

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 376

By: Newberry of the Senate

and

McCall of the House

COMMITTEE SUBSTITUTE

An Act relating to consumer credit; amending 14A O.S. 2011, Sections 1-201, 2-211, as amended by Section 1, Chapter 221, O.S.L. 2012, 2-417, as amended by Section 2, Chapter 221, O.S.L. 2012, 3-505 and 6-501 (14A O.S. Supp. 2014, Sections 2-211 and 2-417), which relate to the Uniform Consumer 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 Advisory Committee to advise and give recommendations to the Commission on Consumer Credit; and providing an effective date.

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

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

1 Section 1-201. (1) Except as otherwise provided in this
2 section, ~~this act~~ the Uniform Consumer Credit Code applies to sales,
3 leases, and loans made in this state and to modifications, including
4 refinancings, consolidations, and deferrals, made in this state, of
5 sales, leases, and loans, wherever made. For purposes of ~~this act~~
6 the Uniform Consumer Credit Code:

7 (a) a sale or modification of a sale agreement is made in
8 this state if the buyer's agreement or offer to
9 purchase or to modify is received by the seller in
10 this state;

11 (b) a lease or modification of a lease agreement is made
12 in this state if the lessee's agreement or offer to
13 lease or to modify is received by the lessor in this
14 state; and

15 (c) a loan or modification of a loan agreement is made in
16 this state if a writing signed by the debtor and
17 evidencing the debt is received by the lender in this
18 state.

19 (2) With respect to sales made pursuant to a revolving charge
20 account (Section 2-108), ~~this act~~ the Uniform Consumer Credit Code
21 applies if the buyer's communication or indication of his intention
22 to establish the account is received by the seller in this state.
23 If no communication or indication of intention is given by the buyer
24 before the first sale, ~~this act~~ the Uniform Consumer Credit Code

1 applies if the seller's communication notifying the buyer of the
2 privilege of using the account is mailed or personally delivered in
3 this state.

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

14 (4) The part on limitations on creditors' remedies (Part 1) of
15 the article on remedies and penalties (Article 5) applies to actions
16 or other proceedings brought in this state to enforce rights arising
17 from consumer credit sales, consumer leases, consumer loans, or
18 extortionate extensions of credit, wherever made.

19 (5) If a consumer credit sale, consumer lease, or consumer
20 loan, or modification thereof, is made in another state to a person
21 who is a resident of this state when the sale, lease, loan, or
22 modification is made, the following provisions apply as though the
23 transaction occurred in this state:
24

1 (a) a seller, lessor, lender, or assignee of his rights,
2 may not collect charges through actions or other
3 proceedings in excess of those permitted by the
4 article on credit sales (Article 2) or by the article
5 on loans (Article 3); and

6 (b) a seller, lessor, lender, or assignee of his rights,
7 may not enforce rights against the buyer, lessee, or
8 debtor, with respect to the provisions of agreements
9 which violate the provisions on limitations on
10 agreements and practices (Part 4) of the article on
11 credit sales (Article 2) or of the article on loans
12 (Article 3).

13 (6) Except as provided in subsection (4), a sale, lease, loan,
14 or modification thereof, made in another state to a person who was
15 not a resident of this state when the sale, lease, loan, or
16 modification was made is valid and enforceable in this state
17 according to its terms to the extent that it is valid and
18 enforceable under the laws of the state applicable to the
19 transaction.

20 (7) For the purposes of ~~this act~~ the Uniform Consumer Credit
21 Code, the residence of a buyer, lessee, or debtor, is the address
22 given by ~~him~~ the person as his or her residence in any writing
23 signed by ~~him~~ such person in connection with a credit transaction.

1 Until ~~he~~ such person notifies the creditor of a new or different
2 address, the given address is presumed to be unchanged.

3 (8) Notwithstanding other provisions of this section

4 (a) except as provided in subsection (4), ~~this act~~ the
5 Uniform Consumer Credit Code does not apply if the
6 buyer, lessee, or debtor is not a resident of this
7 state at the time of a credit transaction and the
8 parties then agree that the law of his or her
9 residence applies; and

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

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

19 (a) that the law of another state shall apply;

20 (b) that the buyer, lessee, or debtor consents to the
21 jurisdiction of another state; and

22 (c) that fixes venue.

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

1 (a) applicability (Section 6-102) of the part on powers
2 and functions of administrator (Part 1) of the article
3 on administration (Article 6); and

4 (b) applicability (Section 6-201) of the part on
5 notification and Fees (Part 2) of the article on
6 administration (Article 6).

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

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

16 Section 2-211. A. With respect to all sales transactions, a
17 discount which a seller offers, allows or otherwise makes available
18 for the purpose of inducing payment by cash, check or similar means
19 rather than by use of an open-end credit card account shall not
20 constitute a credit service charge as determined under Section 2-109
21 of this title if the discount is offered to all prospective buyers
22 clearly and conspicuously in accordance with regulations of the
23 Administrator of Consumer Affairs. No seller in any sales
24 transaction may impose a surcharge on a cardholder who elects an

1 open-end credit card or debit card account instead of paying by
2 cash, check or similar means. There is no limit on the discount
3 which may be offered by the seller. A seller who provides a
4 discount otherwise than in accordance with the regulations of the
5 Administrator must make the disclosures required by those
6 regulations.

