

*Miss. Code Ann. § 75-67-601*

MISSISSIPPI CODE of 1972

\*\*\* Current through the 2016 Regular and 1st and 2nd Extraordinary Sessions of the  
Legislature \*\*\*

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS  
CHAPTER 67. LOANS  
ARTICLE 13. MISSISSIPPI CREDIT AVAILABILITY ACT

Miss. Code Ann. § 75-67-601 (2016)

**§ 75-67-601. Short title** [Repealed effective July 1, 2018]

This article shall be known and may be cited as the "Mississippi Credit Availability Act."

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 1, eff from and after July 1, 2016.

**§ 75-67-603. Definitions** [Repealed effective July 1, 2018]

The following words and phrases used in this article shall have the following meanings unless the context clearly indicates otherwise:

(a) "Appropriate law enforcement agency" means the sheriff of each county in which the licensee maintains an office, or the police chief of the municipality in which the licensee maintains an office, or law enforcement officers of the Department of Public Safety.

(b) "Attorney General" means the Attorney General of the State of Mississippi.

(c) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance, or his designee, as the designated official for the purpose of enforcing this article.

(d) "Credit availability account" means all credit availability transactions held in the name of a single person through a single licensee or, if a secured transaction and the property is jointly owned, the names of the persons who jointly own the property that is being used as security for the transaction. That person or those persons shall be the "account holder" or "account holders."

(e) "Credit availability transaction" means a transaction whereby a credit availability licensee provides a consumer with a fully amortized loan, secured or unsecured, payable in substantially equal payments due monthly, or on any other schedule mutually agreed upon by the licensee and

the consumer, over an overall term of four (4) to twelve (12) months, calculated on the amount initially disbursed to the account holder or holders plus any fees that may be charged in an amount and manner provided for under this article.

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

(g) "Licensee" means any individual, partnership, association or corporation duly licensed by the Department of Banking and Consumer Finance to engage in the business of providing credit availability transactions under this article.

(h) "Month" means the calendar month beginning on and including the date of the credit availability transaction.

(i) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity, however organized.

(j) "Written" and "writing" includes communication of information in an electronic record consistent with the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act, 15 USC Section 7001 et seq.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 2, eff from and after July 1, 2016.

**§ 75-67-605. Licensing requirements** [Repealed effective July 1, 2018]

(1) A person may not engage in business as a credit availability licensee or otherwise portray himself as a credit availability licensee unless the person has a valid license authorizing him to engage in the business. Any transaction that would be subject to this article that is made by a person who does not have a valid license under this article shall be null and void.

(2) A credit availability licensee shall (a) have a definitive United States postal address and E911 address; and (b) comply with applicable local zoning requirements, except as otherwise provided in this article; and (c) maintain separate books and records for credit availability transactions.

(3) (a) The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license is required upon a change, directly or beneficially, in the ownership of any licensed credit availability business and an application shall be made to the commissioner in accordance with this article.

(b) When a licensee wishes to move a credit availability business to another physical location,

the licensee shall give thirty (30) days' prior written notice to the commissioner who shall amend the license accordingly.

(c) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars (\$ 750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars (\$ 475.00). If the annual renewal fee remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day of September of any year for which the annual fee has been paid. If any licensee fails to pay the annual renewal fee before the thirtieth day of September of any year for which the renewal fee is due, then the licensee 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 licensee has engaged in business after September 30. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding any other provisions of this article, the commissioner may issue a temporary license authorizing the operation of a credit availability business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed credit availability licensee. The temporary license is effective until the permanent license is issued or denied.

(5) Notwithstanding other provisions of this article, neither a new license nor an application to transfer an existing license shall be required upon any change, directly or beneficially, in the ownership of any licensed business incorporated under the laws of this state or any other state so long as the licensee continues to operate as a corporation doing a credit availability business under the license.

(6) Persons licensed under Sections 75-67-401 et seq. and 75-67-501 et seq. on July 1, 2016, shall have until September 30, 2016, to apply for an expedited license approval under this article. The commissioner, in his discretion, may waive certain documentation already on file under those licenses, including fingerprints, and may promulgate an application that expedites the licensing process. Upon the approval of the application, the commissioner shall grant a license under this article.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 3, eff from and after July 1, 2016.

**§ 75-67-607. Exemptions** [Repealed effective July 1, 2018]

The provisions of this article shall not apply to any bank, trust company, savings association, savings and loan association, savings bank or credit union that is chartered under the laws of this state or under federal law and domiciled in this state.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 4, eff from and after July 1, 2016.

