

1 ENGROSSED SENATE
2 BILL NO. 376

By: Newberry of the Senate

and

McCall of the House

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

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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:

Section 1-201. (1) Except as otherwise provided in this
section, ~~this act~~ Section 1-101 et seq. of this title applies to
sales, leases, and loans made in this state and to modifications,
including refinancings, consolidations, and deferrals, made in this
state, of sales, leases, and loans, wherever made. For purposes of
~~this act~~ the Uniform Consumer Credit Code:

(a) a sale or modification of a sale agreement is made in
this state if the buyer's agreement or offer to

1 purchase or to modify is received by the seller in
2 this state;

3 (b) a lease or modification of a lease agreement is made
4 in this ~~State~~ state if the lessee's agreement or offer
5 to lease or to modify is received by the lessor in
6 this state; and

7 (c) a loan or modification of a loan agreement is made in
8 this state if a writing signed by the debtor and
9 evidencing the debt is received by the lender in this
10 state.

11 (2) With respect to sales made pursuant to a revolving charge
12 account (Section 2-108), ~~this act~~ the Uniform Consumer Credit Code
13 applies if the buyer's communication or indication of his intention
14 to establish the account is received by the seller in this state.
15 If no communication or indication of intention is given by the buyer
16 before the first sale, ~~this act~~ the Uniform Consumer Credit Code
17 applies if the seller's communication notifying the buyer of the
18 privilege of using the account is mailed or personally delivered in
19 this state.

20 (3) With respect to loans made pursuant to a lender credit card
21 or similar arrangement (subsection (9) of Section 1-301), ~~this act~~
22 the Uniform Consumer Credit Code applies if the debtor's
23 communication or indication of his intention to establish the
24 arrangement with the lender is received by the lender in this state.

1 If no communication or indication of intention is given by the
2 debtor before the first loan, ~~this act~~ the Uniform Consumer Credit
3 Code applies if the lender's communication notifying the debtor of
4 the privilege of using the arrangement is mailed or personally
5 delivered in this state.

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

11 (5) If a consumer credit sale, consumer lease, or consumer
12 loan, or modification thereof, is made in another state to a person
13 who is a resident of this state when the sale, lease, loan, or
14 modification is made, the following provisions apply as though the
15 transaction occurred in this state:

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

21 (b) a seller, lessor, lender, or assignee of his rights,
22 may not enforce rights against the buyer, lessee, or
23 debtor, with respect to the provisions of agreements
24 which violate the provisions on limitations on

1 agreements and practices (Part 4) of the article on
2 credit sales (Article 2) or of the article on loans
3 (Article 3).

4 (6) Except as provided in subsection (4), a sale, lease, loan,
5 or modification thereof, made in another state to a person who was
6 not a resident of this state when the sale, lease, loan, or
7 modification was made is valid and enforceable in this state
8 according to its terms to the extent that it is valid and
9 enforceable under the laws of the state applicable to the
10 transaction.

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

17 (8) Notwithstanding other provisions of this section

18 (a) except as provided in subsection (4), ~~this act~~ the
19 Uniform Consumer Credit Code does not apply if the
20 buyer, lessee, or debtor is not a resident of this
21 state at the time of a credit transaction and the
22 parties then agree that the law of his or her
23 residence applies; and
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1 (b) ~~this act~~ the Uniform Consumer Credit Code applies if
2 the buyer, lessee, or debtor is a resident of this
3 state at the time of a credit transaction and the
4 parties then agree that the law of this state applies.

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

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

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

13 (c) that fixes venue.

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

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

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

22 (11) Notwithstanding other provisions of this section, the
23 Uniform Consumer Credit Code applies to sales, leases and loans,
24 including modifications, refinancing, consolidations and deferrals

1 thereof, entered into between a resident of this state while in this
2 state, and a seller, lessor, lender or assignee of a seller, lessor
3 or lender via the Internet or any other electronic means.

4 SECTION 2. AMENDATORY 14A O.S. 2011, Section 3-505, is
5 amended to read as follows:

6 Section 3-505. (1) The Administrator of Consumer Credit shall
7 appoint an independent hearing examiner to conduct all
8 administrative hearings involving alleged violations of this title.
9 The independent hearing examiner shall have authority to exercise
10 all powers granted by Article II of the Administrative Procedures
11 Act in conducting hearings. The independent hearing examiner shall
12 recommend penalties authorized by this title and issue proposed
13 orders, with proposed findings of fact and proposed conclusions of
14 law, to the Administrator pursuant to Article II of the
15 Administrative Procedures Act. The Administrator shall review the
16 proposed order and issue a final agency order in accordance with
17 Article II of the Administrative Procedures Act. ~~A final agency~~
18 ~~order issued by the Administrator shall be appealable by all parties~~
19 ~~to the district court as provided in Article II of the~~
20 ~~Administrative Procedures Act.~~ The costs of the hearing examiner
21 may be assessed by the hearing examiner against the respondent,
22 unless the respondent is the prevailing party. Any person aggrieved
23 by a final agency order of the Administrator may obtain judicial
24 review in accordance with the Oklahoma Administrative Procedures

