

CONSUMER LOAN BROKER ACT

Section

81-19-1. Short title.

81-19-3. Definitions.

81-19-5. License requirement; penalty for violation.

81-19-7. Exclusions from chapter coverage.

81-19-9. License application; fee; surety requirement.

81-19-11. Investigation of applicant; issuance or denial of license; time limit for acting on applications.

81-19-13. Separate licenses required for each location; movement of licensed location; surrender of license.

81-19-15. Renewal of license; penalty for failure to pay fee.

81-19-17. Supervision of licensees by commissioner; regulations; examination of licensees' records, etc.; administrative fines; injunctions against licensees violating chapter; administrative fine.

81-19-18. Commissioner authorized to examine persons suspected of conducting business requiring a license.

81-19-19. Deposit of funds collected into Consumer Finance Fund.

81-19-21. Contracts to be written; enumeration of charges.

81-19-23. Activities prohibited; violation; penalties; borrower's remedies.

81-19-25. Records of licensee; retention.

81-19-27. Separate account required for charges and fees collected by broker; authorization to withdraw from account.

81-19-29. Suspension or revocation of license; grounds.

81-19-31. Service charge not to be construed as finance charge or interest.

81-19-33. Effect of failure to comply with chapter on underlying transaction.

81-19-35. Right to hearing upon denial or revocation of license; notice; appeal; review.

§ 81-19-1. Short title.

This chapter shall be known and may be cited as the "Consumer Loan Broker Act."

Sources: Laws, 1992, ch. 485, § 1, eff from and after July 1, 1992.

§ 81-19-3. Definitions.

As used in this chapter:

(a) "Advance fee" means any consideration which is assessed or collected prior to the closing of a loan.

(b) "Commissioner" means the Commissioner of Banking and Consumer Finance.

(c) "Consumer loan" means a transaction by which a lender extends credit for personal, family or household purposes in the form of payment of money or of agreement to pay money, for the account of, or to a third party on behalf of, a natural person or persons and which is repayable in installments and may be unsecured or secured by real or personal property. The term "consumer loan" also includes the creation of consumer debt by a credit to an account with a lender upon which the borrower is entitled to draw immediately.

(d) "Consumer loan broker" means a person not otherwise exempt from this chapter who, for compensation from borrowers, finds and obtains consumer loans or credit cards for borrowers from third party lenders.

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

(f) "Lender" means a person who makes consumer loans.

(g) "License" means a license required by this chapter.

(h) "Loan charges and fees" means amounts collected from a borrower by a consumer loan broker on behalf of a lender to defray costs of such items as appraisals, surveys, title opinions and similar other expenses.

(i) "Service charge" means the amount charged a borrower by a consumer loan broker for the service of finding and obtaining a consumer loan for the borrower from a third party lender.

(j) "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.

Sources: Laws, 1992, ch. 485, § 2; Laws, 2000, ch. 621, § 30, eff from and after passage (approved May 23, 2000.)

§ 81-19-5. License requirement; penalty for violation.

No person shall engage in the business of being a consumer loan broker before posting the bond and obtaining the license as required by this chapter. Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

Sources: Laws, 1992, ch. 485, § 3, eff from and after July 1, 1992.

§ 81-19-7. Exclusions from chapter coverage.

Except as otherwise provided in this section, this chapter does not apply to:

- (a) Banks, bank holding companies, credit unions, insurance companies, savings and loan associations, savings banks, savings and loan association holding companies, small loan licensees, pawnbrokers, trust companies and their employees when acting on behalf of the employer.
- (b) Approved mortgagees of the United States Department of Housing and Urban Development, the Federal Housing Administration or other federal agency.
- (c) Mortgage companies required to be licensed and individuals required to be registered under the Mississippi Mortgage Consumer Protection Act (Sections 1 through 24 of this act), and persons exempt from licensing and registration as provided in Section 81-18-5.
- (d) An attorney or certified public accountant licensed in this state, or an enrolled agent who has a current certification from the Internal Revenue Service, who is not actively and principally engaged in the business of being a consumer loan broker even though the services of a consumer loan broker are occasionally rendered in the attorney's practice of law, the certified public accountant's practice of accounting or the enrolled agent's practice of tax services or bookkeeping. However, any such attorney, or certified public accountant or enrolled agent still shall be subject to the provisions of this chapter except for the provisions of Section 81-19-5.
- (e) A person who, without the consent of the owner, receives a mortgage or deed of trust on real or personal property as security for an obligation arising from use of materials or services in the improvement or repair of the property.
- (f) A seller of real property who receives one or more mortgages or deeds of trust as security for a purchase money obligation.

