

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS
CHAPTER 67. LOANS
ARTICLE 3. SMALL LOAN REGULATORY LAW

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§ 75-67-101. Purpose of article

This article is hereby declared to be a public necessity and is remedial in purpose and the same shall be liberally construed to effectuate the purposes thereof and shall be known as the "Small Loan Regulatory Law" of this state.

HISTORY: SOURCES: Codes, 1942, § 5591-01; Laws, 1958, ch. 170, § 1, eff from and after July 1, 1958.

§ 75-67-103. Definitions

The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

(a) "Person" means and includes every natural person, firm, corporation, copartnership, joint-stock or other association or organization, and any other legal entity whatsoever.

(b) "Licensee" means and includes every person holding a valid license issued under the provisions

of the Small Loan Privilege Tax Law (Section 75-67-201 et seq.) of this state, except those specifically exempt by the provisions of this article, who, in addition to any other rights and powers he or it might otherwise possess, shall engage in the business of lending money either directly or indirectly, to be paid back in monthly installments or other regular installments for periods of more or less than one (1) month, and whether or not the lender requires security from the borrower as indemnity for the repayment of the loan.

(c) "Occasional lender" means a person making not more than one (1) loan in any month or not more than twelve (12) loans in any twelve-month period.

(d) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(e) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(f) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

HISTORY: SOURCES: Codes, 1942, § 5591-02; Laws, 1958, ch. 170, § 2; Laws, 1996, ch. 423, § 1; Laws, 1997, ch. 332, § 3; Laws, 2000, ch. 621, § 13, eff from and after passage (approved May 23, 2000.)

§ 75-67-105. License required

(1) No person shall engage in the business of lending money except as authorized by this article, and without being the holder of a valid and subsisting license to engage in such business as provided by the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).

(2) Every person engaged in the business of lending money as authorized by this article shall have a physical office located in the State of Mississippi. A separate license is required for each office doing business in the State of Mississippi. Each electronic loan processing machine owned or operated by a licensed office is required to possess a separate license and have a permanent address with loan records to be maintained in a designated licensed office in the state.

HISTORY: SOURCES: Codes, 1942, § 5591-03; Laws, 1958, ch. 179, § 3; Laws, 1996, ch. 423, § 2; Laws, 1997, ch. 332, § 4, eff from and after passage (approved March 17, 1997).

§ 75-67-107. Responsibility for administering provisions of Article 3

The provisions of this article shall be enforced and administered by the state comptroller of banks and his duly authorized agents, representatives and employees.

HISTORY: SOURCES: Codes, 1942, § 5591-04; Laws, 1958, ch. 170, § 4, eff from and after July 1, 1958.

§ 75-67-109. Misleading advertising

It shall be a violation of this article for any licensee to advertise, print, display, publish, broadcast or permit to be advertised, printed, displayed, published or broadcast, in any manner whatsoever, any statement or representation with regard to rates, terms or conditions of lending money or for arranging, negotiating, procuring, or guaranteeing any loan or loans for any person which is false, misleading or deceptive. It shall also be a violation of this article for any licensee to offer or give to any borrower or prospective borrower any premium of any sort, whether by cash, check or goods or merchandise as an inducement to the making, brokering or renegotiation of any loan.

HISTORY: SOURCES: Codes, 1942, § 5591-05; Laws, 1958, ch. 170, § 5, eff from and after July 1, 1958.

§ 75-67-111. Licensees to keep records; requirements as to

Each licensee shall keep and use in his business such books, accounts and other records which shall be in accordance with sound and accepted business practices and shall be in such form as will clearly reflect all loan transactions for every borrower and will enable the commissioner to determine whether the licensee is complying with the provisions of this article, or the Small Loan Privilege Tax Law (Section 75-67-201 et seq.). Such records shall be kept with respect to each loan transaction for a period of at least twenty-four (24) months after the final transaction on such loan. The records shall be kept in accordance with instructions of the commissioner and, in addition to any information which may be required by the commissioner, such records shall be so maintained as to clearly reflect, over the signature of the borrower, the following:

- (a) Cash received by the borrower;
- (b) Charges for interest;
- (c) Charges for recording fees and insurance, if any;
- (d) Total amount of note;
- (e) Period of time for which loan is extended; and
- (f) Federal annual percentage rate and the state contract rate.

All such records shall be open to the inspection of the commissioner or his duly authorized representatives at all times during regular business hours. Any suit brought against a licensee by any person on account of the violation or alleged violation of any of the provisions of this article with reference to any loan transaction shall be brought within twenty-four (24) months after the final maturity date of the loan, and not thereafter.

HISTORY: SOURCES: Codes, 1942, § 5591-06; Laws, 1958, ch. 170, § 6; Laws, 1996, ch. 423, § 3, eff from and after July 1, 1996.

