

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2742

By: Peters

4
5 AS INTRODUCED

6 An Act relating to consumer credit; amending 14A O.S.
7 2011, Sections 2-104, 2-106, 3-102, 3-104, 3-310 and
8 5-203, which relate to the Uniform Consumer Credit
9 Code; modifying definitions; modifying applicability;
10 modifying definition; providing exception for certain
11 education loans; modifying disclosure procedure;
12 requiring additional disclosure for certain
13 extensions of credit; requiring additional statements
14 if annual percentage rate changes; mandating receipt
15 of disclosure prior to payment; permitting creditor
16 to impose certain fees; allowing consumer to waive or
17 modify timing requirements in certain instances;
18 declaring inapplicability; modifying certain civil
19 liability amounts; providing additional remedy;
20 requiring creditor notify borrower of certain
21 transfers; authorizing Administrator to share certain
22 information with government agencies; providing for
23 confidentiality and nondisclosure; providing for
24 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

- 1 (a) credit is granted by a person who regularly engages as
2 a seller in credit transactions of the same kind;
- 3 (b) the buyer is a person other than an organization;
- 4 (c) the goods, services or interest in land are purchased
5 primarily for a personal, family or household purpose;
- 6 (d) either the debt is payable in installments or a credit
7 service charge is made; and
- 8 (e) with respect to a sale of goods or services, the
9 amount financed does not exceed ~~Forty five Thousand~~
10 ~~Dollars (\$45,000.00)~~ Fifty Thousand Dollars
11 (\$50,000.00). The dollar amount in this paragraph
12 shall be adjusted annually as indicated by the
13 Consumer Financial Protection Bureau by the annual
14 percentage increase in the Consumer Price Index for
15 Urban Wage Earners and Clerical Workers, as published
16 by the Bureau of Labor Statistics, rounded to the
17 nearest multiple of One Hundred Dollars (\$100.00) or
18 One Thousand Dollars (\$1,000.00) as applicable.

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

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

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

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

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

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

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

1 to the nearest multiple of One Hundred Dollars
2 (\$100.00) or One Thousand Dollars (\$1,000.00) as
3 applicable; and

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

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

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

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

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

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

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

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

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

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

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

18 Section 3-310. (1) In the case of a ~~transaction in which a~~
19 ~~mortgage, deed of trust, or equivalent consensual security interest~~
20 ~~is created or retained in the debtor's principal~~ any extension of
21 credit that is secured by the dwelling to finance the acquisition or
22 initial construction of that dwelling, if that transaction of a
23 consumer, which is also subject to the Real Estate Settlement
24 Procedures Act, 12 U.S.C. Sections 2601 et seq., good faith

1 estimates of the disclosures required by this part shall be made in
2 accordance with the rules of the Administrator ~~concerning estimates~~
3 ~~before the credit is extended, or~~ of Consumer Affairs and shall be
4 delivered or placed in the mail not later than three (3) business
5 days after the ~~lender~~ creditor receives the ~~debtor's~~ consumer's
6 written application, ~~whichever is earlier.~~ If the disclosure
7 ~~statement furnished within three (3) days of the written application~~
8 ~~contains an annual percentage rate which is subsequently rendered~~
9 ~~inaccurate within the meaning of Section 3-304(5) (a) and (c), the~~
10 ~~lender shall furnish another statement at the time of settlement or~~
11 ~~consummation~~ be at least seven (7) business days before consummation
12 of the transaction.

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

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

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

24

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

7 (a) label the payment schedule as follows: "Payment
8 Schedule: Payments will vary based on Interest Rate
9 Changes."

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

20 (4) In any case in which the disclosure statement under
21 subsection (1) of this section contains an annual percentage rate of
22 interest that is no longer accurate, the creditor shall furnish an
23 additional corrected statement to the consumer, not later than three
24

1 (3) business days before the date of consummation of the
2 transaction.

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

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

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

19 (b) the consumer provides to the creditor a dated, written
20 statement describing the emergency and specifically
21 waiving or modifying those timing requirements, which
22 statement shall bear the signature of all consumers
23 entitled to receive disclosures required by this
24 section, and

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

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

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

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

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

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

23 (bb) in the case of an individual action relating
24 to a consumer lease twenty-five percent

1 (25%) of the total amount of monthly
2 payments under the lease but the liability
3 pursuant to this part of this paragraph
4 shall be not less than One Hundred Dollars
5 (\$100.00) nor more than One Thousand Dollars
6 (\$1,000.00), or

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

15 (dd) in the case of an individual action relating
16 to an open end consumer credit plan that is
17 not secured by real property or a dwelling,
18 twice the amount of any finance charge in
19 connection with the transaction, with a
20 minimum of Five Hundred Dollars (\$500.00)
21 and a maximum of Five Thousand Dollars
22 (\$5,000.00), or such higher amount as may be
23 appropriate in the case of an established
24 pattern or practice of such failures; or