Sources: Laws, 1992, ch. 485, § 4; Laws, 1994, ch. 320 § 6; Laws, 1997, ch. 332, § 5; Laws, 2000, ch. 579, § 26; Laws, 2004, ch. 370, § 1 (approved March 14, 2005). This act shall take effect and be in force from and after July 1, 2005.

§ 81-19-9. License application; fee; surety requirement.

(1) An application to become licensed as a consumer loan broker shall be in writing, under oath and in a form prescribed by the commissioner, and shall contain:

- (a) The full name and address of the applicant;
- (b) The street address, municipality and county of the proposed licensed location;
- (c) The complete business and residence address of:
 - (i) The proprietor, if an individual applicant;
 - (ii) All partners, if a partnership applicant; or
 - (iii) The directors and chief executive officer, if a corporate applicant; and
- (d) Such other information as the commissioner may reasonably require in order to evaluate the applicant's suitability to operate as a consumer loan broker.

(2) Each application shall be accompanied by the payment of Three Hundred Dollars (\$300.00), which shall be the annual license fee for each licensed location of a consumer loan broker and is in addition to all other taxes and fees required by law. The twelve-month licensing period shall begin on the date the license is issued.

(3) Each application shall be accompanied by evidence of a surety bond in an amount of Twenty-five Thousand Dollars (\$25,000.00) issued by a company authorized to do business in Mississippi and approved by the commissioner. The bond shall be in favor of the State of Mississippi to discharge unsatisfied indebtedness or liability of the licensed consumer loan broker to the state, any political subdivision thereof or to any person who may have a cause of action against the broker by reason of the broker's conduct as a licensed consumer loan broker.

The surety on the bond may cancel same by giving sixty (60) days' notice in writing to the commissioner and thereafter shall be relieved of liability after the effective date of cancellation. The commissioner shall require a new bond in an amount of Twenty-five Thousand Dollars (\$25,000.00) at any time he has knowledge that a licensee's bond has expired, is about to expire or, in the opinion of the commissioner, is insecure for any reason. The license of any consumer loan broker who fails to post a replacement bond within ten (10) days from receipt of a notice from the commissioner shall be cancelled immediately.

Claimants against the licensee may bring suit directly on the bond, and the Attorney General also may bring suit on behalf of claimants in one (1) or multiple actions.

Sources: Laws, 1992, ch. 485, § 5, eff from and after July 1, 1992.

§ 81-19-11. Investigation of applicant; issuance or denial of license; time limit for acting on applications.

The commissioner shall investigate the financial soundness, experience, character, reputation and general fitness of the applicant to determine if the business will be operated

honestly and in compliance with this chapter and the regulations of the department and if the applicant merits the confidence of the community in which the license is to be located.

At the determination of the commissioner, a license may be issued to the applicant to operate as a consumer loan broker at the address stated in the application.

The commissioner may deny the application and, in that event, shall return the applicant's bond as well as one-half (1/2) of the annual fee. The commissioner shall retain the remaining one-half (1/2) and treat it as other collections permitted under this chapter. The commissioner shall officially act on all applications within thirty (30) days of receipt of same by the department.

Sources: Laws, 1992, ch. 485, § 6, eff from and after July 1, 1992.

§ 81-19-13. Separate licenses required for each location; movement of licensed location; surrender of license.

No more than one (1) place of business may be operated under one (1) license; however, a licensed entity may operate multiple locations, each separately licensed.