**§ 75-67-609. Applicant eligibility requirements [Repealed effective July 1, 2018]**

To be eligible for a credit availability license, an applicant shall:

(a) Operate lawfully and fairly within the purposes of this article.

(b) Not have been convicted in the last ten (10) years or be active as a beneficial owner for someone who has been convicted in the last ten (10) years of a crime that the commissioner finds directly relates to the duties and responsibilities of the business of offering credit availability transactions.

(c) File with the commissioner a bond with good security in the penal sum of Ten Thousand Dollars (\$ 10,000.00), payable to the State of Mississippi, for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation of the provisions of this article. The bond shall not be valid until the commissioner approves it. The applicant may file, in lieu of the bond, cash, a certificate of deposit or government bonds in the amount of Ten Thousand Dollars (\$ 10,000.00). Those deposits shall be filed with the commissioner and are subject to the same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those deposits are payable to the depositor. Applicants applying for multiple licenses may submit a single bond for all licenses, provided that the total value of the bond is equal to Ten Thousand Dollars (\$ 10,000.00) per license applied for.

(d) File with the commissioner an application for a license and the initial license fee required in this article. If applicant's application is approved, a credit availability license will be issued within thirty (30) days.

(e) File with the commissioner a set of fingerprints from any local law enforcement agency for each owner of a sole proprietorship, partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company, shareholders owning ten percent (10%) or more of the outstanding shares of the corporation, except publically traded corporations and their subsidiaries, and any other executive officer with

significant oversight duties of the business. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the FBI for a national criminal history record check.

(f) Complete and file with the commissioner an annual renewal application for a license accompanied by the renewal fee required in this article.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 5, eff from and after July 1, 2016.

**§ 75-67-611. Application form** [Repealed effective July 1, 2018]

Each application for a license shall be in a form prescribed by the commissioner, signed under oath or otherwise authenticated in a record, and shall include the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is a partnership, association or corporation, of every member, officer and director thereof. However, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered under Section 12 of the Securities and Exchange Act of 1934 or is an issuer of securities which is required to file reports with the Securities and Exchange Commission under Section 15(d) of the Securities and Exchange Act, provided that the person files with the commissioner such information, documents and reports as are required by the provisions of the Securities and Exchange Act to be filed by the issuer with the Securities and Exchange Commission. The commissioner may, however, require the licensee to provide such information as he deems reasonable and appropriate concerning the officers and directors of the corporation and persons owning in excess of twenty-five percent (25%) of the outstanding shares of the corporation.

(b) The complete address of the location at which the applicant proposes to engage in the business of offering credit availability transactions.

(c) Other data and information the department may require with respect to the applicant, its directors, trustees, officers, members or agents.

(d) Sworn financial statements of the applicant showing a net worth of at least Twenty Thousand Dollars (\$ 20,000.00) for the first license. The applicant shall possess and maintain a net worth of at least Twenty Thousand Dollars (\$ 20,000.00) for the first license and at least Five Thousand Dollars (\$ 5,000.00) for each additional license.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 6, eff from and after July 1, 2016.

**§ 75-67-613. Investigations, findings and posting of licenses** [Repealed effective July 1, 2018]

(1) Upon filing of an application in a form prescribed by the commissioner, accompanied by the documents required in this article, the department shall investigate to ascertain whether the qualifications prescribed in this article have been satisfied. If the commissioner finds that the qualifications have been satisfied and, if he approves the documents so filed by the applicant, he shall issue to the applicant a license to engage in the credit availability business in this state.

(2) The license shall be kept conspicuously posted in the place of business of the licensee.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 7, eff from and after July 1, 2016.

**§ 75-67-615. Licensee duties; regulations; examinations of books and records** [Repealed effective July 1, 2018]

(1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this article and shall develop and provide any necessary forms or other documentation to carry out the provisions of this article.

(2) To assure compliance with the provisions of this article, the department may examine the books and records of any licensee without notice during normal business hours. 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 a consumer complaint and/or other exigent reasons as determined by the commissioner.

(3) Each licensee shall keep and use in its business any books, accounts and records the department may require to carry into effect the provisions of this article and the administrative regulations issued under this article. Every licensee shall preserve the books, accounts and records of its business for at least two (2) years.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 8, eff from and after July 1, 2016.

**§ 75-67-617. Advertising, displaying or publishing false or misleading statements prohibited** [Repealed effective July 1, 2018]

A licensee shall not advertise, display or publish, or permit to be advertised, displayed or published, in any manner whatsoever, any statement or representation that is false, misleading or deceptive.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 9, eff from and after July 1, 2016.