7 B. A seller who is registered with the United States Treasury
8 Department as a money transmitter pursuant to 31 CFR, Section
9 103.41, and who provides an electronic funds transmission service,
10 including service by telephone and the Internet, may charge a
11 different price for a funds transmission service based on the mode
12 of transmission used in the transaction without violating this
13 section so long as the price charged for a service paid for with an
14 open-end credit card or debit card account is not greater than the
15 price charged for such service if paid for with currency or other
16 similar means accepted within the same mode of transmission.

17 C. Any seller subject to the provisions of subsection B of this
18 section shall either conduct business at a location in this state or
19 comply with the provisions of Section 1022 of Title 18 of the
20 Oklahoma Statutes.

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

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

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

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

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

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

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

13 Section 3-505. (1) The Administrator of Consumer Credit shall
14 appoint an independent hearing examiner to conduct all
15 administrative hearings involving alleged violations of this title.
16 The independent hearing examiner shall have authority to exercise
17 all powers granted by Article II of the Administrative Procedures
18 Act in conducting hearings. The independent hearing examiner shall
19 recommend penalties authorized by this title and issue proposed
20 orders, with proposed findings of fact and proposed conclusions of
21 law, to the Administrator pursuant to Article II of the
22 Administrative Procedures Act. The Administrator shall review the
23 proposed order and issue a final agency order in accordance with
24 Article II of the Administrative Procedures Act. ~~A final agency~~

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

10 (2) The Administrator may, after notice and hearing, censure,
11 probate, suspend, revoke or refuse to renew any license, or in
12 addition to or in lieu of censure, probation, suspension or
13 revocation, order refunds for unlawful charges if the Administrator
14 finds that:

15 (a) The licensee has failed to pay the annual license fee
16 imposed by this title, or an examination fee,

17 investigation fee or other fee or charge imposed by
18 the Administrator under the authority of this title,

19 (b) The licensee, either knowingly or without the exercise
20 of due care to prevent the same, has violated any
21 provision of this title or any regulation or order
22 lawfully made pursuant to and within the authority of
23 this title, or
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1 (c) Any fact or condition exists which, if it had existed
2 or had been known to exist at the time of the original
3 application for such license, clearly would have
4 justified the Administrator in refusing to issue such
5 license.

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

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

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

18 (6) Every licensee shall notify the Administrator of the
19 conviction of or plea of guilty or nolo contendere to any felony
20 within thirty (30) days after the plea is taken and also within
21 thirty (30) days of the entering of an order of judgment and
22 sentencing and shall notify the Administrator of any administrative
23 action resulting in revocation, suspension, or amendment of a
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1 license taken against the licensee in another state within thirty
2 (30) days of the entering of the administrative order in that state.

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

5 Section 6-501. There is hereby created:

6 (a) the Department of Consumer Credit;

7 (b) the Commission on Consumer Credit. The Commission
8 shall be the policy-making and governing authority of
9 the Department and shall appoint the Administrator and
10 be responsible for the enforcement of the Uniform
11 Consumer Credit Code;

12 (c) the Office of Administrator of Consumer Credit; and

13 (d) the Consumer Credit Advisory Committee.

14 (i) The Consumer Credit Advisory Committee shall be
15 appointed by the Commission on Consumer Credit
16 and shall consist of the following members: two
17 licensed supervised lenders, one of whom shall be
18 recommended for appointment by the Oklahoma
19 Consumer Finance Association and one of whom
20 shall be recommended for appointment by the
21 Independent Finance Institute; one licensed
22 pawnbroker recommended for appointment by the
23 Oklahoma Pawnbrokers Association; one licensed
24 mortgage broker and mortgage loan originator

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

22 (ii) The appointments shall be a public record of the
23 Department of Consumer Credit. The term of
24 office for each appointed member shall begin

1 January 1, 2011, and shall continue for a period
2 of four (4) years expiring on January 1. For
3 initial appointments, the Commission shall
4 appoint two members to serve for a term of one
5 (1) year, two members to serve for a term of two
6 (2) years, three members to serve for a term of
7 three (3) years, and three members to serve for a
8 term of four (4) years from their respective
9 dates of appointment and qualification. Each
10 appointed member shall be eligible for
11 reappointment.

12 (iii) ~~The Consumer Credit Advisory Committee shall have~~
13 ~~authority to review fees applicable to licensees~~
14 ~~of the Department of Consumer Credit. The~~
15 ~~Consumer Credit Advisory Committee shall make~~
16 ~~recommendations to the Commission on Consumer~~
17 ~~Credit regarding any fees applicable to licensees~~
18 ~~of the Department~~ may advise the Commission of
19 Consumer Credit regarding matters pertaining to
20 the Department of Consumer Credit and provide
21 recommendations. The Consumer Credit Advisory
22 Committee shall also have the authority to adopt
23 rules for conducting its proceedings.
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1 (iv) The Consumer Credit Advisory Committee shall meet
2 on an annual basis and at such other times as
3 necessary.

4 (v) Meetings of the Consumer Credit Advisory
5 Committee shall be held in accordance with the
6 Oklahoma Open Meeting Act.

7 (vi) Members of the Consumer Credit Advisory Committee
8 may be reimbursed for travel costs in accordance
9 with the State Travel Reimbursement Act.

10 SECTION 6. This act shall become effective November 1, 2015.

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