The license shall be in such form as the commissioner may prescribe and shall be conspicuously posted in the licensed location.

A licensee may move the licensed location within the same county after securing the permission of the commissioner and the payment of Twenty-five Dollars (\$25.00) to the department. Upon approval of the new address, the commissioner shall issue an amended license for the unexpired portion of the year. Nothing in this paragraph shall authorize or permit any change of a licensed address to any location outside the original county of licensure.

A licensee may surrender his license by returning it to the commissioner; however, neither the licensee nor the surety on his bond are relieved of any liability which may have accrued before the surrender date.

Sources: Laws, 1992, ch. 485, § 7, eff from and after July 1, 1992.

§ 81-19-15. Renewal of license; penalty for failure to pay fee.

Applications for renewal of a license shall be submitted, along with the payment of the annual fee, on an application form supplied by the commissioner upon which information relating to all of the applicant's licensed offices shall be set forth in accordance with instructions contained therein, including, in the discretion of the commissioner, such additional information as may be required by statute or regulation for the issuance of an initial license.

The application for renewal of a license shall be received by the commissioner within thirty (30) days prior to the expiration of any valid and existing license issued hereunder. If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the

expiration of his current license shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

Sources: Laws, 1992, ch. 485, § 8; Laws, 2000, ch. 621, § 31, eff from and after passage (approved May 23, 2000.)

§ 81-19-17. Supervision of licensees by commissioner; regulations; examination of licensees' records, etc.; administrative fines; injunctions against licensees violating chapter; administrative fine.

- (1) Each licensee shall be subject to the supervision of the commissioner.
- (2) The commissioner is authorized to make and enforce such reasonable regulations as are necessary and proper for the administration, enforcement and interpretation of the provisions of this chapter. In adopting such regulations, the commissioner shall follow the procedures set forth in the Mississippi Administrative Procedures Act (Sections 25-43-1 et seq., Mississippi Code of 1972).
- (3) In order to discover violations of this chapter and to identify persons subject to the provisions of this chapter, the commissioner is authorized to examine licensees, including all books, records, accounts and papers employed by such licensees in the transaction of their business, to summon witnesses and examine them under oath concerning matters relating to the business of such persons, and to investigate such other matters as may be relevant in the opinion of the commissioner. For this purpose and for the general purposes of administration of this chapter, the commissioner may employ such deputies and assistants as may be necessary, and such deputies and assistants, in the discretion of the commissioner, may be vested with the same authority conferred upon the commissioner by this chapter.
- (4) For the purpose of defraying a portion of the examination and administrative expenses incurred by the commissioner, each licensee shall pay at the time of examination the actual expenses of the examination, not to exceed Two Hundred Dollars (\$200.00) per day for the time actually devoted to examining the business of the licensee. However, for any examination other than one conducted because of suspected blatant violation of this chapter, the amount charged to any single licensee in any one (1) year shall not exceed Two Thousand Dollars (\$2,000.00).
- (5) The commissioner may impose and collect an administrative fine against any person found to have charged or collected a service charge or advance fee from a borrower before a loan is actually found, obtained and closed for such borrower. Such fine shall not exceed Five Thousand Dollars (\$5,000.00) for each violation.
- (6) Whenever the commissioner has reasonable cause to believe that any person is violating any of the provisions of this chapter, in addition to all other remedies provided herein, the commissioner 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 chapter or from doing any act or acts in furtherance thereof.

(7) The commissioner may, after notice and hearing, impose an administrative fine against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The administrative fine shall not exceed Five Hundred Dollars (\$500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

Sources: Laws, 1992, ch. 485, § 9; Laws, 2000, ch. 621, § 32, eff from and after passage (approved May 23, 2000.)

§ 81-19-18. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

Sources: Laws, 2000, ch. 621, § 34, eff from and after passage (approved May 23, 2000.)

§ 81-19-19. Deposit of funds collected into Consumer Finance Fund.