§ 75-67-113. Access to records, etc

The comptroller or his duly authorized representatives shall have free access to the records, offices, places of business, safes and vaults of all licensees for the purpose of determining whether

such licensee is complying with the provisions of this article and any regulations made hereunder. The comptroller shall have the authority to require the attendance of any and all persons and to examine such persons under oath relative to any loan transactions which are the subject matter of any examination, investigation or hearing held under any of the provisions of this article.

HISTORY: SOURCES: Codes, 1942, § 5591-07; Laws, 1958, ch. 170, § 7, eff from and after July 1, 1958.

§ 75-67-115. Expenses of examinations; paid by licensee

The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$ 300.00) nor more than Six Hundred Dollars (\$ 600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

All expense fees paid to the commissioner shall be deposited by the commissioner in the State Treasury in a special and separate fund to be known as the "Consumer Finance Fund."

HISTORY: SOURCES: Codes, 1942, § 5591-08; Laws, 1958, ch. 170, § 8; Laws, 1975, ch. 439; Laws, 1985, ch. 345, § 2; Laws, 2000, ch. 621, § 14; Laws, 2004, ch. 449, § 1, eff from and after passage (approved Apr. 28, 2004.)

§ 75-67-117. Repealed

Repealed by Laws, 1974, ch. 564, § 8, eff from and after July 1, 1974.

[Codes, 1942, § 5591-09; Laws, 1958, ch. 170, § 9]

§ 75-67-119. Penalties for imposition of excessive finance charges

If any finance charge in excess of that expressly permitted by Section 75-17-21 is contracted for or received, all finance charges and other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If any finance charge is contracted for or received that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit; and, in addition, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$ 1,000.00) and not less than One Hundred Dollars (\$ 100.00), in the discretion of the court; and, further, the Commissioner of Banking and Consumer Finance shall forthwith cite such licensee to show cause why its license should not be revoked and proceedings thereon shall be as is specifically provided in the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).

HISTORY: SOURCES: Codes, 1942, § 5591-10; Laws, 1958, ch. 170, § 10; Laws, 1984, ch. 476, § 1; Laws, 1986, ch. 510, § 15, eff from and after July 1, 1986.

§ 75-67-120. Deferral of installment of loan made by small loan licensee; charge for deferral; rules and regulations

(1) With respect to any loan made or handled by a licensee hereunder, the licensee and the borrower may, at any time, agree to a deferral of all or part of one or more unpaid installments, and the licensee may make and collect a charge therefor, subject to the following provisions:

(a) A deferral postpones the scheduled due date of an installment or installments as originally scheduled, or as previously deferred, for the deferment period.

(b) The deferment period is that period of time for which the payment is or the payments are deferred.

(c) The deferral charge shall not exceed an amount equal to the result of applying the annual percentage rate, as defined by the federal Truth in Lending Act and Regulation Z, provided in the original agreement between the licensee and the borrower, to the amount deferred for the deferment period, calculated without regard to differences in the lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth (1/30) of a month. A deferral charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period.

(d) If a loan is prepaid in full during a deferment period, then the licensee shall make or credit to the borrower a refund of the unearned deferral charge in addition to any other refund or credit made for prepayment in full.

(e) A deferral charge may be collected at the time it is assessed or at any time thereafter.

(f) Any payment received at the time of the deferment may be applied first to the deferral charge and the remainder, if any, to the unpaid balance of the loan, but if such payment is sufficient to pay, in addition to the appropriate delinquency charge, any installment which is in default, it shall be first so applied, and such installment shall not then be deferred or be subject to the deferral charge.

(g) No installment on which a delinquency charge has been collected shall be deferred or included in the computation of the deferral unless such delinquency charge is refunded to the borrower or credited to the deferral charge.

(h) In addition to the deferral charge, the licensee may make appropriate additional charges as provided in this chapter. The amount of such charges which are not paid in cash may be added to the amount deferred for the purpose of calculating the deferral.

(i) Any such deferral agreement shall be evidenced in writing, which shall include:

(i) The amount of the deferral charge;

(ii) The amount or amounts deferred;

(iii) The date to which, or the time period for which, payment is deferred; and

(iv) The nature and amount of any other charges made at the time.

(j) No deferral charge may be made for a period after the date that the licensee elects to accelerate the maturity of the loan.

(k) No more than two (2) deferrals on which the charge authorized in this section is made, may be made, or agreed to be made, in any twelve-month period.

(2) Whenever the Commissioner of Banking and Consumer Finance deems it necessary to do so, he shall have the authority to promulgate reasonable rules and regulations to prevent abuse of the provisions of this section.

HISTORY: SOURCES: Laws, 1989, ch. 362, § 1, eff from and after July 1, 1989.

