An Act

ENROLLED SENATE
BILL NO. 376

By: Newberry of the Senate

and

McCall and Echols of the House

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.

SUBJECT: Uniform Consumer Credit Code

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~~ the Uniform Consumer Credit Code 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 purchase or to modify is received by the seller in this state~~.~~,

(b) a lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor in this state~~.~~, and

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

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

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

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

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

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

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

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

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

(8) Notwithstanding other provisions of this section:

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

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

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

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

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

(c) that fixes venue~~;~~

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

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

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

(11) Notwithstanding other provisions of this section, the Uniform Consumer Credit Code applies to sales, leases and loans, including modifications, refinancing, consolidations and deferrals thereof, entered into between a resident of this state while in this

state, and a seller, lessor, lender or assignee of a seller, lessor or lender via the Internet or any other electronic means.

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

Section 2-211. A. With respect to all sales transactions, a discount which a seller offers, allows or otherwise makes available for the purpose of inducing payment by cash, check or similar means rather than by use of an open-end credit card account shall not constitute a credit service charge as determined under Section 2-109 of this title if the discount is offered to all prospective buyers clearly and conspicuously in accordance with regulations of the Administrator of Consumer Affairs. No seller in any sales transaction may impose a surcharge on a cardholder who elects an open-end credit card or debit card account instead of paying by cash, check or similar means. There is no limit on the discount which may be offered by the seller. A seller who provides a discount otherwise than in accordance with the regulations of the Administrator must make the disclosures required by those regulations.

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

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

D. As used in this section, "debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the

cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility.

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

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

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

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

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

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

Section 3-505. (1) The Administrator of Consumer Credit shall appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of this title. The independent hearing examiner shall have authority to exercise all powers granted by Article II of the Administrative Procedures Act in conducting hearings. The independent hearing examiner shall recommend penalties authorized by this title and issue proposed orders, with proposed findings of fact and proposed conclusions of law, to the Administrator pursuant to Article II of the Administrative Procedures Act. The Administrator shall review the proposed order and issue a final agency order in accordance with Article II of the Administrative Procedures Act~~. A final agency order issued by the Administrator shall be appealable by all parties to the district court as provided in Article II of the Administrative Procedures Act~~. The costs of the hearing examiner may be assessed by the hearing examiner against the respondent, unless the respondent is the prevailing party. Any person aggrieved by a final agency order of the Administrator may obtain judicial review in accordance with the Administrative Procedures Act. The jurisdiction and venue of any such action shall be in the district court of Oklahoma County.

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

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

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

(c) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have

justified the Administrator in refusing to issue such license.

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

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

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

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

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

Section 6-501. There is hereby created:

(a) the Department of Consumer Credit~~.~~,

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

(c) the Office of Administrator of Consumer Credit~~.~~, and

(d) the Consumer Credit Advisory Committee.

(i) The Consumer Credit Advisory Committee shall be appointed by the Commission on Consumer Credit and shall consist of the following members: two licensed supervised lenders, one of whom shall be recommended for appointment by the Oklahoma Consumer Finance Association and one of whom shall be recommended for appointment by the Independent Finance Institute; one licensed pawnbroker recommended for appointment by the Oklahoma Pawnbrokers Association; one licensed mortgage broker and mortgage loan originator recommended for appointment by the Oklahoma Association of Mortgage Professionals; one licensed rental dealer recommended for appointment by the Oklahoma Rental Dealers Association; one licensed precious metal and gem dealer; one licensed health spa; one licensed credit services organization; one entity or individual that has filed notification pursuant to Section 6-202 of this title; one entity licensed as a deferred deposit lender recommended for appointment by the Community Financial Services Association of America; and the Administrator of Consumer Credit. The Administrator of Consumer Credit shall serve as the Chair of the Advisory Committee. If a licensee is an entity, the Commission may appoint an employee of the licensed entity to serve on the Consumer Credit Advisory Committee. The Commission shall have authority to prescribe rules to govern appointments to the Consumer Credit Advisory Committee.

(ii) The appointments shall be a public record of the Department of Consumer Credit. The term of office for each appointed member shall begin January 1, 2011, and shall continue for a period of four (4) years expiring on January 1. For initial appointments, the Commission shall appoint two members to serve for a term of one

(1) year, two members to serve for a term of two (2) years, three members to serve for a term of three (3) years, and three members to serve for a term of four (4) years from their respective dates of appointment and qualification. Each appointed member shall be eligible for reappointment.

(iii) ~~The Consumer Credit Advisory Committee shall have authority to review fees applicable to licensees of the Department of Consumer Credit.~~ The Consumer Credit Advisory Committee ~~shall make recommendations to the Commission on Consumer Credit regarding any fees applicable to licensees of the Department~~ may advise the Commission of Consumer Credit regarding matters pertaining to the Department of Consumer Credit and provide recommendations. The Consumer Credit Advisory Committee shall also have the authority to adopt rules for conducting its proceedings.

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

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

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

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

Passed the Senate the 5th day of May, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2015.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 6th day of May, 2015, at 5:30 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 12th day of May, 2015, at 3:38 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 12th day of May, 2015, at 4:31 o'clock P. M.

By: Chi Benge