All funds coming into the possession of the commissioner as a result of this chapter, including all annual fees and examination fees, shall be deposited by the commissioner into the special fund in the State Treasury known as the "Consumer Finance Fund," and shall be expended by the commissioner solely and exclusively for the administration and enforcement of this chapter.

Sources: Laws, 1992, ch. 485, § 10; Laws, 2000, ch. 621, § 33, eff from and after passage (approved May 23, 2000.)

§ 81-19-21. Contracts to be written; enumeration of charges.

A licensee may not enter into an agreement to find and obtain a consumer loan for a borrower unless the agreement is in writing. The contract shall indicate a range acceptable to the borrower of the financing terms, the interest rate, loan charges and fees, and any other charges.

If the loan is to be secured by real property, the contract must enumerate and describe the types of charges which are likely to be made, with a range for each stated, including: discount points, origination fee, appraisals, surveys, title opinions, title insurance and prepaid taxes and insurance premiums. Should the total actual costs at closing exceed the estimate by the greater of ten percent (10%) or Two Hundred Dollars (\$200.00), the

licensee shall obtain a written agreement from the borrower that the borrower has elected to consummate the transaction even though not obligated to do so. However, any loan charges made by a licensee under the Small Loan Regulatory Law (Sections 75-67-101 through 75-67-137) and the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-247) shall be enumerated, described and assessed in the manner provided by Section 75-67-121, Mississippi Code of 1972.

Sources: Laws, 1992, ch. 485, § 11, eff from and after July 1, 1992.

§ 81-19-23. Activities prohibited; violation; penalties; borrower's remedies.

(1) No consumer loan broker may:

(a) Charge or collect any service charge or advance fee from a borrower unless and until a loan is actually found, obtained and closed for that borrower, and in no event shall a service charge exceed three percent (3%) of the original principal amount of the loan or a fee of Twenty-five Dollars (\$25.00), whichever is greater;

(b) Advertise:

(i) Using false, misleading or deceptive statements regarding the services provided by the consumer loan broker, the amount of service charge or the rates, terms and conditions of any loan which might be obtained through the services of the consumer loan broker;

(ii) Using the terms "insured," "bonded," "guaranteed" or "secured" with regard to the consumer loan broker's services or to any loan which might be obtained through the services of the consumer loan broker; or

(iii) Without including the full name and address of the consumer loan broker;

(c) Act as a lender on any consumer loan transaction from which the consumer loan broker receives a service charge from the borrower;

(d) Receive a service charge from a borrower on any consumer loan made by an affiliated lender, meaning a lender under common control or ownership with the consumer loan broker;

(e) Receive a service charge on any consumer loan from which the consumer loan broker also receives compensation as a licensed real estate broker or real estate salesman, unless the fact of payment, the amount of the service charge and the identity of the consumer loan broker is fully disclosed to the borrower;

(f) Accept an assignment of wages or salary from any borrower for any purpose;

(g) Make a false promise in order to influence or induce a person to use the consumer loan broker's services, whether made through agents, employees, advertising or otherwise;

- (h) Misrepresent or conceal essential or material facts regarding the consumer loan broker's services on any transaction under this chapter;
- (i) Withhold or suppress information from the commissioner or refuse to permit an examination of the consumer loan broker's records by the commissioner or his agent;
- (j) Fail to disburse funds in compliance with written agreements or to account for all monies received and disbursed; or
- (k) Fail to comply with the provisions of this chapter or of the regulations of the commissioner.

(2) Any person who knowingly violates any provision of this section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by commitment to the custody of the State Department of Corrections for a term of not more than three (3) years, or by both such fine and commitment.

(3) (a) Any borrower injured by a violation of this section may bring an action for recovery of damages. Judgment shall be entered for actual damages but in no case shall be less than the amount paid by the borrower to the loan broker, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(b) Any borrower injured by a violation of this section may bring an action against the surety bond or trust account, if any, of the loan broker.

(c) The remedies provided under this section are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

Sources: Laws, 1992, ch. 485, § 12; Laws, 1999, ch. 505, § 1; Laws, 2004, ch. 370, § 2, eff from and after passage (approved Apr. 20, 2004.)