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

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

1 required by Sections 2-310 and 3-309 of this title, a
2 creditor shall have a liability determined under
3 paragraph (b) of this subsection only for failing to
4 comply with the requirements of Section 5-204 of this
5 title, Sections 2-310(1) and 3-309(1) of this title,
6 subsections (2)(d) through (k) of Section 2-310 of
7 this title, and subsections (2)(d) through (k) of
8 Section 3-309 of this title. In connection with the
9 disclosures referred to in subsections (1) through (7)
10 of Sections 2-310.1 and 3-309.1 of this title, a card
11 issuer shall have a liability under this section only
12 to a cardholder who pays a fee described in Section 2-
13 310.1(1)(d), Section 2-310.1(5)(a)(i), Section 3-
14 309.1(1)(d) or Section 3-309.1(5)(a)(i) of this title
15 or who uses the credit card or charge card. In
16 connection with disclosures for closed-end credit, a
17 creditor shall have a liability determined under
18 paragraph (b) of this subsection only for failing to
19 comply with the requirements of Section 5-204 of this
20 title, subsections (2)(b) insofar as it requires a
21 disclosure of the amount financed, through (f) and
22 subsection (j) of Section 2-306 of this title, and
23 subsections (2)(b) insofar as it requires a disclosure
24 of the amount financed, through (f), ~~and~~ subsection

1 (h) of Section 3-306 of this title, and subsections
2 (2) and (3) of Section 3-310 of this title. With
3 respect to any failure to make disclosure, liability
4 shall be imposed only upon the creditor required to
5 make disclosure, except as provided in subsection (3)
6 of Section 2-302 of this title, subsection (3) of
7 Section 3-302 of this title and otherwise in this
8 section; and

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

15 (2) A creditor or assignee has no liability under this section,
16 Section 5-302 of this title or Article 6 of this title in relation
17 to disclosure if within sixty (60) days after discovering an error
18 whether pursuant to a final written examination report or notice
19 issued under subsection (4) of Section 6-105 of this title or
20 through the creditor's or assignee's own procedures, and prior to
21 the institution of an action under this section or the receipt of
22 written notice of the error from the obligor, the creditor or
23 assignee notifies the person concerned of the error and makes
24 whatever adjustments in the appropriate account are necessary to

1 assure that the person will not be required to pay a credit service
2 charge or loan finance charge in excess of the amount actually
3 disclosed or the dollar equivalent of the percentage rate actually
4 disclosed, whichever is lower.

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

15 (4) (a) Except as otherwise specifically provided in this
16 section, any civil action for a violation of this
17 section or administrative proceeding for restitution
18 which may be brought against the original creditor in
19 any transaction may be maintained against any
20 subsequent assignee of the original creditor in any
21 transaction where the violation from which the alleged
22 liability arose is apparent on the face of the
23 disclosure statement unless the assignment was
24 involuntary. For the purpose of this section, a

1 violation apparent on the face of the disclosure
2 statement includes, but is not limited to, a
3 disclosure which can be determined to be incomplete or
4 inaccurate from the face of the disclosure statement
5 or other documents assigned or a disclosure which does
6 not use the terms required to be used by this title.

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

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

19 (bb) the assignment to the assignee was
20 voluntary.

21 (ii) For the purpose of this section, a violation is
22 apparent on the face of the disclosure statement
23 if:
24

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

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

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

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

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

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

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

14 (iii) For purposes of this subsection, the term
15 "servicer" has the same meaning as in Section
16 6(i)(2) of the Real Estate Settlement Procedures
17 Act of 1974.

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

21 (8) Where there are multiple obligors in a consumer credit
22 transaction or consumer lease, there shall be no more than one
23 recovery under paragraph (b) of subsection (1) of this section for a
24 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-
24 301 of this title shall be subject to all claims and

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

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

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

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

22 (aa) the amount of all remaining indebtedness;

23 and
24

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

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

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

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3-313 of Title 14A, unless there
15 is created a duplication in numbering, reads as follows:

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

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

23 (b) the date of transfer;

24

- 1 (c) how to reach an agent or party having authority to act
2 on behalf of the new creditor;
- 3 (d) the location of the place where transfer of ownership
4 of the debt is recorded; and
- 5 (e) any other relevant information regarding the new
6 creditor.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6-104.1 of Title 14A, unless
9 there is created a duplication in numbering, reads as follows:

10 (1) The Administrator of Consumer Affairs is authorized to
11 share examination and investigation information with government
12 agencies.

13 (2) Confidential information shared by the Administrator of
14 Consumer Affairs with a government agency shall remain confidential
15 and shall not be subject to disclosure under any federal or state
16 law governing the disclosure to the public of information maintained
17 by a state or federal agency.

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

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

23
24 53-2-8625 EK 01/15/12