

**STATE OF MISSISSIPPI  
DEPARTMENT OF BANKING AND CONSUMER FINANCE  
CONSUMER FINANCE DIVISION**

**MISSISSIPPI SMALL LOAN REGULATORY LAW  
AND  
SMALL LOAN PRIVILEGE TAX LAW**

**EMERGENCY REGULATIONS**



Compiled by the  
Department of Banking and Consumer Finance  
For Licensees governed by  
Mississippi Small Loan Laws

**John S. Allison, Commissioner**  
Effective: November 4, 2005

# DEPARTMENT OF BANKING AND CONSUMER FINANCE

## Emergency Regulation No. 2005-2

### Application of Licensing Requirement of Small Loan Regulatory Law and Small Loan Privilege Tax Law to Commercial Lenders

Mississippi's Small Loan Regulatory Law and Small Loan Privilege Tax Law (hereinafter referred to from time to time as the "Small Loan Statutes") appear as Sections 75-67-101, *et seq.* and 75-67-205, *et seq.* to Miss. Code Ann. of 1972.

Section 75-67-101 of the Small Loan Regulatory Law declares that law to be a public necessity and emphasizes that the law should be "liberally construed" to effectuate its purposes.

Section 75-67-103 of the Small Loan Regulatory Law defines the term "person" as every natural person, firm, corporation, co-partnership, joint-stock or other association or organization, and any other legal entity whatsoever. This same section defines the term "licensee" as every person holding a valid license issued under the provisions of the Small Loan Privilege Tax Law, except those specifically exempt by the provisions of that law, 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.

Section 75-67-203 of the Small Loan Privilege Tax Law defines the terms "person" and "licensee" similarly.

Section 75-67-105 of the Small Loan Regulatory Law and Section 75-67-205 of the Small Loan Privilege Tax Law each provide in part:

No person shall engage in the business of lending money . . . without being the holder of a valid and subsisting license . . . [issued under the Small Loan Regulatory Law].

Section 75-67-135 of the Small Loan Regulatory Law and Section 75-67-241 of the Small Loan Privilege Tax Law both create similar exemptions from the licensing requirements set forth above for certain types of lenders.

An issue exists with respect to the proper interpretation of the requirements of Sections 75-67-105 and 75-67-205 with respect to lenders that extend credit to persons for commercial or business purposes, often in very large amounts.

An examination of the Small Loan Regulatory Law, the Small Loan Privilege Tax Law, the applicable Mississippi interest rate statute and relevant case law in Mississippi leads to the conclusion that the licensing requirements of these laws should not pertain to persons that extend credit for commercial or business purposes and not for personal, family or household purposes.

The Small Loan Statutes, by their terms, apply to lenders engaged in the business of lending money to be paid back in monthly or other regular installments, an obvious reference to consumer lending. See Sections 75-67-103(b) and 75-67-203(b).

Section 75-17-21, Mississippi Code Ann., the Mississippi interest rate statute which governs Small Loan Regulatory Law and Small Loan Privilege Tax Law licensees, permits licensees to charge rates of interest that increase from fourteen percent (14%) for amounts in excess of Five Thousand Dollars (\$5,000.00), to thirty-six percent (36%) for amounts of no more than One Thousand Dollars (\$1,000.00). An alternative of eighteen percent (18%) for loans in excess of Twenty-five Thousand Dollars (\$25,000.00) is also provided. In addition, Section 75-17-21(3)(b) only permits a single fee of Five Hundred Dollars (\$500.00) to be charged on loans greater than Ten Thousand Dollars (\$10,000.00).

Clearly, this interest rate and fee structure contemplates the making of consumer loans, but would be inappropriate for most commercial loans.

The Small Loan Statutes and the accompanying Mississippi Small Loan Regulations reference the Federal Truth-in-Lending Act, and by implication Regulation Z which construes that Act, when providing disclosures and complying with various parts of the Small Loan Statutes. By its terms, the Truth-in-Lending Act does not apply to loans made for business purposes. See 15 U.S.C.A. §1603(1).

The Mississippi Supreme Court, on the various occasions when it has examined Mississippi's Small Loan Statutes, described those laws as remedial in purpose and designed to protect a class of borrowers that were less sophisticated and more vulnerable, while enabling a class of lenders to extend credit at higher rates of interest and with certain established fees that would justify the increased risk that these lenders incur. See Rodge vs. Kelly, 40 So. 552 (1906); Consumer Credit Corporation of Mississippi vs. Stanford, 194 So.2d 868 (1967).

Plainly, commercial loans extended by commercial lenders to sophisticated and highly creditworthy borrowers for business purposes, and not for personal, family or household purposes, do not fall within the ambit of these Small Loan Statutes.

The State of Mississippi has recently experienced an unprecedented disaster, Hurricane Katrina. The process of recovering from Hurricane Katrina will require significant injections of capital from a number of sources. Commercial lenders will play an important role in this process. The purpose of this Interpretative Regulation is to clarify the application of the Small Loan Regulatory Law and the Small Loan Privilege Tax Law to those lenders.

Therefore, based upon the mandate in Section 75-67-101, to liberally construe these laws in order to effectuate their purposes, and based upon the power vested in the Commissioner by Sections 75-67-129 and 75-67-243 to adopt such rules and regulations, not inconsistent with the purposes of these laws, as the Commissioner deems necessary for the purpose of administering these laws, the Commissioner, on behalf of the Department of Banking and Consumer Finance, hereby adopts the following regulation:

That the licensing requirements of Sections 75-67-105 and 75-67-205, Miss. Code Ann., 1972, do not apply to persons engaged in the business of extending credit to borrowers primarily for business or commercial purposes and who do not make any consumer loans as same or defined and contemplated under Mississippi's Small Loan Regulatory Law and Small Loan Privilege Tax Law.

The foregoing is adopted as an Emergency Order effective this \_\_\_\_ day of \_\_\_\_\_, 2005, and will be filed in accordance with the Administrative Procedures Law, Section 25-43-1, *et seq.*

---

John S. Allison, Commissioner  
Department of Banking and Consumer Finance