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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO FINANCIAL INSTITUTIONS - SMALL LOAN LENDERS

Introduced By: Representatives Diaz, Williams, Almeida, Carnevale, and Fox

Date Introduced: February 26, 2009

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-14-1 and 19-14-22 of the General Laws in Chapter 19-14
2 entitled "Licensed Activities" are hereby amended to read as follows:

3 **19-14-1. Definitions.** -- For purposes of this chapter and chapters 14.1, 14.2, 14.3, 14.4,
4 14.6 and 14.7 of this title:

5 (1) "Check" means any check, draft, money order, personal money order, or other
6 instrument for the transmission or payment of money. For the purposes of check cashing,
7 travelers checks or foreign denomination instruments shall not be considered checks. "Check
8 cashing" means providing currency for checks;

9 (2) "Deliver" means to deliver a check to the first person who in payment for the check
10 makes or purports to make a remittance of or against the face amount of the check, whether or not
11 the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer
12 signs the check;

13 (3) "Electronic money transfer" means receiving money for transmission within the
14 United States or to locations abroad by any means including, but not limited to, wire, facsimile or
15 other electronic transfer system;

16 (4) (i) "Lender" means any person who makes or funds a loan within this state with the
17 person's own funds, regardless of whether the person is the nominal mortgagee or creditor on the
18 instrument evidencing the loan;

19 (ii) A loan is made or funded within this state if any of the following conditions exist:

1 (A) The loan is secured by real property located in this state;
2 (B) An application for a loan is taken by an employee, agent, or representative of the
3 lender within this state;

4 (C) The loan closes within this state;
5 (D) The loan solicitation is done by an individual with a physical presence in this state;

6 or

7 (E) The lender maintains an office in this state.

8 (iii) The term "lender" shall also include any person engaged in a transaction whereby
9 the person makes or funds a loan within this state using the proceeds of an advance under a line
10 of credit over which proceeds the person has dominion and control and for the repayment of
11 which the person is unconditionally liable. This transaction is not a table funding transaction. A
12 person is deemed to have dominion and control over the proceeds of an advance under a line of
13 credit used to fund a loan regardless of whether:

14 (A) The person may, contemporaneously with or shortly following the funding of the
15 loan, assign or deliver to the line of credit lender one or more loans funded by the proceeds of an
16 advance to the person under the line of credit;

17 (B) The proceeds of an advance are delivered directly to the settlement agent by the line
18 of credit lender, unless the settlement agent is the agent of the line of credit lender;

19 (C) One or more loans funded by the proceeds of an advance under the line of credit is
20 purchased by the line of credit lender; or

21 (D) Under the circumstances as set forth in regulations adopted by the director or the
22 director's designee pursuant to this chapter;

23 (5) "Licensee" means an entity licensed under this chapter and incorporated in the state
24 or qualified to do business in the state;

25 (6) "Loan" means any advance of money or credit including, but not limited to:

26 (i) Loans secured by mortgages;

27 (ii) Insurance premium finance agreements;

28 (iii) The purchase or acquisition of retail installment contracts or advances to the holders
29 of those contracts;

30 (iv) Educationalloans;

31 (v) Any other advance of money; or

32 (vi) Any transaction such as those commonly known as "pay day loans," "pay day
33 advances," or "deferred presentment loans," in which a cash advance is made to a customer in
34 exchange for the customer's personal check, or in exchange for the customer's authorization to

1 debit the customer's deposit account, and where the parties agree either that the check will not be
2 cashed or deposited, or that customer's deposit account will not be debited, until a designated
3 future date.

