

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 376

By: Newberry of the Senate

3 and

4 McCall of the House

5  
6  
7 An Act relating to Consumer Credit; amending 14A O.S.  
8 2011, Sections 1-201, 3-505 and 6-501, which relate  
9 to territorial application, hearing examiner and  
10 Department of Consumer Credit; updating references  
11 and language; prohibiting certain charges, fees and  
contracts; including Internet transactions; providing  
for judicial review of final agency order; setting  
jurisdiction and venue; authorizing Consumer Credit  
Advisory Committee to make recommendations; and  
providing an effective date.

12  
13  
14 AUTHOR: Add the following House Coauthor: Echols

15 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
and insert

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17  
18 "An Act relating to consumer credit; amending 14A  
19 O.S. 2011, Sections 1-201, 2-211, as amended by  
20 Section 1, Chapter 221, O.S.L. 2012, 2-417, as  
21 amended by Section 2, Chapter 221, O.S.L. 2012, 3-  
22 505 and 6-501 (14A O.S. Supp. 2014, Sections 2-211  
23 and 2-417), which relate to the Uniform Consumer  
24 Credit Code; updating references and language;  
clarifying applicability of the Code; authorizing  
municipalities and certain municipal public trusts  
to charge convenience fees; stating limitations;  
permitting aggrieved party to obtain judicial review  
of final agency order; specifying jurisdiction and  
venue for review; authorizing Consumer Credit

1           Advisory Committee to advise and give  
2           recommendations to the Commission on Consumer  
3           Credit; and providing an effective date.

4  
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6           SECTION 1.        AMENDATORY        14A O.S. 2011, Section 1-201, is  
7 amended to read as follows:

8           Section 1-201. (1) Except as otherwise provided in this  
9 section, ~~this act~~ the Uniform Consumer Credit Code applies to sales,  
10 leases, and loans made in this state and to modifications, including  
11 refinancings, consolidations, and deferrals, made in this state, of  
12 sales, leases, and loans, wherever made. For purposes of ~~this act~~  
13 the Uniform Consumer Credit Code:

14           (a) a sale or modification of a sale agreement is made in  
15           this state if the buyer's agreement or offer to  
16           purchase or to modify is received by the seller in  
17           this state~~;~~;

18           (b) a lease or modification of a lease agreement is made  
19           in this state if the lessee's agreement or offer to  
20           lease or to modify is received by the lessor in this  
21           state~~;~~; and

22           (c) a loan or modification of a loan agreement is made in  
23           this state if a writing signed by the debtor and  
24

1           evidencing the debt is received by the lender in this  
2           state.

3           (2) With respect to sales made pursuant to a revolving charge  
4           account (Section 2-108), ~~this act~~ the Uniform Consumer Credit Code  
5           applies if the buyer's communication or indication of his intention  
6           to establish the account is received by the seller in this state.  
7           If no communication or indication of intention is given by the buyer  
8           before the first sale, ~~this act~~ the Uniform Consumer Credit Code  
9           applies if the seller's communication notifying the buyer of the  
10          privilege of using the account is mailed or personally delivered in  
11          this state.

12          (3) With respect to loans made pursuant to a lender credit card  
13          or similar arrangement (subsection (9) of Section 1-301), ~~this act~~  
14          the Uniform Consumer Credit Code applies if the debtor's  
15          communication or indication of his intention to establish the  
16          arrangement with the lender is received by the lender in this state.  
17          If no communication or indication of intention is given by the  
18          debtor before the first loan, ~~this act~~ the Uniform Consumer Credit  
19          Code applies if the lender's communication notifying the debtor of  
20          the privilege of using the arrangement is mailed or personally  
21          delivered in this state.

22          (4) The part on limitations on creditors' remedies (Part 1) of  
23          the article on remedies and penalties (Article 5) applies to actions  
24          or other proceedings brought in this state to enforce rights arising

1 from consumer credit sales, consumer leases, consumer loans, or  
2 extortionate extensions of credit, wherever made.

3 (5) If a consumer credit sale, consumer lease, or consumer  
4 loan, or modification thereof, is made in another state to a person  
5 who is a resident of this state when the sale, lease, loan, or  
6 modification is made, the following provisions apply as though the  
7 transaction occurred in this state:

8 (a) a seller, lessor, lender, or assignee of his rights,  
9 may not collect charges through actions or other  
10 proceedings in excess of those permitted by the  
11 article on credit sales (Article 2) or by the article  
12 on loans (Article 3) ~~and~~ and

13 (b) a seller, lessor, lender, or assignee of his rights,  
14 may not enforce rights against the buyer, lessee, or  
15 debtor, with respect to the provisions of agreements  
16 which violate the provisions on limitations on  
17 agreements and practices (Part 4) of the article on  
18 credit sales (Article 2) or of the article on loans  
19 (Article 3).