§ 81-19-25. Records of licensee; retention.

(1) A licensee shall retain a complete record of each transaction under this chapter for a period of two (2) years from the date of the closing of the loan. The commissioner may prescribe by regulation the form and nature of the records to be retained.

(2) All records must be housed at the licensed location unless specific permission is secured from the commissioner to maintain them at another location within the state.

Sources: Laws, 1992, ch. 485, § 13, eff from and after July 1, 1992.

§ 81-19-27. Separate account required for charges and fees collected by broker; authorization to withdraw from account.

(1) Loan charges and fees collected on behalf of a lender by the licensee from a borrower shall be deposited and kept in an account maintained solely for that purpose and totally apart and separate from the monies of the licensee.

(2) Withdrawals of loan charges and fees from the separate account shall be only at the direction of the lender, an escrow agent or a loan closing attorney. Proof of the authorization to withdraw and pay out loan charges and fees shall be retained by the licensee.

Sources: Laws, 1992, ch. 485, § 14, eff from and after July 1, 1992.

§ 81-19-29. Suspension or revocation of license; grounds.

(1) After notice and hearing, the commissioner may suspend or revoke any license if he finds that the licensee has knowingly and without exercising due care:

(a) Failed to pay the annual license fee imposed by this chapter or an examination fee imposed by the commissioner under authority of this chapter; or

(b) Violated any provision of this chapter or of any rule or regulation issued under this chapter.

(2) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order to require the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

Sources: Laws, 1992, ch. 485, § 15; Laws, 2004, ch. 370, § 3, eff from and after passage (approved Apr. 20, 2004.)

§ 81-19-31. Service charge not to be construed as finance charge or interest.

Notwithstanding any provision of law to the contrary and specifically Section 75-17-25, Mississippi Code of 1972, a service charge as defined in this chapter shall not be construed to be finance charge or interest when paid to a licensed consumer loan broker by a borrower, or by a lender on behalf of and at the direction of the borrower, if the payment is made pursuant to a written contract between the consumer loan broker and the borrower as required by this chapter.

Sources: Laws, 1992, ch. 485, § 16, eff from and after July 1, 1992.

§ 81-19-33. Effect of failure to comply with chapter on underlying transaction.

The failure of a licensed consumer loan broker to comply with this chapter in the finding and obtaining of a consumer loan for a borrower shall not affect the validity and enforceability of any debt, mortgage, deed of trust or any other lien interest in real or

personal property, and a lender in the consumer loan or his assignee, holder or transferee is under no obligation to ascertain if this chapter has been complied with by the licensed consumer loan broker in the transaction.

Sources: Laws, 1992, ch. 485, § 17, eff from and after July 1, 1992.

§ 81-19-35. Right to hearing upon denial or revocation of license; notice; appeal; review.

When any license application is denied or any active license is revoked, the applicant or licensee has a right to a hearing before the commissioner at which the applicant or licensee may be represented by counsel. The demand for a hearing shall be in writing and shall be made within thirty (30) days after receipt of the denial or revocation. The commissioner shall set a date and time for the hearing no later than thirty (30) days after receipt of the demand. Public notice of the hearing shall be published in a newspaper of general circulation in the county where the license is proposed or is being operated. Such notice shall appear not less than ten (10) days before the date of the hearing and shall contain the date, time, place, identity of the parties involved and the purpose for which the hearing is to be held. All hearings shall be held in the office of the commissioner.

Any action of the commissioner after the hearing may be appealed by the applicant or licensee within ten (10) days from the date of such action by a writ of certiorari to the circuit court of the county where the business is proposed to be conducted or is being conducted, as provided by law in such cases.

The review by the court shall be on the record made before the commissioner; and copies of all applications, bonds and other papers and documents of every kind filed with the commissioner and the hearing shall be included in the record along with the transcript of the evidence.

Sources: Laws, 1992, ch. 485, § 18, eff from and after July 1, 1992.