4 (7) "Loan broker" means any person who, for compensation or gain, or in the expectation
5 of compensation or gain, either directly or indirectly, solicits, processes, negotiates, places or sells
6 a loan within this state for others in the primary market, or offers to do so. A loan broker shall
7 also mean any person who is the nominal mortgagee or creditor in a table funding transaction. A
8 loan is brokered within this state if any of the following conditions exist:

- 9 (i) The loan is secured by real property located in this state;
- 10 (ii) An application for a loan is taken or received by an employee, agent or representative
11 of the loan broker within this state;
- 12 (iii) The loan closes within this state;
- 13 (iv) The loan solicitation is done by an individual with a physical presence in this state;
- 14 or
- 15 (v) The loan broker maintains an office in this state.

16 (8) "Personal money order" means any instrument for the transmission or payment of
17 money in relation to which the purchaser or remitter appoints or purports to appoint the seller as
18 his or her agent for the receipt, transmission, or handling of money, whether the instrument is
19 signed by the seller or by the purchaser or remitter or some other person;

20 (9) "Primary market" means the market in which loans are made to borrowers by lenders,
21 whether or not through a loan broker or other conduit;

22 (10) "Principal owner" means any person who owns, controls, votes or has a beneficial
23 interest in, directly or indirectly, ten percent (10%) or more of the outstanding capital stock
24 and/or equity interest of a licensee;

25 (11) "Sell" means to sell, to issue, or to deliver a check;

26 (12) "Small loan" means a loan of less than five thousand dollars (\$5,000), not secured
27 by real estate, made pursuant to the provisions of chapter 14.2 of this title;

28 (13) "Small loan lender" means a lender engaged in the business of making small loans
29 within this state;

30 (14) "Table funding transaction" means a transaction in which there is a
31 contemporaneous advance of funds by a lender and an assignment by the mortgagee or creditor of
32 the loan to the lender;

33 (15) "Check casher" means a person or entity that, for compensation, engages, in whole
34 or in part, in the business of cashing checks;

1 (16) "Deferred deposit transaction" means any transaction such as those commonly
2 known as "pay-day loans," "pay-day advances," or "deferred presentment loans" in which a cash
3 advance is made to a customer in exchange for the customer's personal check or in exchange for
4 the customer's authorization to debit the customer's deposit account and where the parties agree
5 either that the check will not be cashed or deposited, or that the customer's deposit account will
6 not be debited until a designated future date;

7 (17) "Insurance premium finance agreement" means an agreement by which an insured,
8 or prospective insured, promises to pay to an insurance premium finance company the amount
9 advanced or to be advanced, under the agreement to an insurer or to an insurance producer, in
10 payment of a premium or premiums on an insurance contract or contracts, together with interest
11 and a service charge, as authorized and limited by this title;

12 (18) "Insurance premium finance company" means a person engaged in the business of
13 making insurance premium finance agreements or acquiring insurance premium finance
14 agreements from other insurance premium finance companies;

15 (19) "Simple interest" means interest computed on the principal balance outstanding
16 immediately prior to a payment for the actual number of days between payments made on a loan
17 over the life of a loan;

18 (20) "Nonprofit organization" means a corporation qualifying as a 26 U.S.C. section
19 501(c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,
20 employee, agent, or other affiliated person profits financially other than receiving reasonable
21 salaries if applicable;

22 (21) "Mortgage loan originator" means a natural person employee of a lender or loan
23 broker that is required to be licensed under Rhode Island general laws section 19-14-1 et seq., or
24 a provisional employee as defined herein, and who for or with the expectation of a fee,
25 commission or other valuable consideration (i) advises an applicant about different loan products
26 and their terms and conditions in order to permit the applicant to select and apply for a particular
27 loan product, or (ii) advises persons in completing loan applications by informing the applicant
28 regarding the benefits, terms and/or conditions of a loan product or service, or (iii) negotiates or
29 offers to negotiate the making of a loan with an applicant. A person whose activities are
30 ministerial and clerical is not acting as a mortgage loan originator;

31 (22) "Mortgage loan" means a loan secured in whole or in part by real property located
32 in this state;

33 (23) "Loan solicitation" shall mean an effectuation, procurement, delivery and offer, and
34 advertisement of a loan. Loan solicitation also includes providing or accepting loan applications