20 (6) Except as provided in subsection (4), a sale, lease, loan,  
21 or modification thereof, made in another state to a person who was  
22 not a resident of this state when the sale, lease, loan, or  
23 modification was made is valid and enforceable in this state  
24 according to its terms to the extent that it is valid and

1 enforceable under the laws of the state applicable to the  
2 transaction.

3 (7) For the purposes of ~~this act~~ the Uniform Consumer Credit  
4 Code, the residence of a buyer, lessee, or debtor, is the address  
5 given by ~~him~~ the person as his or her residence in any writing  
6 signed by ~~him~~ such person in connection with a credit transaction.  
7 Until ~~he~~ such person notifies the creditor of a new or different  
8 address, the given address is presumed to be unchanged.

9 (8) Notwithstanding other provisions of this section:

10 (a) except as provided in subsection (4), ~~this act~~ the  
11 Uniform Consumer Credit Code does not apply if the  
12 buyer, lessee, or debtor is not a resident of this  
13 state at the time of a credit transaction and the  
14 parties then agree that the law of his or her  
15 residence applies, and

16 (b) ~~this act~~ the Uniform Consumer Credit Code applies if  
17 the buyer, lessee, or debtor is a resident of this  
18 state at the time of a credit transaction and the  
19 parties then agree that the law of this state applies.

20 (9) Except as provided in subsection (8), the following  
21 agreements by a buyer, lessee, or debtor are invalid with respect to  
22 consumer credit sales, consumer leases, consumer loans, or  
23 modifications thereof, to which ~~this act~~ the Uniform Consumer Credit  
24 Code applies:

- 1 (a) that the law of another state shall apply~~+~~+  
2 (b) that the buyer, lessee, or debtor consents to the  
3 jurisdiction of another state~~+~~+ and  
4 (c) that fixes venue.

5 (10) The following provisions of ~~this act~~ the Uniform Consumer  
6 Credit Code specify the applicable law governing certain cases:

- 7 (a) applicability (Section 6-102) of the part on powers  
8 and functions of administrator (Part 1) of the article  
9 on administration (Article 6)~~+~~+ and  
10 (b) applicability (Section 6-201) of the part on  
11 notification and fees (Part 2) of the article on  
12 administration (Article 6).

13 (11) Notwithstanding other provisions of this section, the  
14 Uniform Consumer Credit Code applies to sales, leases and loans,  
15 including modifications, refinancing, consolidations and deferrals  
16 thereof, entered into between a resident of this state while in this  
17 state, and a seller, lessor, lender or assignee of a seller, lessor  
18 or lender via the Internet or any other electronic means.

19 SECTION 2. AMENDATORY 14A O.S. 2011, Section 2-211, as  
20 amended by Section 1, Chapter 221, O.S.L. 2012 (14A O.S. Supp. 2014,  
21 Section 2-211), is amended to read as follows:

22 Section 2-211. A. With respect to all sales transactions, a  
23 discount which a seller offers, allows or otherwise makes available  
24 for the purpose of inducing payment by cash, check or similar means

1 rather than by use of an open-end credit card account shall not  
2 constitute a credit service charge as determined under Section 2-109  
3 of this title if the discount is offered to all prospective buyers  
4 clearly and conspicuously in accordance with regulations of the  
5 Administrator of Consumer Affairs. No seller in any sales  
6 transaction may impose a surcharge on a cardholder who elects an  
7 open-end credit card or debit card account instead of paying by  
8 cash, check or similar means. There is no limit on the discount  
9 which may be offered by the seller. A seller who provides a  
10 discount otherwise than in accordance with the regulations of the  
11 Administrator must make the disclosures required by those  
12 regulations.

13 B. A seller who is registered with the United States Treasury  
14 Department as a money transmitter pursuant to 31 CFR, Section  
15 103.41, and who provides an electronic funds transmission service,  
16 including service by telephone and the Internet, may charge a  
17 different price for a funds transmission service based on the mode  
18 of transmission used in the transaction without violating this  
19 section so long as the price charged for a service paid for with an  
20 open-end credit card or debit card account is not greater than the  
21 price charged for such service if paid for with currency or other  
22 similar means accepted within the same mode of transmission.

