
20 Consumer Financial Protection Bureau by the annual
21 percentage increase in the Consumer Price Index for
22 Urban Wage Earners and Clerical Workers, as published
23 by the Bureau of Labor Statistics, rounded to the

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1 nearest multiple of One Hundred Dollars (\$100.00) or
2 One Thousand Dollars (\$1,000.00) as applicable.

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

5 Section 3-310. (1) In the case of ~~a transaction in which a~~
6 ~~mortgage, deed of trust, or equivalent consensual security interest~~
7 ~~is created or retained in the debtor's principal~~ any extension of
8 credit that is secured by the dwelling to finance the acquisition or
9 ~~initial construction of that dwelling, if that transaction of a~~
10 consumer, which is also subject to the Real Estate Settlement
11 Procedures Act, 12 U.S.C. Sections 2601 et seq., good-faith
12 estimates of the disclosures required by this part shall be made in
13 accordance with the rules of the Administrator ~~concerning estimates~~
14 ~~before the credit is extended, or~~ of Consumer Credit and shall be
15 delivered or placed in the mail not later than three (3) business
16 days after the ~~lender~~ creditor receives the ~~debtor's~~ consumer's
17 written application, ~~whichever is earlier. If the disclosure~~
18 ~~statement furnished within three (3) days of the written application~~
19 ~~contains an annual percentage rate which is subsequently rendered~~
20 ~~inaccurate within the meaning of Section 3-304(5) (a) and (c), the~~
21 ~~lender shall furnish another statement at the time of settlement or~~
22 ~~consummation~~ be at least seven (7) business days before consummation
23 of the transaction.

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

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

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

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

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

21 (b) state in conspicuous type size and format examples of
22 adjustments to the regular required payment on the
23 extension of credit based on the change in interest

1 rates specified by the contract for such extension of
2 credit. Among the examples required to be provided is
3 an example that reflects the maximum payment amount of
4 the regular required payments on the extension of
5 credit, based on the maximum interest rate allowed
6 under the contract, in accordance with rules of the
7 Administrator.

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

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

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

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

8 (b) the consumer provides to the creditor a dated, written
9 statement describing the emergency and specifically
10 waiving or modifying those timing requirements, which
11 statement shall bear the signature of all consumers
12 entitled to receive disclosures required by this
13 section, and

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

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

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

22 Section 5-203. (1) Except as otherwise provided in this
23 section, any creditor who fails to comply with any requirement
24

1 imposed by the provisions on disclosure (Part 3), other than the
2 provisions on advertising pursuant to Sections 2-313 of Article 2 of
3 this title and 3-312 of Article 3 of this title, or with any
4 requirement imposed by the provision on the right to rescind
5 pursuant to Section 5-204 of this title, with respect to any person
6 is liable to that person in an amount equal to the sum of:

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

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

13 (bb) in the case of an individual action relating
14 to a consumer lease twenty-five percent
15 (25%) of the total amount of monthly
16 payments under the lease but the liability
17 pursuant to this part of this paragraph
18 shall be not less than One Hundred Dollars
19 (\$100.00) nor more than One Thousand Dollars
20 (\$1,000.00), ~~or~~

21 (cc) in the case of an individual action relating
22 to a credit transaction not under an open-
23 end credit plan that is secured by real

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1 property or a dwelling, not less than ~~Two~~
2 ~~Hundred Dollars (\$200.00)~~ Four Hundred
3 Dollars (\$400.00) or greater than ~~Two~~
4 ~~Thousand Dollars (\$2,000.00)~~ Four Thousand
5 Dollars (\$4,000.00), or

6 (dd) in the case of an individual action relating
7 to an open-end consumer credit plan that is
8 not secured by real property or a dwelling,
9 twice the amount of any finance charge in
10 connection with the transaction, with a
11 minimum of Five Hundred Dollars (\$500.00)
12 and a maximum of Five Thousand Dollars
13 (\$5,000.00), or such higher amount as may be
14 appropriate in the case of an established
15 pattern or practice of such failures; or