1 and assisting persons in completing loan applications and/or advising, conferring, or informing
2 anyone regarding the benefits, terms and/or conditions of a loan product or service. Loan
3 solicitation does not include loan processing or loan underwriting as defined in this section. Loan
4 solicitation does not include telemarketing which is defined for purposes of this section to mean
5 contacting a person by telephone with the intention of collecting such person's name, address and
6 telephone number for the sole purpose of allowing a mortgage loan originator to fulfill a loan
7 inquiry;

8 (24) "Loan processing" shall mean any of a series of acts or functions including the
9 preparation of a loan application and supporting documents performed by a person which leads to
10 or results in the acceptance, approval, denial, and/or withdrawal of a loan application, including,
11 without limitation, the rendering of services including loan underwriting, taking or receiving loan
12 applications, obtaining verifications, credit reports or appraisals, communicating with the
13 applicant and/or the lender or loan broker, and/or other loan processing and origination services
14 for consideration by a lender or loan broker. Loan processing does not include the following:

15 (A) The providing of title services, including title searches, title examinations, abstract
16 preparation, insurability determinations, and the issuance of title commitments and title insurance
17 policies, loan closings, preparation of loan closing documents when performed by or under the
18 supervision of a licensed attorney, licensed title agency or licensed title insurance company;
19 (B) Rendering of credit reports by an authorized credit reporting agency; and
20 (C) Rendering of appraisal services.

21 (25) "Loan underwriting" shall mean a loan process that involves the analysis of risk
22 with respect to the decision whether to make a loan to a loan applicant based on credit,
23 employment, assets, and other factors including evaluating a loan applicant against a lender's
24 various lending criteria for creditworthiness, making a determination for the lender as to whether
25 the applicant meets the lender's pre-established credit standards and/or making a recommendation
26 regarding loan approval;

27 (26) "Negotiate a loan" shall mean to confer directly with or offer advice directly to a
28 loan applicant or prospective loan applicant for a loan product or service concerning any of the
29 substantive benefits, terms, or conditions of the loan product or service;

30 (27) "Natural person employee" shall mean any natural person performing services as a
31 bona-fide employee for a person licensed under the provisions of Rhode Island general laws
32 section 19-14-1, et. seq., in return for a salary, wage, or other consideration, where such salary,
33 wage, or consideration is reported by the licensee on a federal form W-2 payroll record. The term
34 does not include any natural person or business entity performing services for a person licensed

1 under the provisions of Rhode Island general laws in return for a salary, wage, or other
2 consideration, where such salary, wage, or consideration is reported by the licensee on a federal
3 form 1099;

4 (28) "Bona-fide employee" shall mean an employee of a licensee who works under the
5 oversight and supervision of the licensee;

6 (29) "Oversight and supervision of the licensee" shall mean that the licensee provides
7 training to the employee, sets the employee's hours of work, and provides the employee with the
8 equipment and physical premises required to perform the employee's duties;

9 (30) "Operating subsidiary" shall mean a majority-owned subsidiary of a financial
10 institution or banking institution that engages only in activities permitted by the parent financial
11 institution or banking institution;

12 (31) "Provisional employee" means a natural person who, pursuant to a written
13 agreement between the natural person and a wholly owned subsidiary of a financial holding
14 company, as defined in The Bank Holding Company Act of 1956, as amended, a bank holding
15 company, savings bank holding company, or thrift holding company, is an exclusive agent for the
16 subsidiary with respect to mortgage loan originations, and the subsidiary: (a) holds a valid loan
17 broker's license and (b) enters into a written agreement with the director or the director's designee
18 to include:

19 (i) An "undertaking of accountability" in a form prescribed by the director or the
20 director's designee, for all of the subsidiary's exclusive agents to include full and direct financial
21 and regulatory responsibility for the mortgage loan originator activities of each exclusive agent as
22 if said exclusive agent was an employee of the subsidiary;