23 C. Any seller subject to the provisions of subsection B of this  
24 section shall either conduct business at a location in this state or

1 comply with the provisions of Section 1022 of Title 18 of the  
2 Oklahoma Statutes.

3 D. As used in this section, "debit card" means any instrument  
4 or device, whether known as a debit card or by any other name,  
5 issued with or without fee by an issuer for the use of the  
6 cardholder in depositing, obtaining or transferring funds from a  
7 consumer banking electronic facility.

8 E. For purposes of this section, a private educational  
9 institution as defined in paragraph (e) of Section 3102 of Title 70  
10 of the Oklahoma Statutes, a municipality as defined in paragraph 5  
11 of Section 1-102 of Title 11 of the Oklahoma Statutes or a public  
12 trust with a municipality as its beneficiary may charge a  
13 convenience fee. The convenience fee shall be limited to bank  
14 processing fees and financial transaction fees, the cost of  
15 providing for secure transaction, portal fees, and fees necessary to  
16 compensate for increased bandwidth incurred as a result of providing  
17 for an online transaction.

18 SECTION 3. AMENDATORY 14A O.S. 2011, Section 2-417, as  
19 amended by Section 2, Chapter 221, O.S.L. 2012 (14A O.S. Supp. 2014,  
20 Section 2-417), is amended to read as follows:

21 Section 2-417. A. No seller in any sales transaction may  
22 impose a surcharge on a cardholder who elects to use a credit card  
23 or debit card in lieu of payment by cash, check or similar means.  
24

1 B. As used in this section, "debit card" means any instrument  
2 or device, whether known as a debit card or by any other name,  
3 issued with or without fee by an issuer for the use of the  
4 cardholder in depositing, obtaining or transferring funds from a  
5 consumer banking electronic facility.

6 C. For purposes of this section, a private educational  
7 institution as defined in paragraph (e) of Section 3102 of Title 70  
8 of the Oklahoma Statutes, a municipality as defined in paragraph 5  
9 of Section 1-102 of Title 11 of the Oklahoma Statutes or a public  
10 trust with a municipality as its beneficiary may charge a  
11 convenience fee. The convenience fee shall be limited to bank  
12 processing fees and financial transaction fees, the cost of  
13 providing for secure transaction, portal fees, and fees necessary to  
14 compensate for increased bandwidth incurred as a result of providing  
15 for an online transaction.

16 SECTION 4. AMENDATORY 14A O.S. 2011, Section 3-505, is  
17 amended to read as follows:

18 Section 3-505. (1) The Administrator of Consumer Credit shall  
19 appoint an independent hearing examiner to conduct all  
20 administrative hearings involving alleged violations of this title.  
21 The independent hearing examiner shall have authority to exercise  
22 all powers granted by Article II of the Administrative Procedures  
23 Act in conducting hearings. The independent hearing examiner shall  
24 recommend penalties authorized by this title and issue proposed

1 orders, with proposed findings of fact and proposed conclusions of  
2 law, to the Administrator pursuant to Article II of the  
3 Administrative Procedures Act. The Administrator shall review the  
4 proposed order and issue a final agency order in accordance with  
5 Article II of the Administrative Procedures Act. ~~A final agency  
6 order issued by the Administrator shall be appealable by all parties  
7 to the district court as provided in Article II of the  
8 Administrative Procedures Act.~~ The costs of the hearing examiner  
9 may be assessed by the hearing examiner against the respondent,  
10 unless the respondent is the prevailing party. Any person aggrieved  
11 by a final agency order of the Administrator may obtain judicial  
12 review in accordance with the Administrative Procedures Act. The  
13 jurisdiction and venue of any such action shall be in the district  
14 court of Oklahoma County.

15 (2) The Administrator may, after notice and hearing, censure,  
16 probate, suspend, revoke or refuse to renew any license, or in  
17 addition to or in lieu of censure, probation, suspension or  
18 revocation, order refunds for unlawful charges if the Administrator  
19 finds that:

- 20 (a) The licensee has failed to pay the annual license fee  
21 imposed by this title, or an examination fee,  
22 investigation fee or other fee or charge imposed by  
23 the Administrator under the authority of this title,  
24

1 (b) The licensee, either knowingly or without the exercise  
2 of due care to prevent the same, has violated any  
3 provision of this title or any regulation or order  
4 lawfully made pursuant to and within the authority of  
5 this title, or

6 (c) Any fact or condition exists which, if it had existed  
7 or had been known to exist at the time of the original  
8 application for such license, clearly would have  
9 justified the Administrator in refusing to issue such  
10 license.