16 (ii) in the case of a class action, an amount the
17 court may allow, except that as to each member of
18 the class no minimum recovery shall be applicable
19 and the total recovery other than for actual
20 damages in any class action or series of class
21 actions arising out of the same failure to comply
22 by the same creditor shall not be more than the
23 lesser of Five Hundred Thousand Dollars

1 (\$500,000.00) or one percent (1%) of the net
2 worth of the creditor;

3 (c) in the case of a successful action to enforce the
4 liability under paragraph (b) of this subsection or in
5 any action in which a person is determined to have a
6 right of rescission under Section 5-204 of this title,
7 the costs of the action together with reasonable
8 attorney fees as determined by the court. In
9 determining the amount of award in any class action,
10 the court shall consider among other relevant factors
11 the amount of any actual damages awarded, the
12 frequency and persistence of failures of compliance by
13 the creditor, the resources of the creditor, the
14 number of persons adversely affected, and the extent
15 to which the creditor's failure of compliance was
16 intentional. In connection with the disclosures
17 required by Sections 2-310 and 3-309 of this title, a
18 creditor shall have a liability determined under
19 paragraph (b) of this subsection only for failing to
20 comply with the requirements of Section 5-204 of this
21 title, Sections 2-310(1) and 3-309(1) of this title,
22 subsections (2)(d) through (k) of Section 2-310 of
23 this title, and subsections (2)(d) through (k) of
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1 Section 3-309 of this title. In connection with the
2 disclosures referred to in subsections (1) through (7)
3 of Sections 2-310.1 and 3-309.1 of this title, a card
4 issuer shall have a liability under this section only
5 to a cardholder who pays a fee described in Section 2-
6 310.1(1)(d), Section 2-310.1(5)(a)(i), Section 3-
7 309.1(1)(d) or Section 3-309.1(5)(a)(i) of this title
8 or who uses the credit card or charge card. In
9 connection with disclosures for closed-end credit, a
10 creditor shall have a liability determined under
11 paragraph (b) of this subsection only for failing to
12 comply with the requirements of Section 5-204 of this
13 title, subsections (2)(b) insofar as it requires a
14 disclosure of the amount financed, through (f) and
15 subsection (j) of Section 2-306 of this title, and
16 subsections (2)(b) insofar as it requires a disclosure
17 of the amount financed, through (f), ~~and~~ subsection
18 (h) of Section 3-306 of this title, and subsections
19 (2) and (3) of Section 3-310 of this title. With
20 respect to any failure to make disclosure, liability
21 shall be imposed only upon the creditor required to
22 make disclosure, except as provided in subsection (3)
23 of Section 2-302 of this title, subsection (3) of
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1 Section 3-302 of this title and otherwise in this
2 section; and

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

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

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

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

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

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

16 (bb) the assignment to the assignee was
17 voluntary.

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

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

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

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

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

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

17 (b) (i) A servicer of a consumer obligation arising from
18 a consumer credit transaction shall not be
19 treated as an assignee of such obligation for
20 purposes of this section unless the servicer is
21 or was the owner of the obligation.

22 (ii) A servicer of a consumer obligation arising from
23 a consumer credit transaction shall not be

1 treated as the owner of the obligation for
2 purposes of this section on the basis of an
3 assignment of the obligation from the creditor or
4 another assignee to the servicer solely for the
5 administrative convenience of the servicer in
6 servicing the obligation. Upon written request
7 by the obligor, the servicer shall provide the
8 obligor, to the best knowledge of the servicer,
9 with the name, address, and telephone number of
10 the owner of the obligation or the master
11 servicer of the obligation.

12 (iii) For purposes of this subsection, the term
13 "servicer" has the same meaning as in Section
14 6(i)(2) of the Real Estate Settlement Procedures
15 Act of 1974.

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

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

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

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

22 (11) (a) Any person who purchases or is otherwise assigned a
23 mortgage referred to in subsection (10) of Section 1-

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

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

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

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

1 (aa) the amount of all remaining indebtedness;

2 and

3 (bb) the total amount paid by the consumer in

4 connection with the transaction.

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

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

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

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

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

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

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

6 (b) the date of transfer;

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

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

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

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

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

18
19 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
20 FINANCIAL SERVICES, dated 02/23/2012 - DO PASS, As Amended and
21 Coauthored.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.