

1. **ALABAMA:** Under the *Alabama Small Loan Act, Ala. Code 5-18-4(a)*, a license is required for anyone in the business of lending amounts of less than \$1500. Anyone who makes such loans without a license is guilty of a misdemeanor. I imagine this does not apply to most commercial transactions, which typically involve much more than \$1500.

Alabama Small Loan Act (2017)

https://www.banking.alabama.gov/pdf/Laws/Small_Loans_Act.pdf

2. **ALASKA:** A person may not engage in the business of making loans of money, credit, goods, or things in action in the amount or of a value of \$25,000 or less and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the person were not a licensee under this chapter, without first obtaining a license from the department.

As is often the case, banks, savings and loans, trust companies, building and loan associations and credit unions are exempt for the licensing requirement.

Alaska Small Loans Act (2019)

<https://law.justia.com/codes/alaska/2019/title-6/chapter-20/>

3. **ARIZONA:** Like many other states, Arizona considers small loans, in this case those under \$10,000, to be consumer loans, regardless of whether the money is used for personal or business purposes. There is an exemption in Arizona, however, for a “person who is not regularly engaged in the business of making consumer loans”.

Arizona Revised Statute 6-602(A)(3) (2021). Consumer lenders and brokers need licenses, and, as always, banks, saving and loans, credit unions, and the like are exempt. Seems unlikely that any commercial lender or loan broker will be “regularly engaged in the business of consumer loans”, so it would appear that a license is unnecessary.

There are Arizona laws requiring that you “register” with the superintendent if you are an “advance fee loan broker” making consumer loans (i.e. those under \$10,000).

Arizona Revised Statute 6-1302 (2021)

Any person who acts as an advance fee loan broker **shall register** with the superintendent as provided in this chapter. A person who is not exempt under subsection B of this section and who advertises for, solicits or purports to be willing to make or procure a loan or extension of credit for an advance fee is presumed to be engaged in the business of an advance fee loan broker.

So, what is an “advance fee”?

Arizona Revised Statute 6-1301 (2021)

Advance fee" means a fee, interest or other consideration directly or indirectly received by a person prior to a loan of money or extension of credit or a commitment to loan money or extend credit being made by the person. Advance fees do not include the actual cost of charges paid to a third party which are incurred in making *real estate loans* secured in whole or in part by *a mortgage deed of trust or other security instrument on real estate*, including charges for a preliminary title search, title examination and report, title insurance premiums, property survey and appraisal fees.

It appears likely that these rules only apply to real property secured transactions, given the language of the rules, regulations, opinions and documents I have reviewed. It is also unlikely that this will be an issue if the transaction is commercial, for the "registration" instructions state that the "license" provided by registering authorizes "consumer loan brokering, consumer loan lending, private student loan lending, debt management/counseling and debt negotiation". *It does not mention commercial transactions*. But if your transaction is under \$10,000, and deemed a "consumer loan", and you take what is clearly an advance fee, you should consider registration. The process is fairly inexpensive and simple. Here's the link:

https://nationwidelicencingsystem.org/slr/PublishedStateDocuments/AZ_Advance_Fee_Loan_Broker_License-New-App-Checklist.pdf

Arizona Revised Statutes (2021)

<https://www.azleg.gov/arsDetail/?title=6#:~:text=Article%201-.Mortgage%20Brokers,Noncompliance%20not%20to%20affect%20validity%20of%20loan,-Chapter%2010>

- 4. ARKANSAS:** Interestingly, Arkansas defines "advance fee" broadly as "any consideration which is assessed or collected prior to the closing of a loan by a loan broker." *Arkansas Code Annotate § 23-39-401(2019) (emphasis added)*. However, that statute is nestled in a series of laws relating to "Mortgage Loan Companies and Loan Brokers". Query whether the word "mortgage" modifies "loan companies", "loan brokers", or both. If the latter, this is a mortgage loan statute with no application to personal property loans. Even if it more broadly interpreted to relate to personal property/equipment loans, one significant exemption is found in *§23-39-401(5)(B)(iii)* which exempts "a person extending or arranging credit, or offering to extend or arrange credit, **to a partnership or corporation exclusively for commercial of business purposes**."

I have read and re-read these statutes, conducted a few hours of online research, and spoken with several individuals in various departments in the Arkansas government, and not a single person knew anything about this. I believe that in all likelihood the advance fee statutes pertain to real estate loans only, and, further that no license is required in this state to make or broker personal property or unsecured loans.

However, if anyone has any different information about the laws in Arkansas, I would appreciate it if you would let me know.

Arkansas Mortgage Loan Companies and Loan Brokers Laws (2019):

<https://law.justia.com/codes/arkansas/2019/title-23/subtitle-2/chapter-39/>

5. **CALIFORNIA:** Pursuant to the *California Financing Law, Ca. Fin. Code §22000 et seq.*, a license is required for lenders and brokers making and/or brokering consumer and commercial loans. There are the usual exemptions for state and federally chartered banks, trust companies, insurance premium finance agencies, savings and loans, credit unions and the like. There are also exceptions for *bona fide* (true) leases, which do not require a license for the lessor. There are other exemptions for companies that make or broker five or fewer loans in a twelve-month period if the loans are “*incidental* to the business of the person” making the loan (which I interpret to mean that the exemption is not available to a company that is in the business of finance), and anyone can make or broker one loan in any given twelve-month period, incidental or not. *Fin. Code §§22050(e) and 22050.5(a)*.

California Financing Law (2020):

<https://law.justia.com/codes/california/2020/code-fin/division-9/>

CFL application form and instructions:

<https://dfpi.ca.gov/wp-content/uploads/sites/337/forms/cfl/DFPI-CFL-1422.pdf>

California has a fairly comprehensive scheme exempting pure referral sources from any licensing requirements as long as the referral source and the actual lender adhere to a strict set of guidelines. *Fin. Code §22602(a) et seq.*

Referral Law Statutes (2020):

<https://law.justia.com/codes/california/2020/code-fin/division-9/chapter-3/article-3/section-22602/>

<https://law.justia.com/codes/california/2020/code-fin/division-9/chapter-3/article-3/section-22603/>

<https://law.justia.com/codes/california/2020/code-fin/division-9/chapter-3/article-3/section-22604/>

In addition, you should be aware of the new California disclosure statutes, which are still being finalized by the DFPI, but should become effective by 2022.

California Disclosure Statutes (2020): (Note: For reference only. These regulations are still being fine-tuned.)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1235