11 (3) Any licensee may surrender any license by delivering it to  
12 the Administrator with written notice of its surrender, but such  
13 surrender shall not affect the administrative, civil or criminal  
14 liability for acts committed prior thereto.

15 (4) No revocation, suspension, or surrender of any license  
16 shall impair or affect the obligation of any preexisting lawful  
17 contract between the licensee and any borrower.

18 (5) The Administrator may reinstate suspended licenses or issue  
19 new licenses to a person whose license or licenses have been revoked  
20 if no fact or condition then exists which clearly would have  
21 justified the Administrator or the independent hearing examiner in  
22 refusing originally to issue such license under this part.

23 (6) Every licensee shall notify the Administrator of the  
24 conviction of or plea of guilty or nolo contendere to any felony

1 within thirty (30) days after the plea is taken and also within  
2 thirty (30) days of the entering of an order of judgment and  
3 sentencing and shall notify the Administrator of any administrative  
4 action resulting in revocation, suspension, or amendment of a  
5 license taken against the licensee in another state within thirty  
6 (30) days of the entering of the administrative order in that state.

7 SECTION 5. AMENDATORY 14A O.S. 2011, Section 6-501, is  
8 amended to read as follows:

9 Section 6-501. There is hereby created:

10 (a) the Department of Consumer Credit~~†~~†

11 (b) the Commission on Consumer Credit. The Commission  
12 shall be the policy-making and governing authority of  
13 the Department and shall appoint the Administrator and  
14 be responsible for the enforcement of the Uniform  
15 Consumer Credit Code~~†~~†

16 (c) the Office of Administrator of Consumer Credit~~†~~† and

17 (d) the Consumer Credit Advisory Committee.

18 (i) The Consumer Credit Advisory Committee shall be  
19 appointed by the Commission on Consumer Credit  
20 and shall consist of the following members: two  
21 licensed supervised lenders, one of whom shall be  
22 recommended for appointment by the Oklahoma  
23 Consumer Finance Association and one of whom  
24 shall be recommended for appointment by the

1 Independent Finance Institute; one licensed  
2 pawnbroker recommended for appointment by the  
3 Oklahoma Pawnbrokers Association; one licensed  
4 mortgage broker and mortgage loan originator  
5 recommended for appointment by the Oklahoma  
6 Association of Mortgage Professionals; one  
7 licensed rental dealer recommended for  
8 appointment by the Oklahoma Rental Dealers  
9 Association; one licensed precious metal and gem  
10 dealer; one licensed health spa; one licensed  
11 credit services organization; one entity or  
12 individual that has filed notification pursuant  
13 to Section 6-202 of this title; one entity  
14 licensed as a deferred deposit lender recommended  
15 for appointment by the Community Financial  
16 Services Association of America; and the  
17 Administrator of Consumer Credit. The  
18 Administrator of Consumer Credit shall serve as  
19 the Chair of the Advisory Committee. If a  
20 licensee is an entity, the Commission may appoint  
21 an employee of the licensed entity to serve on  
22 the Consumer Credit Advisory Committee. The  
23 Commission shall have authority to prescribe  
24

1 rules to govern appointments to the Consumer  
2 Credit Advisory Committee.

3 (ii) The appointments shall be a public record of the  
4 Department of Consumer Credit. The term of  
5 office for each appointed member shall begin  
6 January 1, 2011, and shall continue for a period  
7 of four (4) years expiring on January 1. For  
8 initial appointments, the Commission shall  
9 appoint two members to serve for a term of one  
10 (1) year, two members to serve for a term of two  
11 (2) years, three members to serve for a term of  
12 three (3) years, and three members to serve for a  
13 term of four (4) years from their respective  
14 dates of appointment and qualification. Each  
15 appointed member shall be eligible for  
16 reappointment.

17 ~~(iii) The Consumer Credit Advisory Committee shall have~~  
18 ~~authority to review fees applicable to licensees~~  
19 ~~of the Department of Consumer Credit. The~~  
20 ~~Consumer Credit Advisory Committee shall make~~  
21 ~~recommendations to the Commission on Consumer~~  
22 ~~Credit regarding any fees applicable to licensees~~  
23 ~~of the Department may advise the Commission of~~  
24 ~~Consumer Credit regarding matters pertaining to~~