23 (ii) A business plan to be approved by the director or the director's designee, for the
24 education of the exclusive agents, the handling of consumer complaints related to the exclusive
25 agents, and the supervision of the mortgage loan origination activities of the exclusive agents;

26 (iii) A restriction of the exclusive agents' mortgage loan originators' activities to loans to
27 be made only by the subsidiary's affiliated bank; and

28 (32) [Effective December 31, 2008; see contingent effective date note.] "Multi-state
29 licensing system" a system involving one or more states, the District of Columbia, or the
30 Commonwealth of Puerto Rico established to facilitate the sharing of regulatory information and
31 the licensing, application, reporting and payment processes, by electronic or other means, for
32 mortgage lenders and loan brokers, and other licensees required to be licensed under this chapter.

33 (33) "Negative equity" means the difference between the value of an asset and the
34 outstanding portion of the loan taken out to pay for the asset, when the latter exceeds the former

1 amount.

2 **19-14-22. Reporting requirements.** -- (a) Each licensee shall annually on or before
3 March 31 file a report with the director or the director's designee giving any relevant information
4 that the director or the director's designee may reasonably require concerning the business and
5 operations during the preceding calendar year of each licensed place of business conducted by the
6 licensee within the state. The information provided to the director or the director's designee shall
7 include, without limitation, and as applicable to such licensee: (1) The total number and dollar
8 amount of checks sold; (2) The total number and dollar amount of money transfers made; (3) The
9 total number and dollar amount of checks cashed; (4) The total number and dollar amount of
10 loans made; (5) The total number of branches or agents owned or operated by the licensee within
11 the state; and (6) The total amount of fees generated by each branch or agent owned or operated
12 by the licensee within the state. The report shall be made under oath and shall be in a form
13 prescribed by the director or the director's designee. At the time of filing each report, the sum of
14 fifty-five dollars (\$55.00) per license and fifty-five dollars (\$55.00) per branch certificate shall be
15 paid by the licensee to the director for the use of the state. Any licensee who shall delay
16 transmission of any report required by the provisions of this title beyond the limit, unless
17 additional time is granted, in writing, for good cause, by the director or the director's designee,
18 shall pay a penalty of twenty-five dollars (\$25) for each day of the delay.

19 (b) Any licensee shall, within twenty-four (24) hours after actual knowledge, notify the
20 director or the director's designee, in writing, of the occurrence of any of the following events: the
21 institution of bankruptcy, receivership, reorganization or insolvency proceedings regarding a
22 licensee, the institution of any adverse government action against a licensee, or any felony
23 indictment or conviction of any licensee or any officers, directors, owners, employees, members
24 or partners thereof, as the case may be.

25 (c) Each mortgage loan originator licensee shall, on or before March 31, 2010 and every
26 March 31st thereafter, file with the director or the director's designee evidence acceptable to the
27 director or the director's designee that said loan originator licensee has successfully completed,
28 during the twelve (12) months immediately preceding March 31, a minimum of eight (8) hours of
29 continuing education relative to state and federal statutes, rules and regulations applicable to
30 loans, mortgages, real property, deeds and contracts provided by an approved nationally
31 recognized training facility or other facility including in-house programs, as determined by the
32 director or the director's designee.

33 (d) Both the mortgage loan originator and the licensee shall promptly notify the director
34 or the director's designee, in writing, within fifteen (15) business days of the termination of

1 employment or services of a mortgage loan originator.

2 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T

RELATING TO FINANCIAL INSTITUTIONS - SMALL LOAN LENDERS

- 1 This act would require businesses operating as or taking part in small loan lending,
 - 2 money transfers or check cashing to provide additional information when submitting their annual
 - 3 license renewal. Said information would include the net profit for each location listed under their
 - 4 license; whether or not they have a policy to guide their community reinvestment, and if so to
 - 5 provide a copy of such; and, a list of donations made, including amount and to which institutions
 - 6 or organizations.
- 7 This act would take effect upon passage.

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