§ 75-67-121. Recording and attorney's fees; insurance premiums; licensee may offer borrower opportunity to purchase auto club membership under certain circumstances

Any licensee under this article may charge any borrower on loans of One Hundred Dollars (\$ 100.00) or more the actual cost of recording any instrument executed as security for a loan; any reasonable fee paid to an attorney for investigating the title to any property given as security for a loan; the actual cost of any premium paid for insurance upon any property given as security for a loan, such insurance to be placed with an insurance company agent of the borrower's selection so long as it is licensed to do business in the State of Mississippi; the actual cost of any premium paid for life, health and/or accident insurance on any borrower where the amount of insurance required is not in excess of the amount of the loan and the premium for the insurance is in keeping with that usually and customarily paid for like insurance.

In addition, after the licensee has fully approved the loan to the borrower, the licensee may offer the borrower the opportunity to purchase an auto club membership. The licensee shall inform the borrower in writing that the purchase of an auto club membership is optional and is not required as a condition of receiving the loan, and that failure to purchase an auto club membership will not affect the licensee's approval of the loan or the receipt of the loan by the borrower. The notification shall be initiated by the borrower. If the borrower chooses to purchase an auto club membership, the licensee shall allow the borrower to pay the cost of the auto club membership using funds other than the proceeds of a loan or have the cost deducted from the proceeds of any loan obtained from the licensee. The borrower shall be allowed to cancel the auto club membership for a full refund of the purchase price at any time within thirty (30) days after the date of purchase from the licensee if the borrower has not used any of the services provided through the auto club membership. The commissioner shall monitor the number of loans made by licensees with which the borrower chooses to purchase an auto club membership, and shall report that information to the Chairmen of the House Banking and Financial Services Committee and the Senate Business and Financial Institutions Committee by January 1, 2009. This paragraph shall stand repealed on July 1, 2015.

Whenever he finds it necessary, the Commissioner of Banking and Consumer Finance shall have the power to adopt and enforce reasonable rules and regulations to prevent the abuse of this section and the making of excessive charges under this section.

HISTORY: SOURCES: Codes, 1942, § 5591-11; Laws, 1958, ch. 170, § 11; Laws, 2005, ch. 438, § 2; Laws, 2006, ch. 509, § 1; Laws, 2008, ch. 369, § 1; Laws, 2010, ch. 522, § 1, eff from and after July 1, 2010.

§ 75-67-122. Authorization for small loan licensees to charge and collect bad check charge

Any licensee hereunder who receives a check, draft, negotiable order of withdrawal or like instrument drawn on a bank or other depository institution given by any person in full or partial repayment of a loan or other extension of credit may, if such instrument is not paid or is dishonored by such institution, charge and collect from the borrower or person to whom the credit was extended, a bad check charge in an amount not to exceed the sum of Fifteen Dollars (\$ 15.00). This charge may be made only once with respect to the same instrument, and after the nonpayment or dishonor of the instrument, it shall be returned by the licensee to the borrower or person to whom credit was extended. This charge shall not be deemed to be interest, finance charge or other charge made as an incident to or as a condition to the grant of the loan or other extension of credit and shall not be included in determining the limit on charges which may be made in connection with the loan or extension of credit as provided in this chapter or in any other law of this state.

HISTORY: SOURCES: Laws, 1989, ch. 452, § 1; Laws, 1991, ch. 436 § 1, eff from and after passage (approved March 21, 1991).

§ 75-67-123. Repealed

Repealed by Laws, 1997, ch. 332, § 9, eff from and after passage (approved March 17, 1997).

[Codes, 1942, § 5591-12; Laws, 1958, ch. 170, § 12]

§ 75-67-125. Repealed

Repealed by Laws, 1974, ch. 564, § 8, eff from and after July 1, 1974.

[Codes, 1942, § 5591-13; Laws, 1958, ch. 170, § 13]

§ 75-67-127. Requirements for making and payment of loans; confession of judgment; incomplete instruments; penalty

(1) Every licensee shall:

(a) At the time any loan is made, deliver to the borrower, or if there are two (2) or more borrowers to one (1) of them, a statement in the English language, disclosing (i) the date of the loan, (ii) the amount of the loan, (iii) the schedule of payments or a description thereof, (iv) the type of the security, which may be by mortgage or deed of trust upon real estate or personal property, or both, (v) the name and address of the licensed office and of each person primarily obligated on the note, and (vi) the total amount of finance charges expressed as a dollar amount and as an annual percentage rate.

(b) For each payment made on account of any such loan, give to the person making it at the time the payment is made a receipt specifying in plain, clear and simple terms the amount of the payment and the balance owing on the combined principal and finance charges after credit for each payment. When payment is made by check or money order, the licensee shall not be required to furnish a receipt. Compliance with the Federal Truth in Lending Act shall constitute compliance with this section.