1 Act. The jurisdiction and venue of any such action shall be in the
2 district court of Oklahoma County.

3 (2) The Administrator may, after notice and hearing, censure,
4 probate, suspend, revoke or refuse to renew any license, or in
5 addition to or in lieu of censure, probation, suspension or
6 revocation, order refunds for unlawful charges if the Administrator
7 finds that:

8 (a) The licensee has failed to pay the annual license fee
9 imposed by this title, or an examination fee,
10 investigation fee or other fee or charge imposed by
11 the Administrator under the authority of this title,

12 (b) The licensee, either knowingly or without the exercise
13 of due care to prevent the same, has violated any
14 provision of this title or any regulation or order
15 lawfully made pursuant to and within the authority of
16 this title, or

17 (c) Any fact or condition exists which, if it had existed
18 or had been known to exist at the time of the original
19 application for such license, clearly would have
20 justified the Administrator in refusing to issue such
21 license.

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

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

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

11 (6) Every licensee shall notify the Administrator of the
12 conviction of or plea of guilty or nolo contendere to any felony
13 within thirty (30) days after the plea is taken and also within
14 thirty (30) days of the entering of an order of judgment and
15 sentencing and shall notify the Administrator of any administrative
16 action resulting in revocation, suspension, or amendment of a
17 license taken against the licensee in another state within thirty
18 (30) days of the entering of the administrative order in that state.

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

21 Section 6-501. There is hereby created:

22 (a) the Department of Consumer Credit;

23 (b) the Commission on Consumer Credit. The Commission

24 shall be the policy-making and governing authority of

1 the Department and shall appoint the Administrator and
2 be responsible for the enforcement of the Uniform
3 Consumer Credit Code;

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

5 (d) the Consumer Credit Advisory Committee.

6 (i) The Consumer Credit Advisory Committee shall be
7 appointed by the Commission on Consumer Credit
8 and shall consist of the following members: two
9 licensed supervised lenders, one of whom shall be
10 recommended for appointment by the Oklahoma
11 Consumer Finance Association and one of whom
12 shall be recommended for appointment by the
13 Independent Finance Institute; one licensed
14 pawnbroker recommended for appointment by the
15 Oklahoma Pawnbrokers Association; one licensed
16 mortgage broker and mortgage loan originator
17 recommended for appointment by the Oklahoma
18 Association of Mortgage Professionals; one
19 licensed rental dealer recommended for
20 appointment by the Oklahoma Rental Dealers
21 Association; one licensed precious metal and gem
22 dealer; one licensed health spa; one licensed
23 credit services organization; one entity or
24 individual that has filed notification pursuant

1 to Section 6-202 of this title; one entity
2 licensed as a deferred deposit lender recommended
3 for appointment by the Community Financial
4 Services Association of America; and the
5 Administrator of Consumer Credit. The
6 Administrator of Consumer Credit shall serve as
7 the Chair of the Advisory Committee. If a
8 licensee is an entity, the Commission may appoint
9 an employee of the licensed entity to serve on
10 the Consumer Credit Advisory Committee. The
11 Commission shall have authority to prescribe
12 rules to govern appointments to the Consumer
13 Credit Advisory Committee.

14 (ii) The appointments shall be a public record of the
15 Department of Consumer Credit. The term of
16 office for each appointed member shall begin
17 January 1, 2011, and shall continue for a period
18 of four (4) years expiring on January 1. For
19 initial appointments, the Commission shall
20 appoint two members to serve for a term of one
21 (1) year, two members to serve for a term of two
22 (2) years, three members to serve for a term of
23 three (3) years, and three members to serve for a
24 term of four (4) years from their respective

1 dates of appointment and qualification. Each
2 appointed member shall be eligible for
3 reappointment.

4 (iii) ~~The Consumer Credit Advisory Committee shall have~~
5 ~~authority to review fees applicable to licensees~~
6 ~~of the Department of Consumer Credit. The~~
7 Consumer Credit Advisory Committee ~~shall make~~
8 ~~recommendations to the Commission on Consumer~~
9 ~~Credit regarding any fees applicable to licensees~~
10 ~~of the Department~~ may advise the Commission of
11 Consumer Credit regarding matters pertaining to
12 the Department of Consumer Credit and provide
13 recommendations. The Consumer Credit Advisory
14 Committee shall also have the authority to adopt
15 rules for conducting its proceedings.

16 (iv) The Consumer Credit Advisory Committee shall meet
17 on an annual basis and at such other times as
18 necessary.

19 (v) Meetings of the Consumer Credit Advisory
20 Committee shall be held in accordance with the
21 Oklahoma Open Meeting Act.

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