**§ 75-67-619. Fees and charges; method of computation** [Repealed effective July 1, 2018]

(1) Notwithstanding any other statutory limitation, a licensee authorized to provide credit availability transactions under this article may charge and collect fees and charges in a manner consistent with this section, and may take as security therefor any personal property that is not exempt or prohibited by state or federal law or regulations.

(2) (a) A licensee may charge and collect a monthly handling fee for services, expenses, and costs not to exceed twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or any portion thereof, for transactions of Five Hundred Dollars (\$ 500.00) or less. The handling fee shall not be deemed interest for any purpose of law.

(b) A licensee may charge and collect a monthly handling fee for services, expenses, and costs not to exceed twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or portion thereof, for transactions in excess of Five Hundred Dollars (\$ 500.00). The handling fee shall not be deemed interest for any purpose of law.

(c) (i) In addition to the charges authorized under this subsection (2), a licensee may also charge and collect an origination fee in the amount of one percent (1%) of the amount disbursed to the account holder or Five Dollars (\$ 5.00), whichever is greater, for costs associated with providing a credit availability transaction.

(ii) The origination fee shall not be deemed interest for any purpose of law.

(3) (a) No credit availability account created under subsection (2)(a) of this section shall have an outstanding principal balance in excess of Five Hundred Dollars (\$ 500.00) at any time.

(b) No credit availability account created under subsection (2)(b) of this section shall have an outstanding principal balance in excess of Two Thousand Five Hundred Dollars (\$ 2,500.00) at

any time.

(4) (a) Any credit availability account created under subsection (2)(a) of this section shall be a fully amortized loan, secured or unsecured, payable in equal payments of four (4) to six (6) months calculated on the amount initially disbursed to the account holder plus any fees that may be charged, in an amount and manner provided for under this article.

(b) Any credit availability account created under subsection (2)(b) of this section shall be a fully amortized loan, secured or unsecured, payable in equal payments of six (6) to twelve (12) months calculated on the amount initially disbursed to the account holder plus any fees that may be charged, in an amount and manner provided for under this article.

(5) In the event an account holder is delinquent in payment of a monthly payment under the terms of a credit availability agreement, the licensee may charge and collect from the account holder a late fee of ten percent (10%) of the past-due amount; provided, however, that no such late fee may be charged unless an account holder has failed to pay the past-due amount within ten (10) business days after the due date and provided that such fees are clearly disclosed in the credit availability agreement.

(6) In the event an account holder is in default under the terms of a credit availability agreement for more than sixty (60) days, the licensee may charge and collect from the account holder the following fees in connection with any such default, provided that such fees are clearly disclosed in the credit availability agreement:

(a) If the licensee is required to employ a third party, including an attorney, to collect on the account the licensee may:

(i) If the credit availability agreement so provides, charge and collect a reasonable collection fee and attorney's fee; and

(ii) If the credit availability agreement so provides, shall be entitled to recover from the account holder all court costs incurred and to recover any court-awarded damages, including those incurred on appeal.

(b) If applicable, the licensee may charge and collect from the account holder any fees and costs relating to the repossession and sale of collateral, including, but not limited to, fees and costs associated with the repossession, storage, preparation for sale and sale of collateral.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 10, eff from and after July 1, 2016.



**§ 75-67-621. Licensee to provide account holder with a written explanation of fees and charges** [Repealed effective July 1, 2018]

(1) A licensee shall provide each prospective account holder, before consummation of a credit availability transaction, a written explanation of the fees, and charges to be charged by the licensee and the due dates for all payments. The style, content, and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the account holder may prepay the unpaid balance in whole or in part at any time. The commissioner may promulgate rules in accordance with this article in order to assure complete and accurate disclosure of the fees and charges to be charged by a licensee under a credit availability agreement. At a minimum, the written explanation must include:

- (a) The amount of the transaction;
  - (b) The date the agreement was entered into;
  - (c) A schedule or description of the payments;
  - (d) The name and address of the licensed office;
  - (e) The name of the person primarily obligated on the agreement;
  - (f) The amount of the principal;
  - (g) The agreed rate of charge stated on a percent per year basis and the amount in dollars and cents;
  - (h) All other disclosures required pursuant to state and federal law.
- (2) The contract for any credit availability agreement shall include, along with other state or federal law requirements, the right for an account holder to rescind the transaction within one (1) business day; provided, however, that if the account holder accepts funds from the credit availability licensee prior to the expiration of the one-day rescission period, any origination fee charged shall be nonrefundable.