(c) When loans made or handled by a licensee under the provisions of the Small Loan Privilege Tax

Law are paid in full prior to maturity, after July 1, 1974, whether by cash, renewal or otherwise, refund to the borrower the finance charge exceeding one dollar (\$ 1.00) calculated on the rule of the sum of the digits, commonly known as the "Rule of 78ths." The refund shall be based and calculated on the number of days by which the loan is paid in advance, less twenty (20) days.

(d) Upon repayment of the loan in full, release any mortgage or security agreement and restore any pledge unless such mortgage, security agreement or pledge continues to secure an obligation to the licensee, and cancel and return any note and any assignment given to the licensee for the loan which is repaid.

(2) No licensee shall:

(a) Take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor

(b) take any note, promise to pay, or instrument of security that does not disclose the amount of the loan before the addition of precomputed charges, a schedule of payments or a description thereof, the agreed rate of charge, nor any instrument in which blanks are left to be filled in after the loan is made.

(3) Any contract of loan in the making or collection of which any provision of this section shall have been violated, either knowingly or without the exercise of due care to prevent the same, shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

HISTORY: SOURCES: Codes, 1942, § 5591-14; Laws, 1958, ch. 170, § 14; Laws, 1974, ch. 564, § 4, eff from and after July 1, 1974.

§ 75-67-129. Rules and regulations

The commissioner shall have the power and authority to adopt, promulgate and issue such rules and regulations, not inconsistent with the provisions of this article or some other statute, as he shall deem necessary for the purpose of the administration of this article. A copy of every rule and regulation promulgated by the commissioner shall be filed in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.

HISTORY: SOURCES: Codes, 1942, § 5591-15; Laws, 1958, ch. 170, § 15; Laws, 1996, ch. 423, § 4, eff from and after July 1, 1996.

§ 75-67-131. Injunction for violation of article

Whenever the comptroller has reasonable cause to believe that any person is violating any of the provisions of this article, in addition to all other remedies provided hereby, the comptroller may, by, through and on the relation of the attorney general, district attorney or county attorney, apply to a court of competent jurisdiction for an injunction, both temporary and permanent, to restrain such person from engaging in or continuing such violation of the provisions of this article or from doing any act or acts in furtherance thereof.

HISTORY: SOURCES: Codes, 1942, § 5591-16; Laws, 1958, ch. 170, § 16, eff from and after July 1, 1958.

§ 75-67-133. Prior obligations not impaired

Nothing herein contained shall be so construed so as to invalidate, impair or affect the obligation of any contract, agreement or loan between any lender or licensee and borrower which was lawfully entered into prior to July 1, 1958, or which shall be lawfully entered into prior to the expiration or cancellation of a license issued to the licensee under the provisions of the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).

HISTORY: SOURCES: Codes, 1942, § 5591-17; Laws, 1958, ch. 170, § 17, eff from and after July 1, 1958.

§ 75-67-135. Exemptions

This article shall not apply to any person, firm, partnership, corporation or association doing business under any of the laws of this state relating to banks, savings banks, trust companies, building and loan associations, insurance companies, pawnbrokers or credit unions; nor shall this article apply to any person, firm, partnership, corporation or association concerning loans made to the employees or farm tenants of such person, firm, partnership or corporation or association; nor to loans or advances made to be used in or in the furtherance of farming or agricultural operations; nor to loans insured or guaranteed by the United States or any of its agencies; nor to persons, firms, partnerships, associations or corporations making loans only secured by real estate; nor to dealers and sellers or purchasers of conditional sales or retained title contracts on real or personal property; nor an occasional lender not regularly engaged in the business of lending money, but such lender shall be governed by the usury statutes of this state.

HISTORY: SOURCES: Codes, 1942, § 5591-18; Laws, 1958, ch. 170, § 18; Laws, 1996, ch. 423, § 5, eff from and after July 1, 1996.

§ 75-67-137. Licensee; freedom from liability

(1) A licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

HISTORY: SOURCES: Laws, 1997, ch. 332, § 12, eff from and after passage (approved March 17, 1997).

§ 75-67-139. Municipal and county ordinances void if overly restrictive

Municipalities and counties in this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this article. Any order, ordinance or regulation existing on

April 28, 2004, of Sections 75-67-115, 75-67-215, 75-67-247 and this section, or any order, ordinance or regulation enacted after April 28, 2004, of Sections 75-67-115, 75-67-215, 75-67-247 and this section, that conflicts with any of the provisions of this article shall be void to the extent of the conflict.

HISTORY: SOURCES: Laws, 2004, ch. 449, § 3, eff from and after passage (approved Apr. 28, 2004.)