(3) A licensee with a physical location in this state shall display in its consumer waiting area, and shall provide a copy to any account holder that requests it, a pamphlet prepared by the department that describes general information about the transaction and about the account holder's rights and responsibilities in the transaction, including the rates and fees charged by the licensee, the licensee's rights in event of default by the consumer, the maximum allowable

account balance, and the consumer hotline telephone number to the Mississippi Department of Banking and Consumer Finance. The licensee shall add the account information and/or complaint hotline telephone number of the licensee to the pamphlet. A licensee without a physical location in this state shall make the information available on its website.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 11, eff from and after July 1, 2016.

**§ 75-67-623. Suspending or revoking license; reinstatement; notice to law enforcement**  
[Repealed effective July 1, 2018]

(1) The commissioner may, after notice and hearing, suspend or revoke a license if he finds that:

(a) The licensee, either knowingly, or without the exercise of due care to prevent the same, has violated any provision of this article;

(b) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner in refusing the license;

(c) The licensee has aided, abetted or conspired with an individual or person to circumvent or violate the requirement of this article;

(d) The licensee, or a legal or beneficial owner of the license, has been convicted of a crime that the commissioner finds directly relates to the duties and responsibilities of the business of offering credit availability transactions.

(2) The commissioner may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this article.

(3) The manner of giving notice and conducting a hearing as required by subsection (1) of this section shall be performed in accordance with procedures prescribed by the commissioner in rules or regulations adopted under the Mississippi Administrative Procedures Law, Section 25-43-1 et seq.

(4) Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender, but that surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

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

(6) The appropriate local law enforcement agency shall be notified of any licensee who has his license suspended or revoked as provided by this article.

(7) The commissioner shall enforce the provisions of this section.

(8) No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any debtor.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 12, eff from and after July 1, 2016.

**§ 75-67-625. Investigative powers and examinations** [Repealed effective July 1, 2018]

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, 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 article, including without limitation the conduct of business without a license as required under this article.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 13, eff from and after July 1, 2016.

**§ 75-67-627. Engaging in business without license; penalty** [Repealed effective July 1, 2018]

(1) Any person who engages in the business of offering credit availability transactions without first securing a license prescribed by this article shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed One Thousand Dollars (\$ 1,000.00) or by confinement in the county jail for not more than one (1) year, or both.

(2) Any person who engages in the business of offering credit availability transactions without first securing a license prescribed by this article 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 engaged in the business without a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 14, eff from and after July 1, 2016.

**§ 75-67-629. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture** [Repealed effective July 1, 2018]

(1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of this article, or who willfully makes a false entry in any record specifically required by this article, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed One Thousand Dollars (\$ 1,000.00) per violation or false entry.

(2) Compliance with criminal provisions of this article shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring 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 action in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(4) The commissioner may impose a civil penalty against any licensee adjudged by the commissioner to be in violation of the provisions of this article. The civil penalty shall not exceed Five Hundred Dollars (\$ 500.00) per violation and shall be deposited into the Department of Banking and Consumer Finance, "Consumer Finance Fund."

(5) Any licensee convicted in the manner provided in this article shall forfeit the surety bond or deposit required in this article and the amount of the bond or deposit shall be credited to the budget of the state or local agency which directly participated in the prosecution of the licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. The bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 15, eff from and after July 1, 2016.

**§ 75-67-631. Severability** [Repealed effective July 1, 2018]

The provisions of this article are severable. If any part of this article is declared invalid or unconstitutional, that declaration shall not affect the parts that remain.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 16, eff from and after July 1, 2016.

**§ 75-67-633. Municipal ordinances** [Repealed effective July 1, 2018]

(1) Municipalities of this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this article. Any existing or future order, ordinance or regulation that conflicts with this provision shall be null and void.

(2) Notwithstanding any existing zoning ordinance, any person or entity conducting business under a valid license issued by the department pursuant to Section 75-67-401 et seq. or Section 75-67-501 et seq., as of July 1, 2016, that elects to secure a license under this article may not be restricted from continuing operations under this article in the same location, regardless of whether the licensee elects to continue, if permitted by law, or to terminate its previous license.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 17, eff from and after July 1, 2016.

**§ 75-67-635. Commissioner employees and funds authorized for enforcement** [Repealed effective July 1, 2018]

The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for fiscal year 2016 to carry out and enforce the provisions of this article. The commissioner may also expend the necessary funds to equip and provide necessary travel expenses for those employees.

**HISTORY:** SOURCES: Laws, 2016, ch. 500, § 18, eff from and after July 1, 2016.

**§ 75-67-637. Liability of licensees** [Repealed effective July 1, 2018]

(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, 2016, ch. 500, § 19, eff from and after July 1, 2016.